



Reference: 20171003-5426
3/3/4/3
Enquiries: S Faker

Circular: 0045/2017
Expiry date: None

To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Deputy Directors, Circuit Managers, Heads: SLES Coordination and Advice, District Officials, Principals and Chairpersons of governing bodies of ordinary public schools

Short summary: *Amendments to the grievance procedure for educators as outlined in Chapter G of the Personnel Administrative Measures (PAM), published in Government Gazette No. 39684 of 12 February 2016.*

SUBJECT: AMENDMENTS TO THE GRIEVANCE PROCEDURE FOR EDUCATORS

1. INTRODUCTION

- 1.1 The Minister of Basic Education, Ms AM Motshekga, has promulgated amendments to the PAM document on 12 February 2016, in terms of section 4 of the Employment of Educators Act, 1998 (Act 76 of 1998), which determined and consolidated the terms and conditions for the employment of educators.
- 1.2 Attention is drawn to paragraph 4.1 and 4.2 of Circular 0037/2013, which outline the procedure that must be followed when an educator in the service of the Western Cape Education Department (WCED) wishes to lodge a grievance, as outlined in the PAM.
- 1.3 This circular outlines the revised grievance procedure for educators in line with the amendments to the PAM.

2. **PURPOSE**

The primary purpose is to enhance the grievance procedure in public education by promoting:

- (a) the speedy, impartial and equitable handling of grievances;
- (b) sound employee relations;
- (c) the resolution of individual grievances at the lowest possible level in a department; and
- (d) dispute prevention.

3. **AMENDMENTS TO THE GRIEVANCE PROCEDURE**

- 3.1 The first fundamental amendment is the change in chapters from Chapter H to Chapter G of the PAM document.
- 3.2 Secondly, any educator who is aggrieved must in future either follow an informal route (complaint) by approaching his/her direct supervisor and/or relevant manager about the dissatisfaction, or use the prescribed form by reducing the grievance to writing. The Grievance Form (**Annexure A**) is attached hereto for ease of reference.

4. **DEALING WITH GRIEVANCES**

4.1 Informal stage (complaint)

- 4.1.1 This process is informal and without prejudice to either of the parties.
- 4.1.2 **Educators are encouraged to follow the informal route (complaint) with their head of institution/relevant manager before lodging a formal grievance.**
- 4.1.3 A sincere attempt should be made by the head of institution/relevant manager to resolve any grievance by oral interview. During said process no records will be kept of proceedings.
- 4.1.4 Representation is not allowed at this stage, however, the educator may request an observer.
- 4.1.5 Heads of institutions/relevant managers are encouraged to complete the process within 10 working days upon receipt of the complaint.
- 4.1.6 **The aim is to strengthen and effectively deal with the complaint process to avoid a formal grievance.**

4.2 Formal stage

- 4.2.1 This is a formal process and the complaint is reduced to writing with the head of institution/relevant manager by using the Grievance Form (Annexure A), within 90 days from the date on which the educator became aware of the act or omission which adversely affected him/her.
- 4.2.2 Time frames should be calculated by excluding the first day and including the last day.
- 4.2.3 If the educator is not satisfied with the outcome referred to in paragraph G.4.2 of the PAM, the grievant may refer the matter in writing, by hand or registered mail, together with the decision of the head of institution/relevant manager, as the case may be, to the Regional/District Head of Education in the case of an educator at a school, or to the office referred to in paragraph G.4.2.4 of the PAM in the case of an educator outside the school, within five working days of the parties failing to resolve the grievance.
- 4.2.4 **The aim is to strengthen and effectively deal with the formal grievance process to avoid a dispute.**

5. **GUIDELINES ON HOW TO COMPLETE THE GRIEVANCE FORM (ANNEXURE A)**

- 5.1 This form must be used to lodge a formal grievance (excluding an alleged unfair dismissal) when an educator is dissatisfied with an act or omission and has been unable to resolve the problem during the complaint stage.
- 5.2 The educator has to lodge a grievance within 90 days from the date on which he/she became aware of the act or omission which adversely affected them.
- 5.3 The educator may be assisted or represented by a fellow educator and/or a representative and/or an official from a recognised trade union.
- 5.4 It is important to ensure that all information is completed accurately. Once the form is completed, it must be given to the head of institution/relevant manager designated to facilitate grievances at the educator's institution. The WCED will attach this form to the grievance documentation and it will be used throughout all the stages of the grievance procedure.
- 5.5 As the head of institution/relevant manager attempts to resolve the grievance at each stage, each party will complete the appropriate part of the form. The educator will be given an opportunity to respond to each and every comment.
- 5.6 At the conclusion of each stage of the grievance procedure, the head of institution/relevant manager will provide the educator with a copy of the completed form.

- 5.7 Once the grievance has been resolved, the educator does not need to complete the rest of the form.
- 5.8 Educators are required to complete Parts A and B of this form and then hand it to the head of institution/relevant manager, as the case may be, at their institution/office. The head of institution/relevant manager, as the case may be, will affix his/her signature in the block below Part B of the form to indicate that the grievance has been received. The educator must ensure that he/she receives a copy of the form where receipt of their grievance has been acknowledged.
- 5.9 Part C of the Grievance Form will be completed by the head of institution/relevant manager, as the case may be, and the grievant will be provided with a copy during the various stages where attempts will be made to resolve the grievance.
6. Please note that incomplete Grievance Forms will **not** be captured or registered; nor will the grievance be investigated.
7. To ensure legislative compliance, Heads of institutions/relevant managers are strongly encouraged to adhere to the time frames set out in the PAM and must use the guidelines as set out in Annexure B and C to facilitate and resolve the grievance process.
8. The Directorate: Employee Relations should be informed of the outcome of the grievance, with all the necessary attachments, within five days of finalising the grievance at district level.
9. Where an educator feels aggrieved with regard to his/her application for temporary incapacity leave in line with the Policy on Incapacity Leave and Ill-Health Retirement (PILIR) and/or service benefits which include, but are not limited to salaries, bonuses and allowances, such concerns **must** be directed to the relevant manager at Head Office.
10. Heads of institutions/relevant managers are required to inform all staff of the contents of this circular regarding amendment to the grievance procedure for educators.
11. All new educators should be made aware of this circular as soon they are appointed at any of the WCED's educational institutions.

SIGNED: BK SCHREUDER
HEAD: EDUCATION
DATE: 2017-11-18

GRIEVANCE FORM**G.1****PLEASE READ THE FOLLOWING INSTRUCTIONS BEFORE COMPLETING THE FORM**

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

PART A: PERSONAL PARTICULARS*To be completed by the aggrieved educator*

INITIALS AND SURNAME		
PERSAL NUMBER		
REGION/DISTRICT		
SCHOOL/OFFICE		
RANK/POST LEVEL		
DATE ON WHICH YOU BECAME AWARE OF THE ACT OR OMISSION		
PERSONAL CONTACT DETAILS	TEL:	CELL:
	FAX:	
CONTACT DETAILS OF REPRESENTATIVE	TEL:	CELL:
NAME OF TRADE UNION		
CONTACT DETAILS OF TRADE UNION	TEL:	CELL:

PART B: DETAILS OF THE GRIEVANCE*To be completed by the aggrieved educator***What are you aggrieved about?***(If space below is not enough, please attach additional page(s))*

What solutions do you propose?

SIGNATURE: _____**DATE:** _____

Receipt of grievance form acknowledged and a copy given to aggrieved educator

SIGNATURE: _____**DATE:** _____**NAME:** _____**RANK:** _____

PART C: GRIEVANCE RESOLUTION: LEVELS

NOTES:

This part of the form makes provision for levels of authority to attempt to resolve the grievance. Depending on the circumstances, one or more pages below need to be completed.

The grievance must be dealt with by the applicable levels within the periods referred to in the procedure, unless extended by agreement with the aggrieved educator.

Should the grievance not be attended to within the periods referred to in the procedure or extended period agreed to with the aggrieved educator, in the case of an alleged unfair labour practice, the aggrieved educator has the right to refer a dispute to the Education Labour Relations Council to be dealt with in terms of the dispute resolution procedures.

To be completed on behalf of the Head of Department

NAME OF OFFICIAL			
DESIGNATION			
RELATIONSHIP WITH AGGRIEVED EDUCATOR	SUPERVISOR/ HEAD	COMPONENT HEAD	DISTRICT HEAD/DIRECTOR
TEL:	CELL:		FAX:
WAS THE GRIEVANCE RESOLVED?	YES		NO

Comments by the aggrieved educator if necessary

SIGNATURE: _____
On behalf of Employer

DATE: _____

NAME: _____

RANK: _____

Was the grievance resolved?	YES		NO	
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Comments by the aggrieved educator if necessary

EDUCATOR SIGNATURE: _____

DATE: _____

PART D: REGION/DISTRICT OR DEPARTMENTAL LEVEL

To be completed on behalf of the Head of Department

NAME OF OFFICIAL			
DESIGNATION			
RELATIONSHIP WITH AGGRIEVED EDUCATOR	DISTRICT/REGIONAL HEAD	COMPONENT HEAD	DIRECTORATE
TEL:	CELL:	FAX:	

Decision in respect of the grievance and reasons for the decision:

(If space below is not enough, please attach additional page(s))

SIGNATURE: _____

DATE: _____

On behalf of Employer

NAME: _____

RANK: _____

Was the grievance resolved?	YES		NO	
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If no, the aggrieved educator must explain why he/she is still dissatisfied:

EDUCATOR SIGNATURE: _____

DATE: _____



GENERAL GRIEVANCES REPORT FORM

GRIEVANCE PROCESS AT SCHOOL LEVEL

NO.	QUESTIONS	YES	NO
1	Is the educator aware of the grievance procedure?		
2	Is the educator aware of the informal and formal stages of the grievance procedure?		
3	Is the educator aware of the applicable time frames?		
4	Is the educator aware of his/her rights in following the grievance procedure?		
5	Was the Grievance Form (G.1) used and was the time frame of 90 days adhered to?		
6	Was it explained to the grievant that he/she has the right to representation from a fellow employee or union representative?		
7	Was the <i>audi alteram partem</i> principle applied?		
8	Is the decision-making/outcome of the grievance defensible?		
9	If the grievance remains unresolved, is the grievant aware that the matter can be escalated to district level?		
10	Did you convene a meeting with the grievant within three days in an attempt to resolve the matter?		
11	Did you reduce the outcome of the grievance to writing and communicate the outcome to the grievant within five days after the meeting?		

Date grievance was lodged	Date meeting was facilitated	Date that report was communicated

Reasons for not complying with time frames

Outcome of the grievance meeting: Grievance was: resolved / not resolved

Supervisor/principal signature	Grievant signature	Representative signature



GRIEVANCE PROCESS AT DISTRICT LEVEL

What is the nature of the grievance?

What is the desired outcome that the grievant is seeking?

GRIEVANCE CHECKLIST: LINE MANAGER/LABOUR RELATIONS OFFICER/SUPERVISOR

NO.	QUESTIONS	YES	NO
1	Did you act impartially/experience no conflict of interest in handling the matter?		
2	Were you a party involved in the matter?		
3	Are you familiar with the procedure and time frames?		
4	Are you in possession of all relevant and/or supporting documentation to handle the grievance?		
5	If documentary evidence is needed in order for the grievant to apply the <i>audi alteram partem</i> principle, did you assist?		
IDENTIFYING ISSUES — CONDUCTING A PROPER ASSESSMENT			
6	Were the identified issues properly assessed and dealt with adequately?		
7	Was the grievance issue clarified with the person that feels aggrieved and are the parties clear on the issue that needs to be addressed?		
8	Did you distinguish between issues in dispute and issues that are common cause?		

PROCESSES, ACTIONS, DECISIONS — IMPARTIAL AND TRANSPARENT			
9	Did you apply principles such as reasonableness, fairness, lawfulness in handling the grievance?		
10	Did you convene a meeting within five days with the grievant in an attempt to resolve the matter?		
11	Did you reduce the outcome of the grievance to writing and communicate the outcome to the grievant within five days after the meeting?		
12	Would the grievant and/or any other party be in a position to understand how you arrived at a particular decision?		
ADDITIONAL CONSIDERATIONS			
13	Was confidentiality maintained during the process?		
14	Can you concur that the <i>audi alteram partem</i> principle was applied?		

Outcome of the grievance meeting:	
Grievance was: resolved / not resolved	

District official signature	Grievant signature	Representative signature

**PLEASE NOTE: THIS CHECKLIST MUST BE SENT WITH THE DISPUTE TO THE DIRECTORATE :
EMPLOYEE RELATIONS – HEAD OFFICE**



FILLING OF ADVERTISED VACANCY GRIEVANCE REPORT FORM

NO.		YES	NO
ADVERTISEMENT			
1	Was it discriminatory in nature?		
2	Did it cover key performance areas of the post as per job specifications?		
3	Was it beneficial only in respect of a particular individual with the aim to exclude others?		
4	Were the criteria fair and reasonable?		
SHORTLISTING PROCESS			
5	Was the grievance referred within the relevant time frame (30 days)?		
6	Was the grievant shortlisted for the purpose of an interview?		
7	Was the grievant given ample time to prepare for the interview?		
8	Was the process conducted by an interview committee as required by law?		
9	Was the interview committee elected by a fully constituted governing body?		
10	Were criteria applied in line with the advertisement?		
11	If members were co-opted to the interview committee, was the process followed correctly?		
12	Did the governing body/interview committee use a scoring grid during the shortlisting process? If not, which method was used?		
13	Was consideration given to Employment Equity processes?		
14	Does the grievant meet the minimum requirements for the advertised vacancy?		
15	Were there any deviations from the agreed upon process as determined by the governing body/interview committee?		
16	Were there any other procedural irregularities as required by law		

INTERVIEW PROCESS			
17	Was the grievant interviewed for the post?		
18	Was the grievant one of the nominated candidates for the advertised vacancy?		
19	Can you confirm that the criteria used by the interview committee whether using scoring/consensus or voting during the interview process was fairly applied.		
20	If scoring was used, was a benchmark applied?		
21	If scoring was used, are scoresheets available?		
22	Were questions related to the set criteria for the advertised vacancy?		
23	Did the governing body/interview committee compile a preference list?		
24	Did a motivation accompany each nominated candidate's ranking?		
25	Were there any deviations from the agreed upon process as determined by the governing body/interview committee?		
26	Were there any other procedural irregularities in the process		
GENERAL			
27	Does the grievant claim he/she is the best candidate for the post?		
28	Does the grievant contend that had it not been for the irregularities/procedural deviations that he/she would have been appointed?		
29	In your view, does the grievant possess a similar or higher skill set, qualifications and experience than the nominated candidate(s)?		
30	Were subjective considerations by the governing body/interview committee taken into account in arriving at their nomination? If so, what were these considerations?		
31	Was the process used to identify suitable candidates for nomination fair?		
32	Was there a WCED representative/resource person as required by law (for principal posts) present during all the processes for the filling of the vacancy?		
33	Is the basis that the grievant claim unfair conduct in relation to the advertised post justifiable if no, provide reasons?		
34	Is there any procedural irregularities that could amount to prejudice the grievant or WCED?		
35	Can the grievant demonstrate the existence of any conduct which resulted in him/her being denied a fair opportunity to compete for		

	the advertised post?		
36	If an interview committee conducted the process, were the recommendations ratified by a full governing body?		
37	Were educator unions invited to attend all the processes for the filling of the advertised vacancy?		
38	Was a competency-based assessment done through the WCED?		
39	Were fair criteria set for the competency-based assessment?		
40	Does the grievant seek any relief if yes, please elaborate?		

Findings and recommendation(s):

Investigating Officer/WCED representative signature

Date

Findings and recommendation(s): **supported** **not supported** **amended**

District Director signature

Date