

ABBREVIATIONS AND ACRONYMS

AMCI	African Management Consultants International
CCMA	Commission for Conciliation, Mediation and Arbitration
CELP	Centre for Education Law and Education Policy
CoC	Code of Conduct
CPTD	Continuing Professional Teacher Development
DC	Disciplinary Committee
DBE	Department of Basic Education
DHs	Disciplinary Hearings
DoE	Department of Education
ELs	Evidence Leaders
ELC	Education Law Center
ELRC	Education Labour Relations Council
EEA	Employment of Educators Act
FEDSAS	Federation of Governing Bodies of South African Schools
GDE	Gauteng Department of Education
HOD	Head of Department
HRM	Human Resource Management
IDH	Internal Disciplinary Hearing
ILO	International Labour Organisation
ISASA	Independent Schools Association of South Africa
IS	Independent Schools
LRA	Labour Relations Act
LSEN	Learners with Special Educational Needs
MEC	Member of Executive Council
NEPA	National Education Policy Act
NICRO	National Institute for Crime Prevention and Reintegration of Offenders
NPFTED	National Policy Framework for Teacher Education and Development
PAM	Personnel Administrative Measures
PAJA	Promotion of Administrative Justice Act
SAELA	South African Education Law Association
SASA	South African Schools Act
SANCA	South African National Council on Alcoholism and Drug Dependence
SDA	Skills Development Act
SGB	School Governing Body
SMTs	School Management Teams
WCED	Western Cape Education Department

ABSTRACT

The Evidence Leader's (EL's) role is still new to the practice of managing learner discipline, but since the change in the education climate in South Africa after 1994 new policy and regulations have been promulgated to manage learner discipline. This study has determined that there is sufficient evidence that there is improvement in the process of learner discipline due to the EL's role and the effect of a Disciplinary Hearing (DH).

The fair management of learner discipline is guided by regulations and legal provisions such as Section 33 of the Constitution of the Republic of South Africa of 1996 and the Bill of Rights in the Constitution of the Republic of South Africa of 1996. The DH is considered a quasi-judicial hearing to resolve learner transgressions; the EL and Disciplinary Committee (DC) perform quasi-judicial functions to investigate an alleged transgression. This study emphasises that ELs must have some degree of legal knowledge to manage this process fairly.

The research was conducted through a case study design to generate rich information regarding the role of the EL (Brundrett & Rhodes, 2014). Responses obtained in semi-structured interviews generated significant descriptions of the EL's experiences regarding the role of the EL in managing learner discipline. The study was conducted in a part of the Gauteng Province. Content analysis and discourse analysis assisted with the analysis of the data. After the analysis process it became evident that the role of the EL in managing learner discipline revolves around the following: 1) disciplinary hearings as mechanisms to manage learner discipline; 2) poor support systems that have an impact on the management of discipline; 3) disciplinary hearings changing learner behaviour; 4) the role of stakeholders in ensuring due process; 5) managing a fair disciplinary process and hearing, and 6) the invidious role of ELs aggravated by their lack of training.

The study has revealed how significant and unique the role of the EL is in managing learner discipline and in presenting the case in a DH to make fair decisions with a view to changing a learner's behaviour. The determination of the ELs to bring about change in learners by managing learner discipline in a manner that is both corrective and restorative constitutes a major contribution to the management practices of discipline in schools in South Africa.

KEY WORDS

Disciplinary hearings

Disciplinary committee

Due process

Code of conduct

Education law

Evidence leader

Learner discipline

Semi-structured interviews

Qualitative methodology

Quasi-judicial hearing

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CHAPTER 1: AN INTRODUCTION TO THE STUDY

1.1 INTRODUCTION

Learner behaviour problems have, for years, been a major concern for teachers, administrators and parents (Daily Dispatch, 27 February 2004). More than ever before teachers are faced with critical problems in their classrooms, and are confronted on a daily basis with unacceptable learner behaviour and threatening situations. After the abolition of corporal punishment, an urgent need arose countrywide to deal with behavioural issues in innovative ways. The new approach to positive behavioural support, for example disciplinary hearings, represents a shift from a focus on deficit and control to a developmental and restorative approach (Rossouw, 2003). This approach is embodied in the Constitution of the Republic of South Africa of 1996 (hereafter The Constitution) (Republic of South Africa, 1996b), the South African Schools Act, 84 of 1996 (hereafter SASA), (Republic of South Africa, 1996a) and the specific outcomes of the National Curriculum Statement that give priority to the concept of responsibility (Western Cape Education Department (hereafter WCED), 2007). The focus of the restorative approach is to hold the accused learners accountable for their actions and to restore them to a state of wholeness (Bosworth, 2005). According to Rossouw (2003) there is an overemphasis on the human rights of learners, especially children's rights; this complicates the management of discipline in public schools. It is also a concern for privately owned schools that are also subject to the law concerning discipline (Roos, 2003).

As the deputy principal of a school I have many responsibilities. Among these duties are the application of discipline; supporting the principal in the performance of his duties to create a school culture of positive discipline; supporting the principal in the provision of learner support and guidance regarding good discipline; supervising the representative council of learners; the supervision and mentoring of a prefect programme as well as being an evidence leader in learner disciplinary hearings in terms of the Personnel Administrative Measures (Republic of South Africa, 1998b) (hereafter PAM). Discipline is based on the agreed-upon code of conduct (CoC) as adopted by the school governing body (SGB) in terms of the procedures set out in Section 8 of SASA (Rossouw, 2007; Republic of South Africa, 1996a).

The CoC is not a set of rules and measures for punishment but is the school's framework for the creation of a culture of positive behaviour within which learners should conduct themselves (WCED, 2007). A CoC must be adopted by the school governing body (hereafter SGB) as prescribed by Section 8 (1) of SASA, (Republic of South Africa, 1996a), after consultation with all stakeholders (teachers, learners and parents) and must be revised regularly. After the code

has been drawn up, consensus on a uniform disciplinary structure must be reached and the practice must be firm, fair, consistent and positive. The CoC as prescribed by Section 8 (2) of SASA, (Republic of South Africa, 1996a) aims at establishing a disciplined and purposeful school environment for the improvement and maintenance of the quality of the teaching and learning process.

The CoC envisages a discipline system that protects all learners' rights. These rights include the right to effective education, the right to human dignity and the right to security. Learners get to know the behaviour and actions expected of them so that they act accordingly (Republic of South Africa, 1996a). It spells out the consistent and uniform actions as well as infringements and makes it clear to all what is expected of them. It serves as a gauge for fair and reasonable actions and guides the daily functioning of the school. Moreover, it supports the objectives formulated in the school's mission statement (WCED, 2007).

School principals and educators are empowered to discipline and act as evidence leaders (ELs) in terms of law and policy, like the National Education Policy Act, 27 of 1996 (hereafter NEPA) (Republic of South Africa, 1996c), SASA (Republic of South Africa, 1996a), PAM (Republic of South Africa, 1998b) and the school's CoC. Both principals and educators have original and delegated authority to discipline and punish learners as confirmed in the cases *Van Biljon v Crawford* (Case no 475/2007) and *R v Muller* 1948 (4) SA 848 (O). It is original authority in terms of their status as educators and delegated authority in terms of their position *in loco parentis* – to act in the place of the parent. This has given the educator the right to act as a reasonable parent when supervising, disciplining and punishing learners (Joubert, 2008). Joubert (2008) identifies the role players in a disciplinary hearing as the following people:

1. Chairperson (often the chairperson of the SGB)
2. Principal and/or deputy principal
3. Educator
4. Parent governors
5. Learner representative (in secondary schools)
6. Accused learner
7. Witnesses



In South Africa the job requirements as well as the workload of educators are set out in the PAM (Republic of South Africa, 1998b) published under the Employment of Educators Act, 76 of 1998 (hereafter EEA) (Republic of South Africa, 1998e). The requirements with which principals, deputy principals, heads of department and other educators must comply are set out in the PAM. Paragraph 3 of the PAM describes the core duties of educators employed at various levels. It also contains a general rule that, in addition to the core duties and responsibilities specified in this section, certain specialised duties and responsibilities may be allocated to staff in an equitable manner by the appropriate representative of the employer (Republic of South Africa, 1998b). Principals may also delegate specialised responsibility as EL to any teacher to represent the school during disciplinary hearings (Republic of South Africa, 1998b). If the principal acts as EL he/she may not be part of the disciplinary committee (DC) during the hearing, as in the case of *De Kock v HOD of the Department of Education in the Western Cape, the Governing Body of the High School Overberg and the Minister of Education (Case 12533/98)*.

During the disciplinary hearing (DH) the EL as representative of the school is the prosecutor. The EL's tasks include the initial investigation and collection of relevant evidence or artefacts in support of the case to present before the DC during the DH. The researcher has personally experienced the immense pressure to present evidence before a DC when one does not fully understand what is expected of one. This pressure frustrates one and makes one feel incompetent when a DC critically analyses the presented evidence. The DH environment can be experienced as intimidating due to the fact that the teacher EL is not trained as a prosecutor. Having to assume this task may even have labour law dimensions.

This research is focused on educators acting as ELs in public secondary schools, and what their experiences and opinions of this particular role in the disciplinary process are.

1.2 PURPOSE OF THE RESEARCH

The purpose of this research is to investigate the experiences and opinions of educator evidence leaders (ELs)¹ on their role in learner disciplinary hearings (DHs) in secondary schools.

¹ Also known as *prosecutors* or *pro forma complainants*

1.3 PROBLEM STATEMENT

This research is based on the assumption that a significant number of educators in public schools experience challenges dealing with the disciplinary process of the school and with their role as EL. After attending a seminar on the essential skills for role players in education disciplinary hearings and tribunals (African Management Consultants International (hereafter AMCI), 2013) it was clear to the researcher that little is known in educational circles about the practice and the specific role of the EL. The researcher also attended an empowerment course for newly appointed principals and deputy principals where the same concerns regarding the uncertainties of the role and expectations of the EL were voiced, as well as what a due disciplinary process demands (Suid-Afrikaanse Onderwysunie (hereafter SAOU), 2013). It was evident during the course of the seminar that the EL must have knowledge of a fair and reasonable disciplinary process and the utilisation of education law and policies as seen in the Interuniversity Centre for Education Law and Education Policy (hereafter CELP) manual (Joubert, 2008), as well as in General Notice 2591 of 2001 in Circular 74 (Gauteng Department of Education (hereafter GDE), 2007). The dilemma is that many of these educators only learn about due disciplinary process and the role of an EL when presenting a case in a DH. This research therefore focuses on the perceptions of the ELs of their role and their involvement in improving the fairness and reasonableness of DHs.

Learner discipline and the misbehaviour of learners in South African schools are well documented in the work of, among others, De Wet (2007) as well as in the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners in General Notice 776 (hereafter Guidelines) (Department of Education (DoE), 1998), which state that school managers and in particular educators have an increasing responsibility to manage learner discipline in schools. As learner conduct deteriorates, disciplinary intervention and action may become necessary in order to correct behaviour and to maintain order (Mtsweni, 2008). In order to maintain fairness in decisions regarding learner discipline and to ensure impartiality, there has to be enough evidence and good reason to take disciplinary action (Oosthuizen, 2006). A DH is convened to hear the particulars of the case, to hear both sides of the story and to determine responsibility, as well as to decide on proper disciplinary action if necessary (Joubert, 2008).

The disciplinary hearing process starts with the classroom teacher who has to report and incident of misconduct and the process concludes with a decision made by the DC to correct the behaviour of the learner if the learner is found guilty. The instrument to manage learner discipline in schools is the CoC, as adopted by the SGB (Republic of South Africa, 1996a:

Sec. 8). This instrument aims at establishing an environment that promotes the rights of learners, their safety (Department of Education (hereafter DoE), 2008) and good discipline in schools (Joubert & Bray, 2007). In Circular 74 (GDE, 2007) serious transgressions are classified as schedule 1 and 2 offences). An example is being in possession of illegal substances like drugs, firearms or being accused of harassment. Such misconduct may lead to the suspension or expulsion of a learner as prescribed in Section 9 of SASA, (Republic of South Africa, 1996a).

Serious misconduct by learners is dealt with by a DC in DHs as a method to improve fairness (Joubert, 2008; DoE, 1998). The role of the EL has developed since the inception of the DH, which only began in South Africa in 1997 with the commencement of SASA (Republic of South Africa, 1996a). In these DHs educators have roles to play that they are barely trained for, in particular the role of EL where they have to present evidence and witnesses in support of the case. The most serious challenges faced are the ignorance of the law regarding DHs and tribunals, as well as the perception that DHs are about winning the case or the position of hopelessness in presenting a case against an attorney (AMCI, 2013; WCED, 2007). What the experiences or opinions of ELs are and what challenges they experience when attending such hearings are not known. It is uncertain whether DHs promote justice and fairness towards learners.

1.4 RATIONALE

The literature is very detailed regarding due disciplinary procedures and the application of the law within education (Joubert, 2004; Rossouw, 2003; WCED, 2007). In contrast to the literature on what should be done by the EL, very little is known about the role of educators acting the role as ELs and how they deal with the complexity of law and policies (AMCI, 2013). As deputy principal in a secondary school, I am tasked to present evidence during DHs. I experience first-hand the complexity and challenges of the role as an EL in DHs. Managing learner discipline and DHs is part and parcel of my many responsibilities. I was not trained for these responsibilities but have to carry them out as part of my managerial duties (Republic of South Africa, 1998a).

The role of an EL is very challenging and he/she has to be very meticulous when managing school discipline within the parameters of all the laws, rules and procedures regulating discipline (in particular DHs) such as the Constitution (Republic of South Africa, 1996b), SASA (Republic of South Africa, 1996a) and the CoC of a school, to name but a few. It is required of a school governor and manager to manage a school environment that is well disciplined

and to create a climate that is safe for all learners (Republic of South Africa, 1996a; Rossouw, 2003; Joubert, 2004).

My own participation in DHs in the role of EL and conversing with colleagues of neighbouring schools, as well as with educators attending a seminar on essential skills for role players in DHs and tribunals (AMCI, 2013) have led me to believe that insight can be gained into and new knowledge generated from the experiences and opinions of ELs.

1.5 PRELIMINARY LITERATURE ANALYSIS

The mandatory implementation of due process by school governing bodies (SGBs) in the disciplinary process began in South Africa only in 1997 with the commencement of SASA (Republic of South Africa, 1996a) while school policies and structures for school governance were influenced by the political context and international trends (Heystek, 2011). It is worth mentioning that the legal principles inherent in due process were part of South African law before 1997 but their implementation left much to be desired (Beckmann & Prinsloo, 2013). These trends included self-management of schools with community involvement by means of a SGB, decentralised decisions and the democratic perspective on disciplining learners whereby DHs were introduced as part of a school's disciplining process (Rossouw, 2001; Republic of South Africa, 1996b).

In the past, prior to this new concept of the democratisation of school discipline, learners were disciplined through a punitive system. A punitive disciplinary system is one in which the emphasis is on punishment, which sometimes involves treating the learner in a cruel, inhuman or degrading way (Republic of South Africa, 1996b). The change in the political climate of a new united South Africa during the election of 1994 gave birth to a school disciplining system that is corrective and in which the rights of learners are respected. Political transformation has had an influence on the disciplining of learners, aiming to establish democratic values and rights as stipulated in the Bill of Rights and the Constitution (Republic of South Africa, 1996b) in our education system, with equity and quality as cornerstones (Heystek, 2011).

Our national school system is still redressing past injustices, advancing transformation and striving to uphold the rights of all learners, parents and educators (Mashile, 2000). DHs create a platform for the SGB to succeed in their role and function to establish democratic principles when disciplining learners. SASA (Republic of South Africa, 1996a) grants parents participatory rights in the disciplinary process where parents may accompany their child in DHs or, conversely, participate as SGB members acting as the DC. The DH should provide

the learner with the right of freedom and security of person, including the right not to be tortured in any way, and not to be punished in a cruel, inhuman or degrading way (Heystek, 2011; Republic of South Africa, 1996a:Sec. 8).

Studies conducted by De Klerk and Rens (2003), Maree and Cherian (2004), Oosthuizen, Roux and Van der Walt (2003) emphasise that learner discipline constitutes a problem in South African schools. Media reports with headlines like “School head gunned down” (Sunday World, 10 February 2005), “Thugs target high school” (Daily Sun, 13 March 2005), “Violence at schools the order of the day” (Cape Argus, 19 January 2005) and “Teacher shot, learner held hostage at Cape school” (SABC, 12 February 2005) underscore the safety risks in South African schools (Xaba, 2006). More recent media reports are “Discipline in schools is suffering under too many rules” (Beeld, 2 March 2009), “School safety becomes urgent” (Daily News, 13 March 2009), “EC education needs discipline, better facilities” (The Herald, 12 March 2009), “MEC pleads for school safety” (Daily News, 23 February 2010), “Gangs threaten school safety” (Sowetan, 12 March 2012) and “Schools are blamed for violence among pupils” (Star, 26 October 2012). More recently reports of a teacher being struck with a broom by a learner (Beeld, 17 October 2013) has proved that very little has changed regarding the safety in South African schools and the manner in which discipline is managed.

Education legislation, by implementing rigorous procedures that must be followed, has constrained the way in which educators manage discipline in schools (Joubert, 2008). Joubert (2008), Beckmann (2010) and the Education Law Center (ELC) (2001) elaborate on the management of discipline in schools, the role of the SGB, due process and just administrative action in Section 33 of the Constitution (Republic of South Africa, 1996b) to be followed and the role players in this process. Due process refers, among others, to fair procedures that include the following:

1. The learner must be informed, in a language that is understandable to him/her, of the charge against him/her before the DH takes place.
2. The learner must be given the opportunity to state his/her case, according to the principle of *audi alteram partem*.
3. The learner must be allowed to be represented.
4. Reasons must be given for the decision taken by the DC.
5. The learner has the right to appeal against the decision.

It is good practice (in fact imperative) to conduct a preliminary investigation before the DH, to collect evidence that will determine whether or not there are sufficient grounds to proceed with a DH. The above mentioned principles have to be implemented to promote fairness in the disciplinary process and DH.

The DH is based on fundamental principles of the law (Rossouw, 2003). The learner has a right to just administrative action as stipulated in Section 33 of the Bill of Rights in the Constitution (Republic of South Africa, 1996b). These principles apply to the process to be followed as well as the way in which arguments are presented. A DH should be preceded by an investigation into the alleged serious misconduct, as well as a presentation of the allegation of serious misconduct by a learner to the principal for consideration and a recommendation (WCED, 2007). The principle of being innocent until proven guilty has to be applied in all cases by the EL and the disciplinary committee for the disciplinary process should act reasonably and fairly. There should also be interviews with witnesses for the purposes of further enquiries and clarity of the incident, but the principle of confidentiality, non-intimidation or influencing of witnesses by means of coaching or prompts of what to say has to be respected.

The alleged offender (learner) must be given the opportunity to request the support of his/her parents when it is expected of him/her to make a statement that could be incriminating (Joubert, 2008). A notice about the hearing should include information about the alleged offence, as well as information about the time, place and date of the hearing and must be delivered in writing to the parents and learner five (5) working days before the hearing (Rossouw, 2003; WCED, 2007). The learner who has been accused must be given the opportunity to present his/her side of the matter according to the principle of *audi alteram partem*, as well as to call witnesses on his/her behalf (Joubert, 2008).

The role of the EL during the opening stages of the DH is to read the charge laid against the accused aloud as well as to present evidence in support of the case against the accused learner (Joubert, 2008). It is also the right of the EL to cross-examine the accused or any witness produced by the accused learner for the defence (WCED, 2007; Joubert, 2008). Literature on the role of the ELs in the disciplinary process or in a DH is very limited as seen in the work of Joubert (2008) and the WCED (2007).

There are guidelines to manage misconduct of learners at public schools as stipulated in SASA (Republic of South Africa, 1996a), as well as regulations for a fair disciplinary process, elaborated on in the above mentioned paragraph, to ensure a fair and unprejudiced disciplinary system. The rights of learners are protected by a CoC that is enforced as an

instrument to maintain good discipline (Joubert & Bray, 2007; Joubert, 2008). Section 8 (4) of the South African Schools Act provides that all learners attending a school are bound by the CoC of the school (Republic of South Africa, 1996a). This instrument provides for an environment that promotes quality education and all rights of learners and their safety (Department of Education, 2008). The CoC is adopted by a SGB and implemented on ground level by educators, School Management Teams (SMTs) and in particular by ELs during DHs to defend a case.

It is of the utmost importance that the disciplinary process preceding acquittal or sanctioning by the DC is fair, justifiable and reasonable as in General Notice 2591 (GDE, 2007). The fundamental task of the disciplinary officer, also known as the prosecutor or *evidence leader*, is to support an unprejudiced and fair disciplinary process (Jacobs, 2001). The EL plays a leading role in a misconduct case from the moment the incident is reported until acquittal or sanctioning by the presiding officer, which makes the EL a central person in a fair disciplinary process (GDE, 2007). A disciplinary process is a demanding process and is not measured only against a well-drafted CoC, but to a greater extent against its proper enforcement and utilisation (Daily Dispatch, 27 February 2004). The EL makes use of the CoC to build a case and to present the case before a DC. The EL needs to prove compliance with all the procedures as outlined in SASA (Republic of South Africa, 1996a) and the regulations of the CoC when presenting a case in a DH (GDE, 2007; Joubert, 2008). A lack of knowledge regarding due disciplinary process or of the expertise to apply it may severely and adversely influence sanctioning, the justness and fairness of the hearing and may eventually violate the safety of educators and all learners.

It stands to reason that the training of the EL is of fundamental importance before this person may act the role of EL. Xaba (2011) and Mokhele (2006) underline the importance of being trained before acting in the role of governor or (in this research) of EL. Without training the EL may be subjected to the following (Xaba, 2011; Mokhele, 2006):

1. Unfamiliarity with meeting or hearing procedures.
2. Problems with the specialist language used in these hearings.
3. Large volumes of paper work.
4. Not knowing how to make a contribution.
5. A lack of knowledge of appropriate legislation.

Watkins and Cervero (2000) also discuss the importance of workplace learning as it improves performance and competence in a professional's work setting.

In research reported by Watson and Harmel-Law (2009) one of the participants emphasises the value of informal training by means of learning from others in the workplace with relevant experience as practical experience. Seeing that knowledge of the role of EL is limited, rich knowledge can be extracted from the experiences and opinions of those acting as ELs. The research also wants to illuminate the functionality of the DH in helping to determine whether a hearing is just and fair.

The promulgation of SASA (Republic of South Africa, 1996a) made the decentralisation of decision making in schools possible (Heystek, 2011). SASA, (Republic of South Africa, 1996a) provided for the participation of more stakeholders that include principals, teachers, parents and SGB members during the disciplinary process, thereby increasing objectivity and fairness to justify the disciplinary process and actions taken by the DC (Rossouw, 2001; Roos, 2003). According to section 8 of SASA (Republic of South Africa, 1996a) the SGB has to adopt a CoC to establish a disciplined and purposeful school environment, dedicated to the improvement and maintenance of a safe school environment. This CoC must provide for a due disciplinary process to safeguard the interest of all learners and any other stakeholder involved in the disciplinary process (Republic of South Africa, 1996a).

A disciplinary hearing must be conducted by a DC constituted by a SGB in terms of section 30 of SASA (Republic of South Africa, 1996a) which states, among others, that a member of a SGB must be the chairperson of each committee established by the SGB and paragraph 13 (2) of the Guidelines (DoE, 1998). A DC thus constituted performs a quasi-judicial function when it investigates the conduct of a learner. Exercising a quasi-judicial power or function is not a judicial act but in a sense and to a degree it appears to be a judicial act (Chambers Concise Dictionary, 1997). A DH therefore has elements of a court hearing but is not a hearing in a court of law. A learner DH is similar to a court case but is a quasi-judicial hearing held at a school to resolve learner misconduct. It concludes the disciplinary process when all parties involved in the case had a fair opportunity to state their side of the story (*audi alteram partem*) (Joubert, 2008).

The process mentioned above by Joubert (2008) and the following rules and legislation indicate the importance as well as the complexity of the EL's role. There is a range of sources of law in, for example rules, regulations and legal principles that form the basis of discipline policies and procedures. The following acts provide the legal framework for school discipline (Joubert, 2008):

1. The Constitution
2. NEPA
3. The Children's Act, 38 of 2005 (Republic of South Africa, 2005)
4. The provincial school education acts of the respective provinces

One of the most challenging aspects of the Constitution (Republic of South Africa, 1996b) is to comply with its founding values (human dignity, equality and freedom) and to create and maintain a safe and disciplined environment where effective instruction and learning can take place. When learners are constantly threatened by others or some learners disrupt the normal teaching and learning process, it has a severe impact on the access to equal educational opportunities and quality learning (Joubert, 2004). Mabeba and Prinsloo (2000) reiterate that disruptive behaviour significantly affects the fundamental right to feel safe, which complies with the founding values of the Constitution of 1996 (Republic of South Africa, 1996b). The Constitution (Republic of South Africa, 1996b) gives every learner the right to a basic education, but education can only be successful if the learners are committed to self-development. All learners have the right to attend classes, to be educated, to make use of all school facilities and to develop their potential (Republic of South Africa, 1996b). To assist learner development, the school should provide qualified educators, maintain professional ethics and ensure that teachers educate the learners (Republic of South Africa, 1996a). It is deemed unacceptable if a learner disrupts learning, destroys property or victimises others (Republic of South Africa, 1996a). The quality of learning therefore relies directly on the realisation of safety and security of learners attending the school (De la Rey, 2012).

Common law is law that is not enacted in legislation. It is developed through historical events or customs, where the South African common law was developed from Roman-Dutch law and English law (Joubert, 2008). An example of common law is the principle of *habeas corpus* that protects the individual from unlawful imprisonment. It implies that a free man cannot be imprisoned or punished under the law of the land without the judgment of his peers, thereby establishing the right to a trial by jury (Robbins, 1952).

The school is obligated to give the accused learner the opportunity to state his/her side of the story during a DH, thereby acting fairly against the learner (Joubert, 2008). Educators have certain powers to discipline learners, mainly derived from the fact that educators act *in loco parentis* (i.e. in the place of the parent) (Republic of South Africa, 1996a). Common law principles regulate educators' actions regarding discipline; among others, through the rules of natural justice that are also embodied in Section 33 of the Constitution (Republic of South Africa, 1996b). The rules of natural justice apply when the rights and privileges or freedom of

individuals could be affected negatively as in the case of DHs or disciplinary proceedings. This implies among others that an opportunity must be given to enable the person to put his or her case in terms of the *audi alteram partem* rule to state his/her side of the story. It is for this reason that a tribunal or a DH is essential so that all parties involved in the case may see that justice is done fairly (Malan, 2005).

There is also case law. It comprises court decisions that are recorded in law reports (Joubert, 2008). Case law plays an important role in interpreting primary and secondary legislation, clarifying concepts and principles and protecting people's rights (Joubert, 2008). An example is *De Kock v The Head of Department of the Department of Education, Province of the Western Cape heard in the Supreme Court of South Africa: 12533/98*. The facts of this case are that disciplinary action was taken via a DH against De Kock in 1998 by the SGB of Overberg High School that recommended expelling De Kock from school. De Kock was found in possession of dagga (marijuana) on the school grounds - this constitutes an example of serious misconduct. The matter was immediately reported to the local police office by the principal who also arranged a DH. During the DH De Kock was supported by his father and an attorney. Evidence was presented to the DC by the principal and deputy principal who were also cross- examined during the DH. According to the DC, De Kock was not a reliable witness and the principal had acted as expected by the SGB.

Minutes of the DH were sent to the Head of Department of Education (HOD) of the Western Cape to affirm the recommended disciplinary action by the DC. The court found an irregularity in the administrative process, in particular in the composition of the DC where both the principal and deputy principal formed part of the DC. Both the principal and deputy principal took part in the deliberation and decision making of the case, presented evidence and were cross- examined. The court found that there was a severe irregularity in this case because the principal and deputy principal were at the same time witnesses, prosecutors and judges in the case. In terms of Section 9 (1) of SASA (Republic of South Africa, 1996a) the SGB may only suspend a learner after a fair hearing, pending the approval of the HOD. One key factor of a fair hearing is that the DC must be objective and unprejudiced (Oosthuizen, 2006). In *S v Radebe, 1973 (1) SA 796 (A)* the Appeal Court confirmed that, according to Roman-Dutch law, nobody may be a judge in his own case (*nemo iudex in sua causa*). It is for this reason that the decision of the DC to expel De Kock from school could not be accepted. The recommendation by the HOD was that this case had to undergo a retrial with a new DC. This supports English common law where it is not merely of some importance but it is of fundamental importance that justice should not only be done but should manifestly and

undoubtedly be seen to be done (Anderson, 1979). Various other court cases are discussed in the following chapters.

Other law to be considered during DHs is international law and foreign law (Joubert, 2008). International law refers to rules and principles that apply to a number of states by agreement and that are relevant to school discipline and in particular international human rights law (Joubert, 2008). An example is cases dealing with corporal punishment where the DH may consider, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms (Joubert, 2008). Foreign law is the law of another country and includes domestic law and case law, which are based on previous judgments of court cases to assist in developing legal arguments and clarifying legal principles and concepts (All England Reports, 1995).

It is the duty and challenge of school principals, educators and the SGB to create and maintain a safe and disciplined school environment (Joubert, 2004). However, it is becoming increasingly difficult to maintain discipline due to the complexity and demands of legislation and regulations that prescribe discipline and punishment in schools (Squelch, 2000a), as seen in the CELP manual (Joubert, 2008) and in Circular 74 (GDE, 2007). Moreover, the school management team (SMT) has to manage a disciplinary system that has been transformed from a punitive and autocratic system to a democratic disciplinary system over the past 17 years since the 1994 democratic election in South Africa. A democratic discipline system entails that it acknowledges natural justice and the rights of children. This research may discover more regarding this complex environment via the experiences of those acting in the role as EL.

A disciplined school has functional school rules, but it is imperative for these schools to take corrective disciplinary action against those learners who disrupt teaching and learning or challenge the CoC (Joubert, 2004). Disciplining learners or managing discipline in schools is viewed from the experiences of ELs involved in DHs. Discipline is an action aimed at promoting appropriate behaviour and developing self-discipline and self-control in learners (Squelch, 2000a). Punishment, on the other hand, is a facet of discipline that involves a reaction against inappropriate behaviour by learners to correct and restore harmonious relations (Squelch, 2000a; Rossouw, 2003). This research may have discovered more about the safeguarding of schools through the corrective measures or punishment enforced by the DC in DHs.

The person who plays a central part in the disciplinary process in a school is the EL. It is the task of the EL to gather information with regard to a disciplinary case and to refer serious cases to DHs. The EL plays an irreplaceable part with regard to a fair disciplinary process because of his/her involvement during the initial investigation of the case, the enforcement of the CoC, the writing of the charge sheet, arranging the DH with its DC as well as witnesses, presenting the evidence of the case before the DC and lastly reporting back to the School Management Team (SMT) and pupils concerning the outcome of the DH. According to Jacobs (2001) and Circular 74 (GDE, 2007), the EL has to manage an unprejudiced process and comply with all the procedures as outlined in SASA (Republic of South Africa, 1996a) and all regulations of the CoC as adopted by the SGB. The work done by the EL has a direct effect on the disciplinary action recommended by the DC and the fairness of the DH. There is therefore a greater emphasis on protecting learners during the disciplinary process, due to an increasing emphasis on the protection of the fundamental human rights of learners as stipulated in the Bill of Rights and the founding values enshrined in the Constitution (human dignity, equality and freedom) (Republic of South Africa, 1996b; Joubert, 2004).

A school is a place of teaching and learning that can only deliver on its educational mandate under safe and secure conditions (Xaba, 2006). School safety encompasses the entire learning environment, which includes learners, classrooms, the school campus, educators, parents and the community (Xaba, 2006). A safe school is a place that is free from danger and possible harm, where non-educators, educators and learners can work, teach and learn without fear or ridicule, intimidation, harassment, humiliation or violence (Squelch, 2001). According to Caldwell (2010) parents can be involved in the disciplinary process to improve the school safety by means of their representativeness as the DC. My belief resonates with the DoE (2008) that SGBs should become more accountable for learner disciplinary processes; this can be achieved by the functions mentioned in Section 20 (1) of SASA (Republic of South Africa, 1996a), obligating the SGB to:

- a) promote the best interests of the school and to strive to ensure its development through the provision of quality education for all learners at school;
- b) support the principal, educators and other staff of the school in the performance of their professional functions.

It seems that being an EL is very challenging; an EL has to be meticulous when managing school discipline, taking all the rules and procedures governing discipline into account. I believe that the EL stands central in a reasonable disciplinary process and fair DH.

1.6 RESEARCH QUESTIONS

Keeping the aforementioned in mind, the following questions arise:

Primary research question

What are the experiences of educator evidence leaders of their role in learner disciplinary hearings?

Secondary research questions

1. What is the role of the EL during disciplinary hearings?
2. What support systems are there for the EL to manage the process?
3. What influence does the DH have in changing learner behaviour?
4. What influence does the DH have on the management of learner discipline?
5. What stakeholders are involved in the process of managing learner discipline?
6. How do ELs ensure a fair disciplinary process and DHs?
7. What are the challenges the EL face?

1.7 CONCEPTUAL FRAMEWORK

The following diagram is a representation of the different areas in which the EL plays a part and how these areas are interlinked: the disciplinary committee, disciplinary hearing, disciplinary process, and training for the role as EL.

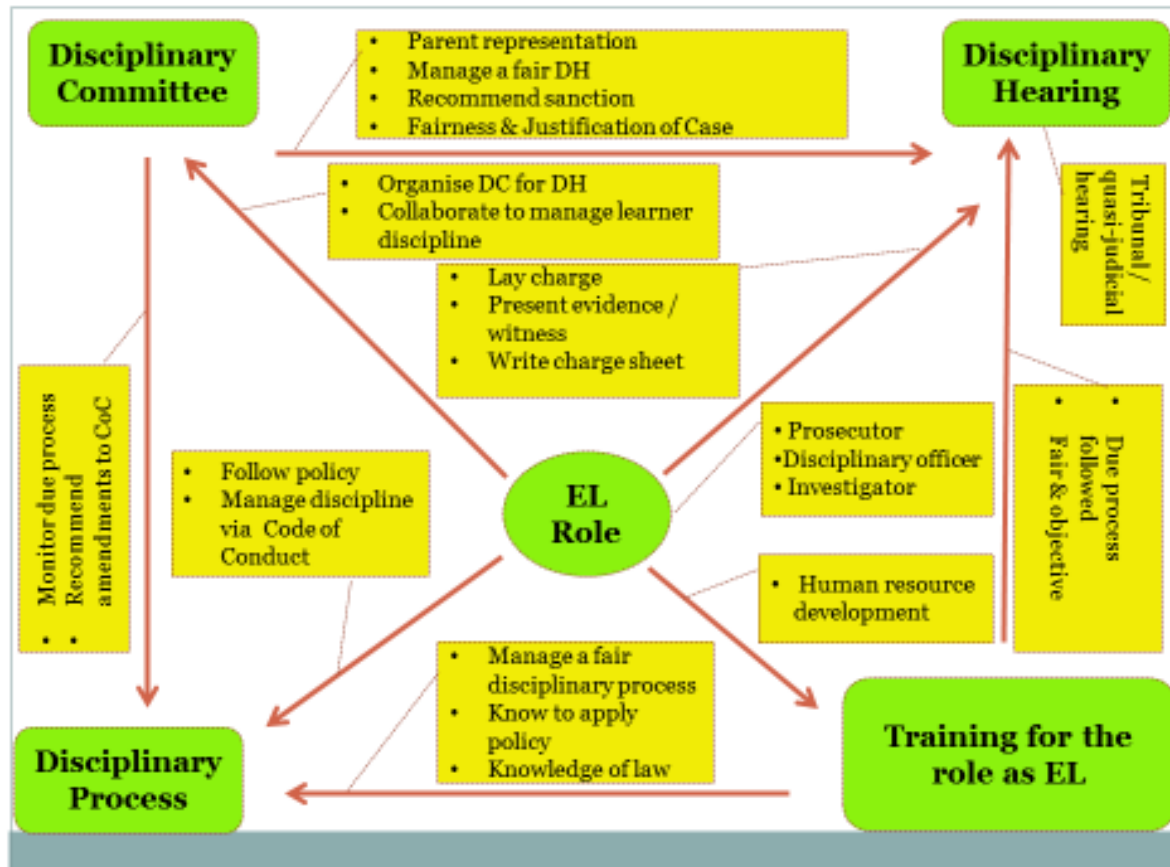


Figure 1.1: The role of the EL

This study uses a conceptual framework developed from the following concepts (Vital & Jansen, 2004):

1. Role of the educator evidence leader
2. Fair and justifiable disciplinary hearings
3. Role of the disciplinary committee in DHs
4. Implementation of the disciplinary process
5. Training for the role as EL

1.7.1 Role of the educator evidence leader

The EL is also known as the prosecutor in DHs and is supposed to manage an unprejudiced disciplinary process at school (Jacobs, 2001). The EL is involved in all the disciplinary procedures leading to a DH; these entail laying charges, writing charge sheets, gathering evidence and witnesses and lastly presenting the case to a DC in a DH (Joubert, 2008). The people who play a part in the DH are not necessarily trained in the law and may, therefore,

experience the disciplinary process or hearing as challenging or intimidating. ELs may experience a position of hopelessness presenting a case against an attorney representing a learner (AMCI, 2013). For the purpose of this research the EL is an educator of the school or a member appointed by the principal as disciplinary officer (prosecutor). The purpose of this research is to gain knowledge from the experiences of ELs that will clarify the role and practice of ELs, a fair DH and disciplinary process.

1.7.2 Fair and justifiable disciplinary hearings

Disciplinary hearings are similar to a court case (Joubert, 2008) or could also be seen as a quasi-judicial hearing to resolve learner misconduct. For the purpose of this study the DH will be seen as a quasi-judicial hearing (forum) at school, where an EL presents a case before a DC to judge serious misconduct cases (Beckmann & Prinsloo, 2013; Hopkins, 2006). Disciplinary hearings are informed, among others, by the provisions of Section 12 (1) of the Constitution (Republic of South Africa, 1996b) to ensure that the disciplining of learners is fair and justifiable. The DH is one part of a process that starts with an incident of alleged misconduct and concludes with the learner being found not guilty or guilty and therefore sanctioned. The DH is a forum for the SGB acting as the DC to enforce corrective action regarding serious misconduct after the learner has been granted a fair and justifiable hearing (Republic of South Africa, 1996a: Sec. 9). According to Beckmann (AMCI, 2013) the DH is there to discover the truth, to be just and fair and to adhere to the so-called rules of natural justice, enshrined in among others the *audi alteram partem* rule.

1.7.3 Role of the disciplinary committee in DHs

The DC must be appointed by the SGB to adjudicate disputes about serious misconduct. This committee normally comprises of three persons who are members of the SGB or are nominated by the SGB. The chairperson or presiding officer has to be a parent member of the SGB and the remaining members may not be the principal or a learner at the school (GDE, 2007). This particular composition of the DC is intended to ensure that the committee is objective and unprejudiced towards all cases presented in DHs, but primarily that learners are treated fairly and justly and safeguarded against unfair and arbitrary treatment (Joubert, 2008). The primary function of the DC is to ensure a fair and just hearing, to see that justice is done and then to decide on finding a learner guilty or not guilty of charges laid against him or her.

1.7.4 Implementation of the disciplinary process

The most important principle of the disciplinary process is procedural and substantive fairness. This principle requires that the accused learner understands all the allegations against him or her, and is given a fair opportunity to respond to these allegations. It is essential that the evidence before the DC must be fairly evaluated and considered, and decisions must be taken without bias, malice or prejudice against anyone (Gauteng Department of Education, 2007). It is the obligation of the SGB acting as the DC to ensure that fair procedures are followed in accordance with legal requirements laid down in the statutes dealing with education and administrative justice as seen in Section 33 of the Constitution of 1996 (Republic of South Africa, 1996b; Roos, 2003). The regulations in SASA (Republic of South Africa, 1996a) makes provision for due process that guarantees a fair hearing before such a learner is suspended or expelled.

In the case of *Phillips v Manser* (1999) 1 All SA 198 (SE) the student challenged his suspension, arguing that he didn't have a fair hearing and his constitutional right to basic education was violated. A case like this is a clear indication that the DH must be fair before suspension or expulsion is implemented. It is firstly imperative that the parents of the accused learner be informed in writing of the proposed action against the learner and when the DH will take place. The CoC is aimed to communicate the disciplined policy of the school and according to Deacon (African Management Consultants International, 2013) the CoC has to protect the safety of each individual involved in the disciplinary process. The learner should also not be prohibited from being represented by legal counsel, in which may improve the fairness of the process and the way the DH is handled by the DC (Beckmann *et al.*, 2010; Joubert, 2008). Substantive fairness requires that a disciplinary enquiry focuses on the alleged transgression of rule or standard of conduct that is fair and valid. This rule must be known to the learner involved (Beckmann and Prinsloo, 2013).

1.7.5 Training for the role as EL

It stands to reason that the training of the EL as well as the DC is vitally important to make informative decisions and because they are performing quasi-judicial functions when investigating a learner transgression case. The fairness of the disciplinary process relies on the knowledge the EL and DC have about the law and policies regulating the disciplining of learners. The training of the EL is critical in terms of human resource development to manage a due process and learner discipline.

1.8 WORKING ASSUMPTION

This research is based on the assumption that secondary schools are only managing learner discipline through a disciplinary process that concludes with a DH. It is also the assumption that the educators managing this process experience challenges in their role as ELs. Very little is known about the practice of ELs and the role they play, except for disciplinary procedures as seen in the CELP manual (Joubert, 2008). A well-structured disciplinary process should be managed according to set policy and regulations. My assumption is that the EL has little knowledge of these policies if any, and may struggle to implement them. The aim of the DH is to manage learner discipline and to change the behaviour of the learner. I assume that the DH has very limited impact on the behaviour of the learner, because the suspension/expulsion of the learner is only the removal of the problem and not the cure.

Learner discipline is not solely managed by the EL, but other role players might be identified who may add value to a fair process. I also assume that a limited number of schools train and prepare the EL properly, due to a lack of knowledge, time and experience regarding the practice. The lack of training and preparation may adversely affect an EL's ability to fairly manage the disciplinary process as well as during the DHs. I think that many of these ELs only learn about due disciplinary process during an investigation of a misconduct case and when the case is presented in a DH. This research therefore focuses on the role of ELs and their impact on the efficiency and fairness of DHs.

I assume that this role is extremely challenging and complex. This research may also reveal knowledge to restore and improve the confidence in managing discipline, to promote a calm and disciplined school environment (AMCI, 2013). It seems that the EL is central to a fair and just DH. I am convinced that significant knowledge can be gained from the experiences regarding the practice and role of ELs and fair DHs.

1.9 THEORETICAL FRAMEWORK

It is the duty and challenge of school principals, educators and the SGB to create and maintain a safe and disciplined school environment (Joubert, 2004). It is becoming increasingly difficult and complicated to maintain discipline due to among others complex legislation and regulations that prescribe disciplinary and punishment protocol in schools (Squelch, 2000a) as seen in the CELP manual (Joubert, 2008) and in Circular 74 (GDE, 2007). A disciplined school has functional school rules, but it is even more necessary for these schools to take corrective and punitive disciplinary measures against those learners who disrupt teaching and learning or challenge the CoC with serious misconduct like being in the possession of drugs

or firearms (Joubert, 2004). It is the opinion of Prinsloo that procedural fairness and substantive fairness are two independent requirements to ensure a fair DH (AMCI 2013). This research may discover more about the safeguarding of schools through the discipline or punishment enforced by the DC in DHs.

A strategic management plan of a SMT should be to train the EL to empower the EL for this role and to create a disciplinary sound environment that is conducive to teaching and learning (Oosthuizen, Wolhuter & du Toit, 2003). The training of the EL as a strategic management plan to manage learner discipline should be viewed as a long-term sustainable advantage for the school and learner (Hax, 1996). The PAM (Republic of South Africa, 1998b) emphasises that the education system has the duty and responsibility to prepare both learners and educators for a new or changing environments. It should therefore be the mission of the Department of Basic Education (DBE) and the SMT to ensure that educators receive flexible lifelong learning and training of high quality. The success of this approach will improve the professional competencies of educators, build a sense of unity of purpose and reinforce their belief that they can make a difference (AMCI 2013). In addition to the core duties and responsibilities of educators certain specialised duties and responsibilities, for example the role of EL, may be allocated to an educator by the principal as representative of the DBE (Republic of South Africa, 1998b).

The EL plays a central part in the disciplinary process and has the responsibility to gather information with regard to a disciplinary case and to refer serious misconduct cases to a DH. According to Jacobs (2001) and Circular 74 (GDE, 2007) the EL has to manage an unprejudiced process and comply with all the procedures as outlined in SASA (Republic of South Africa, 1996a) and all regulations of the CoC. One more challenge is the position of hopelessness experienced in presenting a case against an attorney (AMCI 2013). The work done by the EL has a direct effect on the decisions made by the DC and the fairness of the DH. In this research I view the work of the EL and of the DC as part and parcel of the discipline and punishment role of schools. One of the assumptions of this research is that most of the ELs have not been trained to perform their duty as EL; this deficit was underscored in the group discussions during the seminar on essential skills for role players in education disciplinary hearings and tribunals (AMCI, 2013).

The Constitution (Republic of South Africa, 1996b) indicates that everyone, in this case the EL, has the right to fair labour practices (Section 9s). It is an unfair labour practice (Republic of South Africa, 1996c) when an educator is expected to perform any duties without proper training, which means that it is an unfair act by the principal and SMT (Republic of South

Africa, 1996c: Sec. 186). The EL may be confronted, or questioned by the accused offender or the DC when due process has not been followed (Joubert, 2008) as a result of poor preparation or training. This might be experienced as a violation of the dignity of the EL as person, or even as discrimination and victimisation by the DC. The Labour Relations Act, 66 of 1995 (hereafter LRA) (Republic of South Africa, 1996a) was promulgated in 1995 and protects the fundamental rights of employees; it is consistent with the Constitution (Republic of South Africa, 1996b) and International Labour Organisation (hereafter ILO) conventions. It is regarded as an unfair labour practice if an employee is not properly trained before being employed in a particular vacancy (Finnemore, 1999).

There are basic values and principles governing public administration within Section 195 of the Constitution (Republic of South Africa, 1996b) that the SMT should take into consideration when developing or implementing human resource management (hereafter HRM) systems, as in the case of developing the EL. The provisions include the right of employees to fair labour practices and the principles that govern good administration, including the cultivation of good HRM and career development practices to maximise human potential (Republic of South Africa, 1996b: Sec. 185). The SMT has a responsibility to train and develop the EL to ensure that the EL is capable of managing learner discipline. These principles include efficiency, professional ethics, accountability and transparency, to name a few (Heystek *et al.*, 2005). According to the Section 10 of the Skills Development Act, 97 of 1998 (hereafter SDA) (Republic of South Africa, 1998d) the workplace has to establish learning or training programmes for the employees and monitor these as skills development programmes.

The work place, in this instance the school, should promote training programmes through opportunities of practical experiences, not only in support of developing learning material but also to develop the educator. The school or SMT is legally obligated to train the identified educator as EL to develop new skills as expected from the educator. Developing the skills of the educator acting the role as EL will increase the quality of work done by this person, improve his/her status and protect his/her dignity (Finnemore, 1999). It is the responsibility of the DBE and SGB to ensure, when appointing a person for a particular task or role, that the person is qualified or has opportunity to be developed for this task or role (Beckmann and Prinsloo, 2013). The Norms and Standards for Educators under Section 4 of NEPA (Republic of South Africa, 1996c) supports the policy that educators have to be trained on an ongoing basis, including both pre-service and in-service training. The role of an EL is a specialised role that makes it essential to train those performing this particular task.

The theoretical framework is centred on human resource development, in particular in-service training of ELs as well as fair labour practices in this regard. The lack of training may adversely affect an EL's ability to make fair judgments in the disciplinary process as well as during the DHs. It stands to reason that the training of the EL is of fundamental importance before this person may act the role as EL.

1.10 RESEARCH DESIGN

A research design is a plan of how to proceed in determining the nature of the relationship between variables (Bless and Higson-Smith, 1995). For the purpose of this study a qualitative case study design were selected to understand the practice and role of ELs in learner DHs by means of recording their experiences and opinions (Brundrett & Rhodes, 2014).

The researcher also studied, among others, cases like *De Kock v The Head of Department of the Department of Education, Province of the Western Cape heard in the Supreme Court of South Africa*: 12533/98 and *Le Roux v Dey* CCT 45/10 (2011) ZACC 4 which what the EL should know about a disciplinary process. Cases like the above mentioned supported the researcher to better understand the role of the EL in example that the EL my not be prosecutor and judge in the same case. The use of information from several participants and schools provided the researcher with rich data for analysing the phenomenon by studying various sources, for example the charge sheets, minutes of DHs, voice recordings, recommendations and appeal letters (Mark in Fouché, 2002). The participants provided a description of their experiences in their own words which was transcribed and recorded by the researcher via a voice recorder (Henning, 2004). An interpretivist approach allowed the researcher to ensure that a true reflection and interpretation of the participants' meaning and understanding of the ELs' role in the disciplinary process and DHs was given (Maree, 2011; Brundrett & Rhodes, 2014.).

1.10.1 Methodology

A case study design entails a comprehensive and systematic investigation of a number of cases and the sample consisted of purposively-sampled ELs involved in disciplinary processes and DHs in secondary schools (Bless & Higson-Smith, 1995). The case study design required a thorough literature review and careful and thoughtful posing of questions to understand the complex social phenomenon (See Appendix 2), namely the involvement and role of ELs in the disciplinary process and DHs (Yin, 2009). A case study design could be very useful to better understand the role and practice of ELs and their involvement in DHs when very little is known about the practice (Leedy & Ormrod, 2001). This case study takes an in-

depth study within the boundary of participants acting as ELs in secondary schools (Brundrett & Rhodes, 2014). This methodology focuses on the actions of individuals in specific circumstances, in this study it is the role of the EL in managing learner discipline and DHs (Brundrett & Rhodes, 2014). This design facilitates the collection of large amounts of information and detail regarding the research topic, which allows the researcher to examine and understand a wide range of raw data (Wimmer & Dominick, 2000). It furthermore explains the phenomenon and does not just describe it (Yin, 2009). Another advantage of this design is that it creates new ideas that emerge from precise and detailed observations (Lindegger, 2002).

1.10.2 Data collection

The most common way to collect data within qualitative research is to observe naturally-occurring situations as closely as possible via semi-structured face-to-face interviews. Face-to-face interviews enable the researcher to gain the trust and cooperation of the participant by establishing a relationship with him or her, which in turn sets the participant at ease and increases the response rate (Leedy & Ormrod, 2001). These face-to-face interviews enabled the researcher to gain better insight into the research topic and lived experiences of the people acting as ELs (Atkinson & Silverman, 1997) and (Maree, 2011). Interviews are by nature social encounters between interviewer and interviewee to produce versions of their past (or future) actions, experiences, feelings and thoughts (Seale, 2004).

The aim of the semi-structured interviews was to gain in-depth descriptions of the experiences and opinions on the role of those acting as ELs during disciplinary processes and DHs (Leedy & Ormrod, 2001). Predetermined open-ended questions guided the researcher during the interviews in which the participants were encouraged to share their experiences and opinions as ELs (Greeff, 2002). The transcribed and analysed interviews helped explain and understand the role of the EL, as well as the fairness of DHs.

According to Holstein and Gubrium (2003), interviewing is a unique form of conversation, which provides the researcher with empirical data about the social world by asking the participants to speak about their lives and experiences. A voice recorder was used to record the data collected to make it easier for data to be transcribed and to assist the researcher during data analysis and clarification (Kanjee, 2002; Neuman, 2000).

Further observations with regard to non-verbal gestures by the participants were recorded during the interviews. The researcher also made use of field notes throughout the duration of

this study. These notes contain descriptions regarding conversations, interviews and moments of confusion, intuition and the stimulation of new ideas during the study. Field notes provided the researcher with the opportunity to gain a clear view of his thoughts, which also assisted in planning the next step during the process of data collection (Mayan, 2001).

In addition the researcher analysed court cases as a third method of data collection, for example *De Kock v The Head of Department of the Department of Education, Province of the Western Cape heard in the Supreme Court of South Africa: 12533/98* and *Le Roux v Dey CCT 45/10 (2011) ZACC 4*. This method supported the researcher in gaining knowledge by means of case law and to clarify concepts on the role of the EL, as well as fair and justifiable DHs.

A fourth planned method of data collection was to include the studying of charge sheets, minutes of DH cases, transcriptions of voice recordings, recommendation letters and appeal letters (document analysis) of the schools participating in this research (Maree, 2011).

1.10.3 Data analysis and interpretation

It was of utmost importance that the researcher immersed himself in the data and familiarised himself with the information by means of discourse analysis. Discourse analysis is when the researcher studies the patterns within the data (ways of talking and behaving), or explains the broader context in which the text functions. The aim of discourse analysis is to discover patterns of communication that have functional relevance for the research (Struwig, 2007). This process entailed that the researcher took all the collected data, including the field notes, document analysis and interview transcripts to triangulate the data and shape a clear understanding of the information. The researcher also made use of a case study design and focused on conducting content analysis by identifying patterns to rationalise the role and practice of ELs (Maree, 2011). The researcher was searching for behaviour, meaning, relationship, conditions and consequences of those acting the role as EL (Terre Blanche & Kelly, 2002).

All the research data was analysed, interpreted and integrated using triangulation. Triangulation creates multiple perceptions of the data to clarify meaning, to verify the reliability of an observation or interpretation (Stake, 2000). The triangulation method proposed for this research refers to the interpretation of findings from the interviews (case study design), charge sheets, minutes of DH cases, transcriptions of voice recordings, recommendation letters and appeal letters (document analysis), as well as the themes from the coded data to facilitate the verification and validity of the findings (Maree, 2011). The researcher was not allowed access

to the charge sheets, minutes of DHs, recommendation letters or appeal letters, because the participants were doubtful to give access to these documents. It was my interpretation after the interviews that the participants were acting in the best interests of the learner and their school when refusing access to these documents.

The researcher observed the phenomenon from several angles via interviews, document analysis, a literature review and studying cases about discipline to obtain as much knowledge as possible (Maree, 2011; De Vos, 2002). The data reviewed of the transcribed voice recordings supported the researcher in better understanding the research topic (Kilbourn, 2006). The analysed documents gave structure to identities, circumstances and facts about the role of ELs and enabled the researcher to discover the details of disciplinary processes and DHs (Seale, 2004).

According to Maree (2011) coding relates to dividing the data into meaningful units, and to marking segments of data with symbols, descriptive words or unique names. Coding can be seen as markers that are used to rationalise the data gathered during the interview (Seidel, 1995). The researcher made use of inductive coding that allowed the researcher to examine the data directly. The codes emerged from the data to be compared (Maree, 2011). “I don’t know how it works in court” and “EL only teacher; not a lawyer” are some of the codes that emerged and that generated a theme, for example, “No law knowledge.” I coded all the raw data for each interview line by line via the use of the ATLAS.ti version 7.5.7 qualitative data analysis software program, identifying where the data was originally obtained (Maree, 2011). After the coding process was completed I grouped the themes together into theme clusters, for example, “Impact of DH” to produce patterns, such as “Disciplinary hearings changing learner behaviour”.

1.10.4 Sampling

Data was collected from participants who had been purposefully and conveniently selected by the researcher within his working area. Purposeful sampling gives the researcher the opportunity to hand-pick the participants relevant for a study in order to develop a sample large enough for obtaining the required data (Black, 1999). The sampled participants were involved in learner DHs and disciplinary processes, and had relevant experience as ELs. The researcher had met delegates who showed a particular interest in this research topic at the seminar on essential skills for role players in education disciplinary hearings and tribunals (AMCI, 2013). They willingly indicated that they would participate in research of this kind, as well as share their experiences as ELs. This convinced the researcher that there was a need

among EL practitioners for discussing matters regarding this topic and for sharing aspects of their role as ELs.

The researcher purposively selected twelve participants acting as ELs in eight different secondary schools, which included public and independent schools (hereafter IS). Twelve identified participants were essential to ensure that there were information rich participants to reach a saturation point, as well as to increase reliability. The schools were located in Gauteng Province which included two schools in a rural area (previously disadvantaged schools) and six city schools. The schools represented a balance between public city schools and previously disadvantaged (township) schools, where participants voluntarily engaged in face-to-face semi-structured interviews (Maree, 2011). The letter of invitation stated that participation was voluntary and this fact was again repeated during the interviews (Leedy & Ormrod, 2001). Participants were assured that they could withdraw at any stage of the interview. These participants were interviewed at their schools, after school hours, depending on what was most convenient for them. It was important to get a range of views on the research topic, as these interviewees produced “radically different” and “contrasting views” that played a central part in modifying identified theories (Seale, 2004).

1.10.5 Ethical considerations

According to Mitchell (1993), when a high degree of trust is achieved early in the research, it gives the researcher the “freedom to look and ask”. Trust refers to a relationship between the researcher and the participants. It also applies to discursive practices defining the standards for presenting both the researcher and the work as trustworthy (Fine, 1993). Trustworthiness is the way in which the researcher is able to persuade the audience that the findings are worth paying attention to, transferable and that the research is of high quality (Johnson & Turner, 2003). It includes that the participants do not betray, mislead, and lie or put up a front during an interview (Seale, 2004).

The researcher utilised the services of an independent person to review the data collected and the coding thereof to increase the trustworthiness of the research. This person was used by the University of Pretoria to train post-graduate students in the use of the ATLAS.ti software program. Research is trustworthy when the reader is convinced that the findings did indeed occur as the researcher claims (Durrheim & Wassenaar, 2002).

To increase the dependability, the researcher made use of the Guba model of trustworthiness (Poggenpoel, 1998). This model entails that the phenomenon is described as accurately as

possible to reflect the true value of the research results to increase credibility. It also demonstrates that the findings are applicable and transferable to other academic contexts. It is important throughout this model that the data represent the views of the participants, and not the subjective interpretation of the researcher (Poggenpoel, 1998). The researcher triangulated all the collected data during the research process, including the interviews, field notes, documents of DHs and court cases, and literature review in order to find common themes to provide reliable findings. The researcher also did his utmost to eliminate any bias that might be brought to the study by constantly reflecting on the research process (Maree, 2011). Drafts of the transcriptions were made available to the participants for verification.

The researcher drafted a letter of consent that explained the research process and the aim, design, methods of sampling and analysis of the data (See Appendix 1). This letter firstly had to be sent the HOD of Gauteng and then to the respective district offices to be signed by the district directors to grant permission to proceed. Thereafter a consent letter was sent to the various school principals, SGB and the intended participants.

The researcher made telephonic contact with the principal of the school to introduce and explain the purpose of the research and the voluntary involvement of the school, as well as the ELs. The ELs had to accept the consent letter as a participant in this research before the interview could be scheduled. Only a small number of participants were available, due to the specialisation of the role of prosecutor in learner disciplinary hearings and the number of educators acting this role. In this sense the participants might have experienced that they had no choice but to participate. This situation produced participants with the needed characteristics and experience for this research. The participants had to read the consent letter to gain clarity on the matter and sign the form if they were willing to be voluntarily involved in the research. All the identified participants signed these letters and gave their full support as participants in this research. The intent of the letter was to gain the trust of the participants and to convince them that their participation, views and opinions were of great value and that these would be treated with confidentiality. Participants were informed that they might withdraw at any stage during the process of interviewing if they wished to do so (Maree, 2011; Seale, 2004); fortunately none of them did.

The consent letters included the contact details of the researcher for the use of the participant to confirm participation. The researcher obtained informed consent from the volunteers by means of a text message, telephone call or email stating their willingness to participate in the research. The interviews were conducted in English and Afrikaans, depending on the preference of the interviewee. The participants had the opportunity to indicate, via the consent

letter, whether they would rely on a translator and use their preferred language. None of the participants made use of a translator. Prior to the interviews telephone conversations were utilised to explain the research aim briefly, make final arrangements for the interview and to emphasise the fact that the participant might withdraw at any time. This created the opportunity for the researcher to ascertain whether or not the participant was available and willing to participate in follow-up interviews at a later stage (Maree, 2011). Participants were informed that they had the right to view the transcription of their interview. The researcher requested that the participant should verify the content of the transcription to ensure confidentiality and reliability.

The participants were not exposed to any undue physical or psychological harm (Leedy & Ormrod, 2001). The ELs had knowledge of disciplinary cases that were sensitive and private, which they did not want to disclose to the public. The researcher was honest, respectful and sympathetic regarding information shared by the participants and did not insist on access to the information, for example decisions of DHs. None of the participants requested to be debriefed after an interview and no referrals to a professional were needed (Maree, 2011).

According to Strydom (2002) it is imperative that all participants involved in research have to be aware of the general agreements about what is proper and improper as well as confidential regarding the research. The researcher therefore abided by all the ethical guidelines as set out by the Ethics and Research Statement by the Faculty of the Education of the University of Pretoria to protect the privacy of each participant (Maree, 2011). Participants may rightly fear the consequence of private knowledge being disclosed during the research (Punch, 1994). The researcher was therefore obliged to protect the participants' identity, places of work, and the location of the research, although the research was located within the neighbourhood of the researcher (Seale, 2004). There were no heinous discoveries, such as of unlawful practices during the interviews. The researcher was obligated according to the ethical consideration not to share confidential information with anyone.

There has to be a clear understanding between the researcher and the participants regarding the confidentiality of the results and findings of research. Any information and responses shared by the participants during the research were kept private and the results were presented in such a manner that the identities of the participants were protected and that they therefore remained anonymous. As soon as the research was completed the researcher made all the audio recordings of the interviews and of the raw data available to the University of Pretoria for safekeeping for 15 years as per the University rules (Burns, 2000). The names of

interviewees or their schools would not be published in any way and they would only be identified through codes or pseudonyms.

1.11 SIGNIFICANCE OF THE STUDY

The research illuminates the complexity of managing discipline in a democratic education system, where DHs should optimise objectivity when disciplining learners and improving human rights in schools. It is my opinion that the rights of the EL came to the fore during this research when they might have experienced victimisation or the infringement of their human rights during DHs for not being a person with legal training. The knowledge gained from the interviews about the experiences and opinions on the role of ELs may include knowledge of the effects of inadequate training and preparation for non-conventional (that is quasi-judicial) roles of educators.

This research may clarify how to manage learner discipline and due process for educators presenting a disciplinary case in learner DHs; it may also increase the existing literature regarding the practice and role of ELs in DHs. School managers might initiate induction programmes for educators on managing discipline or novice ELs in order to ensure more efficient, fair and justifiable DHs.

1.12 LIMITATIONS

The researcher has limited experience as EL or the practice thereof, due to limited exposure acting as EL in his own school for four years only. This might have influenced his understanding of the conceptual framework of this research field, and he therefore relied on other sources of information. The researcher might also have been prone to subjectivity due to his continuous involvement in DHs and disciplinary procedures in his own school and might have been misled by personal experience and opinion.

The research might have been limited by the number of information-rich participants acting as EL at the selected schools. There is the possibility that the participants might have produced information to impress either the researcher or others interested in this research and even have lied about their experiences, also known as the Hawthorne effect (McMillan & Schumacher, 2001). It was imperative that the researcher convince the participants to share their experiences truthfully. The researcher re-directed the participants' attention to the research topic and question when he detected any form of the Hawthorne effect. It was also the responsibility of the researcher to motivate the participants to stay objective throughout

the duration of the interview in order to prevent comments that might be offensive to the education department, the school, the principal or the SGB.

The legal principles introduced during the interview might not have been well known to all the participants. The researcher did not need to worry excessively about whether the interview questions or gestures were “too leading” or “not empathetic enough”; he simply continued interacting with the specific person in the interview (Seale, 2004). Leading questions were sometime used, which might have influenced the validity of the data slightly, due to some participants not understanding certain of the questions. According to Lindegger (2002) challenges may occur with regard to the validity of the information and causal relations are often hard to test.

The case study design was time consuming due to large quantities of data that the researcher had to analyse (Wimmer & Dominick, 2000). The use of multiple cases supported the researcher in establishing a range of views and opinions, which decreased the generalisability of the research (Wisker, 2001). To ensure transferability, the researcher used rich descriptions of the interviews and document analysis regarding DHs to accumulate detailed information describing the experiences and opinions of ELs (Creswell, 2003; Mayan, 2001). It is the aim of a qualitative interpretivist study not to generalise, but rather to provide rich descriptions of the participants’ experiences and opinions of their life world (Brundrett & Rhodes, 2014). A study like this could have some transferability, but this was not the main focus of the study.

Internal validity is an accurate presentation of a particular context or event as described by the researcher (Mayan, 2001). Credibility is increased when the conclusions of the research stem from the data. Credibility in this research was enhanced by applying triangulation to the methods of the data collected and data analysis, to determine any inconsistencies in the findings. It was the intent of the researcher to produce findings that were believable and convincing to increase the credibility of the research (Durrheim & Wassenaar, 2002).

The researcher’s access to information was constrained because of reluctance on the part of participants to possibly expose their school and/or learners to negative impressions.

1.13 DIVISION OF CHAPTERS

Chapter 1: Introduction

This chapter presents a general overview of the research and the rationale for the research. The aim of chapter 1 is to explain the role and practice of ELs in learner DHs and the influence of DHs on managing learner discipline. It outlines the research problem, purpose, research questions and research methods and it also provides among others the conceptual framework and a preliminary literature review.

Chapter 2: Literature Review

Chapter 2 outlines the conceptual framework for the research by presenting a literature review on the role and practice of ELs in learner DHs, the fairness and justifiability of DH, as well as the influence of DHs on managing learner discipline. This chapter discusses the platform of DHs as disciplinary tribunals or quasi-judicial hearings at school level with specified rules and procedures to deal with serious misconduct by learners.

Chapter 3: Research design

This chapter describes and explains the research design.

Chapter 4: Data analysis and interpretation

In this chapter the findings from the interviews and the document analysis as well as the analysis of the data are presented. The use of information from several participants and schools provided the researcher with rich data for the analysis of the phenomenon (Mark in Fouché, 2002). The results are presented in a case study format; this type of design facilitates the collection of large amounts of information and detail regarding the research topic in example records of court cases as archived by among others FEDSAS the Federation of Governing Bodies of South African Schools (hereafter FEDSAS) which allowed the researcher to examine and understand a wide range of raw data (Wimmer & Dominick, 2000). The researcher coded the data via the ATLAS.ti version 7.5.7 qualitative data analysis software program and conducted content analysis by identifying specific words or phrases as codes and then categorising these codes into a number of themes for analysis to produce six patterns (Terre Blanche & Kelly, 2002).

Chapter 5: Conclusion and recommendations

This chapter gives an overview of the research findings. It furthermore presents the conclusions drawn from the research. The possible limitations of the research and recommendations for the improvement of practice and for further research are also discussed in this chapter. Lastly it looks at the highlights of the research and emphasises the significance and contribution of the research.

1.14 CONCLUSION

This opening chapter offers a general overview of and the rationale for the research, the aim of which is to explain how the researcher intended to explore the role and practice of ELs in learner DHs. Chapter 1 articulates the research problem, research questions, research methods and purpose of the research as well as the conceptual framework and provides a preliminary literature review.



CHAPTER 2: LITERATURE REVIEW

2.1 INTRODUCTION

The education of the youth is of exceptional importance to society and the state as both depend on a well-educated population (Beckmann & Füssel, 2013). The education authorities have been in the process of transforming the South African school system by means of policy frameworks that emphasise key values denied by the previous education system, for example equity, democracy, access, participation and redress since 1994 (Mashile, 2000). Archer *et al.* (2010) argue that, once a given form of education exists, it exerts an influence on future educational change. This is evident in the disciplining of learners that was transformed from a punitive system to a corrective and restorative process (Archer *et al.*, 2010).

Discipline is an indispensable requirement of the promotion of the education of learners and it is therefore a general duty of all educators, while principals, deputy principals and heads of department, collectively known as the School Management Team (SMT) in collaboration with the SGB, bear an additional burden of ensuring that a proper learning environment is created and sustained, among others through the exercise of sound discipline (Beckmann & Prinsloo, 2013; Republic of South Africa, 1996a). Principals and teachers' disciplinary authority over pupils is quite clearly a central feature of school-level governance across the world (Dickinson, 2000). Section 8 of South African Schools Act (Republic of South Africa, 1996a) gives the SGB decision making powers on learner discipline in terms of adopting a Code of Conduct, to assist the principal and SMT to perform their professional functions as described in Section 20 of SASA (Republic of South Africa, 1996a).

In South Africa several education partners believe their hands are legally tied when enforcing safety and security measures at school level (De Waal, 2013). There is a lack of awareness of personal accountability for ensuring school safety and security (De Waal, 2013). Hoffman (2009) argues that it would not be exaggerating to submit that the South African public school system is dysfunctional and that there is no quick fix for all that ails our public education system. The Gauteng Member of the Executive Council for Education (MEC) Ms. Creecy (2013) blamed parents for the dysfunctional behaviour of learners and ill-discipline at schools during an address in the Gauteng Legislature on October 8, 2013.

To address this issue as mentioned by Ms. Creecy (2013) all stakeholders of education were called upon to effect change in the management of learner discipline that was, and still is so urgently needed. The implementation of due process by school governing bodies (SGBs) in

the disciplinary process only began in South Africa in 1997 with the commencement of SASA (Republic of South Africa, 1996a), while the school policies and structures for school governance were influenced by the political context and international trends. In the South African context it would imply that the SGB should have the knowledge and skills to govern a school towards its intended democratic goals (Möller, 2000). Disciplinary Hearings (DHs) created a platform for the SGB to succeed in its role and function to establish democratic principles when disciplining learners. Item 7 of the Guidelines (Republic of South Africa, 1998a) in adopting a Code of Conduct (CoC) explains that the management of discipline at school starts with the teachers' accountability, which refers to the required fairness associated with aspects of learner discipline at schools and school-related activities. According to the Promotion of Administrative Justice Act, 3 of 2000 (hereafter PAJA) (Republic of South Africa, 2000) schools should create a culture of accountability, openness and transparency, as expected during a DH, in the public administration, or in the exercise of public powers, or the performance of a public function, by giving effect to the right to just administrative action.

The person who plays a central part in the disciplinary process in a school is the evidence leader (EL) or prosecutor. For the purpose of this research the EL is an educator of the school delegated by the principal, in terms of Section 4.1 of chapter A of the PAM (Republic of South Africa, 1998b) as disciplinary officer (prosecutor). It is the task of the EL to gather information with regard to a disciplinary case and to refer serious cases to DHs via the principal. There are many guidelines and laws of which the EL must take note to manage misconduct as stipulated in SASA (Republic of South Africa, 1996a) as well as regulations for a fair disciplinary process as contemplated in Section 33 of the Constitution (Republic of South Africa, 1996b) which deals with administrative justice to ensure a fair and unprejudiced disciplinary process. For this reason the training of ELs is of the utmost importance to have the opportunity to be developed in this specialised field and before this person may play the role as EL.

From the literature review it is evident that the EL needs to be trained to play this role, due to the complexity of exercising quasi-judicial powers and due to the DH having elements of a court hearing (Beckmann & Prinsloo, 2013; Hopkins, 2006). Research conducted by Schimmel and Militello (2007) and Mirabile (2013) explicate the lack of consistent training in education law among teachers where 55% of the teachers who participated in their studies indicated that they had had no training in education law. Schimmel and Militello (2007) reported that more than 70% of the teachers indicated that they were interested in learning more about due process, and more than 75% were interested in teacher liability for learner injury. Schimmel, Militello and Eberwein (2009) are of the opinion that legal training has the

capacity to address concerns in cases where educators, or in this research ELs, are not prepared for their delegated role, and to increase their legal competency.

The following paragraph elaborates on the importance of due process and its impact on DHs.

2.2 DUE PROCESS

The mandatory implementation of due process by school governing bodies (SGBs) in the disciplinary process began in South Africa in 1997 with the commencement of SASA (Republic of South Africa, 1996a), while the school policies and structures for school governance were influenced by the political context and international trends. The above-mentioned trends included management of schools with community involvement by means of a SGB, school-based decisions and the democratic perspective towards disciplining learners according to which DHs were introduced as part of a school's disciplining process (Rossouw, 2001; Republic of South Africa, 1996b).

The management of discipline at school starts with teachers' accountability, which refers to the fairness required during all aspects of learner discipline at schools and school-related activities (Republic of South Africa, 1998a: item 7). In *Jacobs v Chairman, Governing Body, Rhodes High School 2011*, a case concerning the safety of teachers and emphasising the accountability of teachers, the high court pointed out the accountability of principals and teachers concerning the actions of learners. According to PAJA (Republic of South Africa, 2000) the school should create a culture of accountability, openness and transparency in public administration, or in the exercise of public powers, or the performance of a public function, by giving effect to the right to just administrative action. PAJA (Republic of South Africa, 2000) defines administrative action as any decision taken, or failure to take a decision by an organ of state when exercising a public power or performing a public function.

In the past, prior to this new concept of the democratisation of school discipline, learners were disciplined through a punitive system which was regulated by law. The change in the political climate to a new united South Africa after the democratic elections of 1994 (Joubert, 2008), gave birth to a school disciplining system that is corrective and restorative and in which the rights of learners are respected. Our national school system is still redressing past injustices, advancing transformation and striving to uphold the rights of all learners, parents and educators (Mashile, 2000). Political transformation has had an influence on the disciplining of learners, aiming to establish democratic values and rights as stipulated in the Bill of Rights and the Constitution (Republic of South Africa, 1996b) in our education system, with equity and quality as cornerstones (Heystek, 2011).

Transformation is to change from one specific situation or condition to another improved situation or condition (Sykes, 1983). The disciplining of learners was transformed from a punitive system to a corrective and restorative process. These democratic goals can be exercised during a DH, where the SGB should respect the learner's right to freedom and security, including the right not to be tortured in any way, and not to be punished in a cruel, inhuman or degrading way (Heystek, 2011; Republic of South Africa, 1996a). The court in *S v. Williams* (1995) concluded that corporal punishment administered to juvenile prisoners is a violation of Section 12(1) (c), (d) and (e) of the Constitution (Republic of South Africa, 1996b) not to punish anyone in a cruel, inhuman or degrading way.

Education legislation has regulated and constrained the way in which educators manage discipline in schools by prescribing rigorous procedures which must be adhered to (Joubert, 2008). Joubert (2008), Beckmann *et al.* (2010) and the Education Law Centre (2001) elaborate on the management of discipline in schools, the role of the SGB, due process and just administrative action to be followed by the role players in this process (Republic of South Africa, 1996b: Section 33). Due process refers among other things to fair procedures that include the following (Beckmann *et al.*, 2010; Joubert, 2008):

1. The learner must be informed, in a language that is understandable to him/her, of the charge against him/her before the DH takes place.
2. The learner must be given the opportunity to state his/her case, according to the principle of *audi alteram partem*.
3. The learner must be allowed to be represented.
4. Reasons must be given for the decision taken by the DC.
5. The learner has the right to appeal against the decision.

These principles have to be implemented to promote fairness in the disciplinary process and DH. Van Staden and Alston (2000) emphasise the following regarding disciplinary action against learners:

1. The failure of the school to follow meticulously the procedures infringes upon the common law principle of *audi alteram partem* and the right to due process. The case of *Van Wyk v Van der Merwe* (1957) provides an example of failure to follow procedures.

2. Any form of suspension without a fair hearing is *ultra vires*, as argued in the case of *Phillips v Manser* (1999) 1 All SA 198 (SE).
3. School rules, signed by parents and/or learners, are not binding if these rules are unconstitutional or not substantive. The case of *Mfolo v Ministry of Education, Bophuthatswana* (1994), while not binding in South African courts now, is an advisory judgement.
4. The principal may, in exceptional circumstances, place a learner on suspension without a hearing; these circumstances include violence, or the threat of violence with the possession of a gun or a knife, or a learner being tested positive for drugs, or being under the influence of alcohol, as seen in the case of *Naidoo v Director of Indian Education* (1982).

The functioning of a DH is based on fundamental principles of the law (Rossouw, 2003). Administrative justice is a fundamental principle of administrative law that encompasses the principles of fairness and impartiality (Squelch, 2000b). Administrative justice denotes a system of public administration that upholds the principles of fairness, reasonableness, equality, propriety and proportionality (Burns, 1998). The learners have a right to just administrative action as stipulated in Section 33 of the Bill of Rights in the Constitution (Republic of South Africa, 1996b). The Bill of Rights (Republic of South Africa, 1996b) is aimed at protecting people against unfair, arbitrary administrative decisions and actions by administrative organs, which is possible during DHs (Squelch, 2000b). It provides that (Squelch, 2000b):

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has to be provided with written reasons.
3. National legislation must be enacted to give effect to these rights, and must
 - a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal of DH;
 - b) impose a duty of the state to give effect to the rights in Section (1) and (2); and
 - c) promote an efficient administration.

According to Burns (1998), the just administrative clause defines the parameters and manner in which administration must function. It protects the individual (learner) from administrative

abuse by ensuring that all administrative action is lawful, in that it is correctly performed, and that it adheres to certain standards of procedural and substantive fairness (Burns, 1998).

Procedural fairness is concerned with fair and proper procedures and is clearly protected by the Constitution (Republic of South Africa, 1996b) and explained in Section 3 of PAJA (Republic of South Africa, 2000). Procedurally due process means that fair procedures must be followed when an alleged breach of CoC is investigated, a DH is held and corrective measures are imposed (Beckmann & Prinsloo, 2013). Due process implies that the learner must be informed, or be given an opportunity to state his/her case, as Beckmann *et al.* (2010) and Joubert (2008) explained earlier in this paragraph.

Substantively fair process implies that a fair and reasonable rule or standard exists, is known, and must have been contravened through misconduct (Beckmann & Prinsloo, 2013). Paragraph 7 of schedule 8 of the LRA (Republic of South Africa, 1995) assumes that there is a valid and legal norm or rule or standard of which the specific transgressor knew, or could reasonably have been expected to be aware of. Substantive fairness deals with the question of whether the reasons for the decision are fair (Squelch, 2000b). It is protected by virtue of the word “reasonable”, referring to the appropriateness and fairness of rules (Squelch, 2000b). In terms of the law, the disciplinary process and the DH must therefore be both substantively and procedurally fair (Beckmann & Prinsloo, 2013). The SGB or DC may comply with all the procedural requirements but when the decision is unreasonable, the administrative decision may still be invalid. Burns (1998) elaborates that the DC decision will contribute to administrative accountability, openness and transparency as expected in this case of the disciplinary process and DHs.

Administrative action must be lawful, which means that the statutory and common law requirements of legality must be included and obeyed (De Ville, 1995). Squelch (2000b) clarifies lawfulness as an umbrella concept that encompasses all the requirements for valid administrative action. Relevant to this research, when a SGB or DC suspends a learner, it must have the necessary authority to do so and it must comply with relevant legislative and common law requirements, including due process and the principles of natural justice (Squelch, 2000b). If not, in terms of Section 9 (4) of SASA (Republic of South Africa, 1996a), the process and the decision made by the DC, may be challenged by the parent by means of an appeal addressed to the Head of Department of Education (GDE, 2007).

All these rights are subject to reasonable limitations, which may be imposed in terms of Section 36 (1) of the Constitution (Republic of South Africa, 1996b), by common law and case

law, provided the limitation is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom” (Republic of South Africa, 1996b). These principles apply to the process to be followed, as well as to the way in which arguments are presented during a DH (Republic of South Africa, 1996b).

A DH should be preceded by an investigation into the alleged serious misconduct, as well as a presentation of the allegation of serious misconduct by a learner to the DC for consideration and recommendation (Rossouw, 2003). There are two possible recommendations in terms of Section 9 (1) of SASA (Republic of South Africa, 1996a): suspension (the temporary removal from school) and expulsion (permanent removal from school). The outcome of a DH may have a serious impact on the educational rights of learners and it is therefore understandable that SASA (Republic of South Africa, 1996a) requires a CoC to contain provisions for safeguarding the interests of the learner and any other party involved, including the EL and other learners of the school in disciplinary proceedings (Beckmann & Prinsloo, 2013).

Squelch (2000b) reiterates that fairness requires the opportunity to be heard and adequate notice of when such an opportunity will be available in terms of the DH. A learner charged with an offence for which a DH is to be held, is entitled in terms of Section 3 of PAJA (Republic of South Africa, 2000) to be informed in writing of the details of the alleged offence (Squelch, 2000b). A notice about the hearing should include information about the alleged offence, as well as information about the time, place and date of the hearing and must be delivered in writing to the parents and learner five (5) work days before the hearing (GDE, 2007; Joubert, 2008). The learner who has been accused must be given the opportunity to present his/her side of the matter according to the principle of *audi alteram partem*, as well as to call witnesses on his/her behalf (Joubert, 2008; Squelch, 2000b). The *audi alteram partem* rule also requires that all relevant information be communicated to the person who may be affected by administrative decisions (Squelch, 2000b). This will give the person (learner) in question the opportunity to prepare for the case and not to be unfairly prejudiced.

The alleged offender (learner) must be given the opportunity to request the support of his/her parents or legal guardian when it is expected of him/her to make a statement that could be incriminating (Joubert, 2008; Squelch, 2000b). Section 1 of SASA (Republic of South Africa, 1996a) defines a parent as follows:

1. The parent or guardian of a learner
2. The person legally entitled to custody of a learner.
3. The person who undertakes to fulfil the obligations of a person referred to in (a) and (b) towards the learner's education.

At the moment the definition makes no reference to child-headed households, where a child younger than 18 years, a minor according to Section 28 (3) of the Constitution (Republic of South Africa, 1996b) is taking care of other youths and cannot be expected to be held responsible for education at school or to represent the learner during a DH. In terms of Section 1 of SASA (Republic of South Africa, 1996a), being a parent can also mean a formal undertaking by a person to fulfil the legal obligations towards the public school, in this instance to represent the learner during a DH. The learner is entitled to legal representation according to Section 3 of PAJA (Republic of South Africa, 2000) and Section 9 of SASA (Republic of South Africa, 1996a) where such assistance is required to ensure a fair hearing. Legal representation is accepted in complex cases, which may have serious consequences for the learner (Squelch, 2000b).

The disciplinary committee (DC) is required to present the learner with reasons for its decision in order to promote openness and transparency in terms of Section 33 (2) of the Constitution (Republic of South Africa, 1996b; Squelch, 2000b). All reasons must be fair, just and based on relevant information. In contrast, vague, inappropriate and insubstantial reasons are likely to be challenged and set aside (Squelch, 2000b). To increase fairness, Section 9 of SASA (Republic of South Africa, 1996a) provides that the DC must consult the Head of Department (HOD) when suspending or expelling a learner. In terms of Section 9 (4) of SASA (Republic of South Africa, 1996a), the learner has the right to appeal against the decision made by the DC. These appeals are referred to an appeal committee that should consist of members who are not part of the original DC and in most schools it will include the SGB chairperson (Squelch, 2000b).

In terms of Circular 74 and General Notice 2591 of 2001 (GDE, 2007) a learner or the parent may appeal to the HOD of the Province after sanctioning by a DC. After considering the full report of the proceedings, the HOD must within five (5) days of being notified of the recommendation of the DC, reply in writing. The HOD could:

1. expel the learner
2. impose on the learner a lesser punishment permitted by the CoC and the notice
3. suspend or postpone a sentence for a period of not less than six months;
4. impose any other sanction deemed appropriate by the HOD, or
5. find the learner not guilty and notify the learner, parents and representative of the learner of the decision.

An appeal may be lodged against the decision of the HOD to the MEC within fourteen (14) days of being notified by the HOD. The MEC has five (5) days to respond in writing and to provide the reasons why the appeal should be dismissed. The decision of the MEC in respect of the appeal shall be final. This appeal process will firstly prevent an abuse of power and an inappropriate exercise of executive power, for example judicial functions that may only be discharged by the judiciary (Hopkins, 2006), and secondly to ensure due process against the accused learner.

In this paragraph we have seen that in the South African context, the SGB should have the knowledge and skills to act according to due process when dealing with discipline and DHs, and to govern a school towards its intended democratic goals (Möller, 2000). One such democratic goal is to create a platform to succeed in their role and function to apply democratic principles when disciplining learners by means of DHs. The DH should, in terms of Section 8 of SASA (Republic of South Africa, 1996a) respect the learner's right to freedom and security, including the right not to be tortured in any way, and not to be punished in a cruel, inhuman or degrading way (Heystek, 2011).

The DH is based on fundamental principles of the law (Rossouw, 2003). Administrative justice is a fundamental principle of administrative law that encompasses the principles of fairness and impartiality (Squelch, 2000b). It protects the individual from administrative abuse by ensuring that all administrative action is lawful, that it is correctly performed, and that it adheres to certain standards of procedural and substantive fairness (Burns, 1998). Procedurally due process means that fair procedures must be followed when an alleged breach of CoC is investigated, a hearing is held and punishment is imposed (Beckmann & Prinsloo, 2013). Substantively fair process implies that a fair and reasonable rule or standard exists and is known and that it must have been contravened through misconduct (Beckmann & Prinsloo, 2013). Burns (1998) adds that this will contribute to administrative accountability, openness and transparency as expected in this research of the disciplinary process and DHs.

The following paragraph focuses on the role and functions of the evidence leader.

2.3 THE ROLE OF THE EVIDENCE LEADER

There is a greater emphasis than before on protecting learners during the disciplinary process, due to an increasing emphasis on the protection of the fundamental human rights of learners as stipulated in the Bill of Rights and the founding values enshrined in the Constitution of 1996 (Republic of South Africa, 1996b), human dignity, equality and freedom (Joubert *et al.*, 2004).

In the process of democratising discipline in schools in order to acknowledge the founding values, the idea of decentralisation in the management of discipline arose. It suggests distributing authority to others, in this case to the EL, to be more accountable and involved in the disciplinary process (Foster & Smith, 2000). It may also imply that rights are handed down to individuals in a school, as in this case to the EL to manage or control certain functions, for instance the disciplinary process in the school (Möller, 2000). With this in mind, the work done by the EL has a direct effect on the disciplinary action recommended by the DC and the fairness of the DH (Beckmann & Prinsloo, 2013).

The EL's role must be informed by neutrality and tolerance (Beckmann & Füssel, 2013). It is not only a balancing of legal aspects that constrains the EL and necessitates the acceptance of limitations of their fundamental rights, but also pedagogical aspects (Beckmann & Füssel, 2013). The role of the EL and teacher is a kind of "double role" that needs to be considered (Beckmann & Füssel, 2013). It should be accepted that the roles should be equally important and that one should not be subject to the other (Beckmann & Füssel, 2013).

There are guidelines to manage the misconduct of learners at public schools as stipulated in SASA (Republic of South Africa, 1996a) as well as regulations for a fair disciplinary process as required by Section 33 of the Constitution (Republic of South Africa, 1996b) to ensure a just and unprejudiced disciplinary process (Jacobs, 2001; Gauteng Department of Education, 2007). SASA (Republic of South Africa, 1996a) provides the framework for the manner in which the SGB should manage discipline, including the functions of the SGB regarding the following (Mashile, 2000):

1. Section 8: Code of conduct.
2. Section 9: Suspension and expulsion from public schools.
3. Section 10: Prohibition of corporal punishment.

The rights of learners are protected by a CoC as an embodiment of the Bill of Rights, which is enforced as an instrument to maintain good discipline (Joubert & Bray, 2007; Joubert, 2008). Section 8 (4) of SASA (Republic of South Africa, 1996a) provides that all learners attending a school are always bound by the CoC of the school. This instrument provides for an environment that promotes quality education, all rights of learners and their safety (Department of Education, 2008). The CoC is adopted by an SGB and implemented by educators, the SMT and in particular by ELs during the disciplinary process and DHs (Republic of South Africa, 1996a).

A disciplinary process is a demanding process and is not only measured against a well-drafted CoC, but to a greater extent against its proper enforcement and utilisation (Joubert, 2008). The EL makes use of the CoC to build a case and to present evidence and facts before the DC. The EL needs to prove compliance with all the procedures as outlined in SASA (Republic of South Africa, 1996a) and the regulations of the CoC when presenting a case in a DH (Gauteng Department of Education, 2007; Joubert, 2008). A lack of knowledge regarding due disciplinary process, or the expertise to apply it may severely and adversely influence sanctioning, as well as the justness and fairness of the hearing. This research is aimed at exploring the experience of ELs regarding the role they play in the disciplinary process and hearings.

It is of the utmost importance that the disciplinary process preceding acquittal or sanctioning by the DC is fair, justifiable and reasonable as discussed in paragraph 2.2 (GDE, 2007). The fundamental task of the disciplinary officer, also known as the prosecutor or *evidence leader*, is to support an unprejudiced and fair disciplinary process (Jacobs, 2001). The EL plays a leading role in a misconduct case, from the moment the incident is reported, until acquittal or sanctioning by the presiding officer, which makes the EL a central person in a fair disciplinary process (Gauteng Department of Education, 2007). For the purpose of this research the EL is an educator or employee of the school delegated by the principal according to Section 4.1 in Chapter A of PAM (Republic of South Africa, 1998b) as disciplinary officer (prosecutor).

More often than not minor cases are referred to DHs which is one of the first challenges of the EL: to distinguish between minor and serious disciplinary cases. In the case of *Ward and Board of the Blaine Lake School Unit No 57*, Canada (1971) a learner was suspended for breaking a hair-length rule of the school. After an appeal by the parents, the court in the *Ward and Board of the Blaine Lake School Unit No 57* (1971) case set a high threshold for judicial interference, namely that only serious transgressions should be referred to DHs, for example assault or the use of drugs. To identify the seriousness of the transgression, the EL is guided by the Regulations for Misconduct of Learners at Public Schools and Disciplinary Proceedings (Hereafter Regulations) in terms of General Notice 2591 of 2001 (GDE, 2007), to distinguish between a schedule 1 and 2 offence.

The EL plays an irreplaceable part with regard to a fair disciplinary process, because of his/her involvement during the initial investigation of the case, the enforcement of the CoC, the writing of the charge sheet, arranging the DH with its DC as well as witnesses, presenting the evidence of the case before the DC and lastly reporting back to the school management team (SMT) and pupils concerning the outcome of the DH.

The role of the EL during the opening stages of the DH is to read the charge aloud as well as to present evidence, facts and witnesses in support of the case against the accused learner. It is also the right of the EL to cross-examine the accused or any witness produced by the accused learner for the defence (WCED, 2007; Joubert, 2008). Literature on the role of the ELs in the disciplinary process or in a DH is very limited, as seen in the work of Beckmann and Prinsloo (2013), Joubert (2008) and the WCED (2007).

At this stage it is evident that the educator needs to be trained, which is discussed in paragraph 2.4, to play the part of an EL, keeping in mind the magnitude and challenging nature of this particular role. According to Beckmann (AMCI, 2013) people who play a role in the DH are not trained in the law and may therefore experience the disciplinary process or hearing as challenging or intimidating. Some principals show resentment towards DHs regarding the right of learners to make use of a lawyer during a DH, because of the possible revelation of their lack of understanding of the law or the application thereof (Schimmel, Militello & Eberwein, 2009). ELs may experience the same position of hopelessness while presenting a case in the presence of a lawyer representing a learner during a DH (AMCI, 2013). In addition to the role of the EL outlined above, Beckmann and Prinsloo (2013) indicate the following negative aspects of DHs:

1. A lack of confidence in role players.
2. Poor communication, such as departmental disciplinary inquiry manuals that do not reach officials.
3. A lack of policy or poorly-formulated and implemented policy.
4. Ignorance of the law regarding hearings or tribunals.
5. The buffalo with its back in a thorn bush, or the rhino with the headache syndrome displayed by prosecutors.
6. Some role players copying television law series filmed in the USA.
7. Unlawful political, teacher union and bureaucratic interference in the work of, and pressure on role players.

This paragraph focused on the irreplaceable role of the EL with regard to a fair disciplinary process (Jacobs, 2001). The EL plays a leading role in learner misconduct cases, which makes the EL a central person in a fair disciplinary process (Gauteng Department of Education, 2007). The involvement of the EL during the initial investigation of the case, the enforcement of the CoC, the writing of the charge sheet, arranging a DH with its DC as well as witnesses, are some of the EL's responsibilities. The EL has to present evidence and facts

relevant to the case before the DC and lastly to report the outcome of the DH. The documents discussed at the AMCI session clearly discuss the role of the EL, namely to put relevant information before the DC and to ensure that justice is done (AMCI, 2013).

This last paragraph emphasises the various guidelines to manage learner misconduct as stipulated in SASA (Republic of South Africa, 1996a) at public schools, as well as regulations for a fair disciplinary process based on Section 33 of the Constitution of 1996 (Republic of South Africa, 1996b), in order to ensure a fair and unprejudiced disciplinary process. Beckmann (AMCI, 2013) reiterates that people who play leading roles in the DH are not trained in the law and may therefore experience the disciplinary process or hearing as challenging or intimidating. This research is concerned with the experiences of ELs similar to the research done by Schimmel, Militello and Eberwein (2009). The purpose of this research is to gain knowledge from the experiences of ELs that will clarify the role and practice of ELs, a fair DH and disciplinary process.

Next the importance of training the EL will be scrutinised.

2.4 TRAINING OF THE EVIDENCE LEADER

In South Africa teachers historically have different qualifications and educational backgrounds and a large number of serving teachers are not fully qualified (Education Labour Relations Council (hereafter ELRC), 2009). According to Hawker (2013), in September 2013 there were 7 076 unqualified teachers on the education department's payroll, and 2 642 under-qualified teachers in South Africa. These numbers are cause for great concern regarding the education of South African learners, let alone the management of discipline in schools. The National Policy Framework for Teacher Education and Development (hereafter NPFTED) of April 2007 makes provision for a national system of Continuing Professional Teacher Development (CPTD) (Beckmann & Füssel, 2013).

The issue of teacher development was also debated comprehensively at the National Teacher Development Summit held in July 2009 (ELRC, 2009). It seems that teachers' rights to initial teacher education and continuous professional development could take precedence over rights regarding for example professional control, organisational rights and the right to co-control education (Beckmann & Füssel, 2013).

A survey in the United States of America revealed that just under half of the states have law-related training requirements for principals (Hingham, Littleton & Styron, 2001). The survey

also indicated that, although most administrators have completed some form of in-service law training, very few teachers have (Hingham, Littleton & Styron, 2001). This lack of training is of great concern according to Militello (2006) and the ELRC (2009), given that surveys of administrators and teachers rank in-service training on education law as one of their highest priorities concerning professional teacher development. The onus of developing and training the EL remains on the SGB in terms of Section 20 of SASA (Republic of South Africa, 1996a). Schimmel *et al.* (2009) are of the opinion that legal training has the capacity to address concerns in cases where educators are not legally prepared and to increase their legal competency, while Bull and McCarthy (1995) and Eberwein (2008) indicate a strong positive correlation between law training and law knowledge.

Training or developing an individual is to build the capacity of the individual, which according to Aspin (1994) is a process of focusing on the needs of the individual and encouraging self-responsibility. Capacity building is a process of the development and growth of an individual, which enables the individual to take independent decisions and to make a contribution in his/her particular environment (Mashile, 2000; Republic of South Africa, 1998b). This in particular is an important attribute for an EL to make a positive contribution in the management of the disciplinary process. The process of capacity building may include the development of applicable skills, attitudes and knowledge (Mashile, 2000). Archer, Scherman, Coe and Howie (2010) say that the important conditions of teacher performance include the following:

1. A common understanding and expectations of teachers' professionalism, which involves the teachers' behaviour, values and convictions.
2. Understanding teachers' status. This includes the legal rules describing the concrete rights and duties of teachers, in particular their employment conditions. These rights and duties are laid down in normal labour law as stipulated among others in the Employment of Educators Act, 76 of 1998 (Republic of South Africa, 1998e), the Labour Relations Act, 66 of 1995 (Republic of South Africa, 1995) and the Constitution of 1996 (Republic of South Africa, 1996b).

In cases where an educator or EL does not have the capacity to do the job, but has the ability to acquire such capacity "within a reasonable time," or does not have the relevant experience, but is still appointed, such an educator or EL has a legitimate expectation that the employer will provide suitable opportunities for him or her to acquire the required capacity or experience (Beckmann & Prinsloo, 2013). SGBs and principals should support staff development and training, in this case the EL, so that they (ELs) can demonstrate an acceptable understanding of policy, regulations and laws to establish practices based on legal standards (Schimmel *et*

al., 2009). The training of ELs is of utmost importance for them to have the opportunity to be developed in this specialised field as EL. In terms of Section 2 of the Employment Equity Act, 76, of 1998 (hereafter the Equity Act) (Republic of South Africa, 1998c), to train the EL is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment.

According to Section 3.2 in Chapter A of the PAM (Republic of South Africa, 1998b), teachers need to attend professional development programmes for up to eighty (80) hours per annum. It is the responsibility of the principal with the support of the SGB to create more opportunities for the development and training of the EL, to fulfil the regulations as stipulated in Section 3.2 in Chapter A of the PAM (Republic of South Africa, 1998b). The greatest perceived need is for more, and more appropriate training of all role players for the major tasks that confront them, *inter alia* with regard to their legal rights and duties (Mashile, 2000; ELRC, 2009). It stands to reason that the training of principals, teachers, and in this research the EL, is of fundamental importance before a person may act the role of EL.

I discovered only one company that was willing to invest in the training of ELs, namely African Management Consultants International (AMCI) in 2013. I was invited to attend as researcher and as a role player in DHs. The topic at this conference focused on essential skills of role players in education disciplinary tribunals. The seminar was hosted in Johannesburg at the Southern Sun OR Tambo International Airport Hotel. The content of the training for ELs was divided into three parts, namely what to do before, during and after a DH (Beckmann & Prinsloo, 2013). The training about what to do before a hearing included aspects such as the duty to do the following (Beckmann & Prinsloo, 2013):

1. Putting all facts before the DC in a balanced and fair manner.
2. Serving the truth and justice and not merely trying to have the accused found guilty.
3. Complying with constitutional guidelines concerning the assumption that the accused is not guilty, unless it is rebutted on a balance of probabilities.
4. Showing respect for the process and the dignity of all role players, especially the accused.
5. Drafting a charge sheet (after the consultations referred to below) that can be regarded as the be-all and the end-all of a disciplinary tribunal. The charge sheet has to be clear and unambiguous (not vague) and understandable on a number of issues, namely who the perpetrator of the offense or misconduct is, what the

accused is accused of, where the alleged offence or misconduct took place and when it happened.

6. Ensuring that the charge sheet follows and builds on a process of consultation during which the EL takes written statements from witnesses.
7. Serving the charge sheet on the accused.
8. Affording the accused enough (reasonable) time to consider the charge sheet and to prepare.
9. Informing the accused of his or her rights (as found for example in the code of a state department).
10. Notifying the accused in writing of the date, time and venue of the DH and inform the accused of his or her rights.

During the DH the EL must, among others, do the following (Beckmann & Prinsloo, 2013):

1. Follow hearing procedures and show courtesy towards everybody: the presiding officer, accused and witnesses (The aim is to break the influence of American “law” television series and movies).
2. Arrange for and conduct oral evidence and evidence by witnesses who make written statements, making sure that such witnesses are available at the DH.
3. Provide the relevant documents (if any), placed in an original file (“bundle”), with three numbered copies, one each for the presiding officer, the accused and for the witness(es).
4. Create an image of someone who is well organised and who treats all people in the DH with respect. An EL should work in terms of the dictum, “Train hard and fight easy”.
5. Remember that he or she is in the role of a prosecutor and not in that of the persecutor.
6. Adhere to the order of proceedings in a DH/tribunal/inquiry (It should be remembered that the onus to prove the allegations against the accused lies with the EL and that the guilt of the accused needs to be proved on a balance of probabilities and not beyond all reasonable doubt, as in criminal cases). The EL is at all times bound by the charge sheet.
7. Lead direct evidence that supports the charge sheet.
8. Presenting all evidence as comprehensively as possible.

After a DH in which an accused learner has been found guilty, the EL should present a picture or an image of the guilty learner in context and from the file on the guilty learner (Beckmann

& Prinsloo, 2013). The EL will then propose a sanction which is authorised by the disciplinary code and that ranges from a warning, to a final warning, to a recommendation to have the learner expelled (Beckmann & Prinsloo, 2013).

According to Beckmann and Prinsloo (2013) a good number of DH decisions go wrong and when challenged (either through appeals to higher authorities in the system or by approaching a court of law), many are overturned. The training of the EL should not focus on due process and law knowledge only, but should also prepare the EL for what to expect when the outcome of the DH is overturned. When the outcome of a DH is overturned, or the mere fact that an outcome is challenged, it may have a wide range of negative effects on education and a school (Beckmann & Prinsloo, 2013):

1. *Teachers* may lose faith in the process and may be inclined to deny the existence of problems or just ignore them. They just do not bother anymore.
2. *Parents* may lose confidence in a school and its educators and take their children elsewhere.
3. *Dangerous and violent conditions* may arise or escalate in a school and it may be almost impossible to bring them under control.
4. *Learners* may see a decision overturned as a licence to disregard school rules and the CoC and to challenge all authority. They may start viewing themselves as untouchable and will pay scant if any attention to their school work.
5. *Departments of Education* that do not have valid reasons for not confirming SGB recommendations, may cause resentment among educators and aggravate difficult circumstances that may already exist at a school; a feeling of us *versus* them could arise.
6. *Schools, other agencies* and role players may run up enormous legal expenses.
7. *The quality of education* may deteriorate because the environment that is supposed to be conducive to learning and teaching is eroded in Section 8 (2) of SASA (Republic of South Africa, 1996a).

Research conducted by Brabrand (2003), Caldwell (1986) and Kalafatis (1999) emphasises that principals have very low levels of law knowledge, while Schimmel and Militello (2007) indicate the low levels of law knowledge among teachers. The low level of knowledge among principals and teachers is not due to a lack of understanding or avoidance, but due to a lack of pre-service training programmes and ongoing in-service training (Schimmel *et al.*, 2009). According to Schimmel *et al.* (2009), most of the threats or occasional lawsuits that principals experience are due to their administrative decisions regarding school discipline. This particular

study by Schimmel *et al.* (2009) shows that a third of the principals in their sample changed their behaviour and the manner in which they make decisions due to their experiences of learner discipline.

Knowledge or the lack thereof is also a requirement to establish delictual liability in the case of loss or damage that may be suffered by a role player; for example, the EL or an accused in a DH (Beckmann & Prinsloo, 2013). It is primarily the responsibility of the professional person himself or herself to acquire such knowledge, but an employer can also be expected to provide an employee with access to opportunities to acquire appropriate skills and knowledge (Beckmann & Prinsloo, 2013). There are various methods to be trained as EL and to acquire new skills and knowledge as described by Xaba (2011) and Mokhele (2006) in the preliminary literature analysis (See paragraph 1.5). Watkins and Cervero (2000) discuss the importance of workplace learning as it will improve performance and competence in a professional's work setting.

In research reported by Watson and Harmel-Law (2009), one of the participants emphasises the value of informal training by means of learning from others with relevant experience in the workplace. Watkins and Cervero (2000) discuss the importance of workplace learning that could improve performance and competence in a professional's work setting. The core aims of teacher development are to (ELRC, 2009):

1. achieve sustainable improvement in the quality of teaching and learning;
2. enable teachers to improve their knowledge, competence, confidence, morale and professionalism.

The concept of *due process* and how to implement it in disciplinary proceedings and hearings is not one with which educators or ELs in general are familiar, because it does not normally form part of their initial training and it also does not often feature in in-service or professional development programmes (Beckmann & Prinsloo, 2013). Section 1 of Chapter C of PAM (Republic of South Africa, 1998b) indicates that the development of educators should have the following features:

1. simplicity: be easy to understand
2. feasibility: can be administered within different types of institutions
3. flexibility: is used for development and confirmation of probationers.

It is the aim of Section 2.1 in Chapter C of the PAM (Republic of South Africa, 1998b), to facilitate personal and professional development of educators in order to improve the quality of teaching practice and educational management. According to Section 2.3 in Chapter C of the PAM (Republic of South Africa, 1998b) ELs need to reflect on their work and collaborate with others in the same role as part of a developmental process. For the purposes of this research I anticipated that the importance of reflection and collaboration among ELs would be reiterated during the interviews with the participants of this research.

A number of cases taken to South African courts suggest some of the reasons why the EL has to be trained (Beckmann & Prinsloo, 2013):

1. The difficulty of the demands that disciplinary hearings place on role-players and the challenges they face in handling the issues.
2. The inability of some educators and SGB members to perform their roles in disciplinary hearings correctly, or to ensure that due process is followed in such enquiries.
3. Incorrect or unauthorised (*ultra vires*) action on the part of education departments.
4. The tension created in schools if the rulings or recommendations of disciplinary hearings are challenged.

The value of being trained is evident in the comments made by principals in the study of Schimmel *et al.* (2009). One participant mentioned that, “It is prudent to refresh all administrators with updates on legal issues”, while others were frustrated with the conflicting pressure of their job, “How can we keep up with the changes in school law?” and, “I should have gone to law school.” It would therefore seem necessary that role players in disciplinary hearings be equipped with the necessary skills, knowledge and attitudes to play their quasi-judicial roles in this regard (Beckmann & Prinsloo, 2013).

In summary, the lack of training among ELs is of great concern (Militello, 2006). According to surveys conducted by Militello (2006), administrators and teachers rank education law and in-service training as one of the highest priorities. Schimmel *et al.* (2009) are of the opinion that legal training has the potential to address concerns in cases where educators or ELs are not legally prepared and to increase their legal competency. There are various methods for training, for example those of Watkins and Cervero (2000) who discuss the importance of workplace learning, or some form of in-service law training as described by Hingham, Littleton and Styron (2001), or pre-service training programmes as mentioned by Schimmel *et al.* (2009). The impact of teacher development has the potential to maximise effective leadership

at all levels of the school system and ensure functional schools (ELRC, 2009). Principals should support staff development and training, in particular for ELs, so that they can demonstrate an acceptable understanding of policy, regulations and laws to establish practices based on legal standards and fairness (Schimmel *et al.*, 2009). According to Beckmann and Prinsloo (2013), a good number of rulings by DHs are challenged and many are overturned. The training of the EL should also prepare the EL what to expect when the outcome of the DH is overturned.

The legal principles of discipline are discussed next.

2.5 LEGAL PRINCIPLES OF DISCIPLINE

The rules, regulations and legal principles that constitute the basis of disciplining policies and procedures are supported by a range of sources of law. Legislation is made by an organ of state that embodies these laws “acts” or statutes. The following acts provide the legal framework for school discipline (Joubert, 2008):

1. The Constitution (Republic of South Africa, 1996b).
2. NEPA (Republic of South Africa, 1996c).
3. SASA (Republic of South Africa, 1996a).
4. The Children’s Act, 38 of 2005 (Republic of South Africa, 2005).
5. The provincial school education acts of the respective provinces.

The following paragraphs describe the above-mentioned acts and elucidate how they are applied within the legal framework of the EL’s role.

First and foremost is the Constitution (Republic of South Africa, 1996b). One of the challenging aspects of the Constitution of 1996 (Republic of South Africa, 1996b) is create and maintain a safe and disciplined environment where effective teaching and learning can take place (Republic of South Africa, 1996a). It is within this disciplined school environment that the EL has to do his/her work. When learners are constantly threatened by others, or some learners disrupt the normal teaching and learning process, it has a severe impact on the access to equal educational opportunities, as well as the quality of learning (Joubert *et al.*, 2004).

Mabeba and Prinsloo (2000) reiterate that disruptive behaviour significantly affects the fundamental right to a safe environment, which complies with the founding values of the Constitution of South Africa, 1996b). The Constitution of 1996 (Republic of South Africa,

1996b) gives every learner the right to a basic education, but education can only be successful if the learner is committed to self-development, education and learning. All learners have the right to attend classes, to be educated, to make use of all school facilities and have the potential to develop fully (Republic of South Africa, 1996b). To assist learner development, the school should provide qualified educators, maintain professional ethics and ensure that teachers educate the learners (Republic of South Africa, 1996b). It is deemed unacceptable, as stipulated in Section 4.5 (1) (ELRC, 2009) if a learner disrupts learning, destroys property or victimises others. The disruptive behaviour of learners is the starting point of the EL's role. The quality of learning is therefore directly linked to the realisation of the safety and security of learners attending the school (De la Rey, 2012). Safety is defined as the condition of being free from hurt, injury, loss, or protection from accidental events (Merriam-Webster, 2002). De Waal and Grösser (2009) state that safety and security in education aims to negate any threat to learners' welfare, which also includes eliminating physical harm.

The purpose of NEPA (Republic of South Africa, 1996c) is to determine national policy for education and to identify matters on which the Minister of Basic Education may determine policies, including ones on the organisation, management, governance, funding and establishment of educational institutions. The policies regarding management and governance have a direct influence on the manner in which the school manages the disciplinary process, as well as to guide the EL in his/her role. NEPA (Republic of South Africa, 1996c) articulates a list of principles that should guide the development of national education policy and provide for the process that should be utilised in the determination of such policy (Foster & Smith, 2000; Van Staden and Alston, 2000). The principles set out in Section 4 of NEPA (Republic of South Africa, 1996c) are applicable to learner discipline and teacher development:

1. The advancement and protection of the fundamental rights of every person in terms of Chapter 2 of the Constitution (Republic of South Africa, 1996b).
2. Providing opportunities for lifelong learning.
3. Achieving an integrated approach to education and training within a national qualifications framework.
4. Cultivating skills, discipline and capacities necessary for reconstruction and development.
5. Recognising the aptitudes, abilities, interests, prior knowledge and experience of learners.

SASA (Republic of South Africa, 1996a) is the cornerstone of South African school law. In its preamble, SASA (Republic of South Africa, 1996a) sets out its intentions regarding uniform

norms and standards for the education of learners at school and the organisation, governance and funding of schools (Foster & Smith, 2000). SASA (Republic of South Africa, 1996a) provides the framework for the SGB to govern and manage the school, in particular discipline (Beckmann, Foster & Smith, 1997). Section 8 (5) of SASA (Republic of South Africa, 1996a) regarding due process and the principles of natural justice in terms of Section 9 is one of the most valuable guidelines for the EL in managing the disciplinary process and DHs.

In the context of this research, common law is applied in a DH for learners. The most significant common law principles that apply to teachers and ELs include the following (Van Staden & Alston, 2000):

1. *audi alteram partem*: hear the other side
2. *ultra vires*: acting outside one's authority
3. *nullum poena sine lege*: no punishment without a law
4. *in loco parentis*: in place of the parent;
5. *nemo iudex in sua causa*: nobody may be a judge in his own case.

The principles of natural justice are followed throughout the world in countries whose legal systems are (partly) derived from the English legal system. They are applied in many diverse situations, including domestic tribunals and disciplinary cases. The rules of natural justice are aimed at protecting individuals against arbitrary and unjust actions (Squelch, 2000b). The United Kingdom cases of *R v Sussex Justice, Ex parte McCarthy* (1924) and the South African case *S v Le Grange and others* (2009) brought into common parlance the often quoted aphorism, "Not only must justice be done; it must also be seen to be done" that lies at the heart of the right to a fair trial.

It is evident in these cases that a cornerstone of the legal system is the impartial adjudication of disputes (Beckmann & Prinsloo, 2013). The law not only requires that a participant in quasi-judicial proceedings, whether it be the EL or the DC, should conduct the DH open-mindedly, impartially and fairly, but also that such conduct should be clear to all those who are concerned with the trial and its outcome (Beckmann & Prinsloo, 2013). It is for this reason that the right to a fair trial is entrenched in the Constitution (Republic of South Africa, 1996b). The case *Dhlamini v Minister of Education* (1984) reaffirmed the application of the rules of natural justice when dealing with learner misconduct (Squelch, 2000b). The fairness of a trial is under threat if a court or DH does not apply the law and assess the facts of the case impartially and without fear, favour or prejudice (Beckmann & Prinsloo, 2013). The right to a fair trial requires fairness

to the accused (learner), as well as fairness to the EL representing the school in a DH (Beckmann & Prinsloo, 2013).

The educator as EL has certain responsibilities regarding the discipline of learners, mainly derived from the fact that educators act *in loco parentis* (i.e. in the place of the parent) (Republic of South Africa, 1996a). Common law principles regulate educators' actions regarding discipline, among others the rules of natural justice, which are also embodied in Section 33 of the Constitution of 1996 (Republic of South Africa, 1996b). Where the rights and privileges or freedom of individuals (learners) could be affected negatively, as is possible in the case of DHs or disciplinary proceedings, the rules of natural justice apply. This implies that an opportunity must be given to enable the person (learner or parent) to put his/her case in terms of the *audi alteram partem* rule (Van Staden and Alston, 2000). It is for this reason that a tribunal or a DH is essential, so that all parties involved in the case may see that justice is done fairly (Malan, 2005).

Case law also has a bearing. It comprises court decisions that are recorded in law reports, rulings in cases that established important legal principles, which are relevant at the present time (Van Staden & Alston, 2000). The definition of the concrete rights and duties of teachers has been developed by the courts (Beckmann & Füssel, 2013). Case law plays an important role in interpreting primary and secondary legislation, clarifying concepts and principles and protecting people's rights (Joubert, 2008).

The recommendation by the HOD in the case of *De Kock v HOD of the Department of Education in the Western Cape, the Governing Body of the High School Overberg and the Minister of Education (Case 12533/98)* was that this case had to undergo a retrial with a new DC (See Chapter 1, paragraph 1.5). This action by the HOD to demand a retrial is in accordance with Section 6 of the Judicial Review of Administrative Action in PAJA (Republic of South Africa, 2000). Section 6 (2) of PAJA (Republic of South Africa, 2000) stipulates that a court or tribunal has the power to judicially review an administrative action if:

- a. the administrator who took it ...
- iii) was biased or could reasonably be suspected of bias;
- b. the action was procedurally unfair;
- e. the action was taken
 - ii) for an ulterior purpose or motive,
 - iii) because an irrelevant consideration was taken into account,
 - v) in bad faith;
- i. the action is otherwise unconstitutional or unlawful.

The action by the HOD and the dictum expressed by it is not merely of some importance, but is of fundamental importance: justice should not only be done, but should manifestly and undoubtedly be seen to be done fairly (Anderson, 1979).

There are legal principles and decisions relevant to education established in cases unrelated to education. *S v. Williams* (1995), a case relating to Sections 290 and 294 of the Criminal Procedures Act, 51 of 1977 and the United States of America case *Ingraham v. Wright* (1977), which dealt with corporal punishment of juvenile offenders, are examples of relevant cases. The corporal punishment examined in *S v. Williams* (1995) was declared unconstitutional by the Constitutional Court, and analogously, corporal punishment in schools was banned by Section 10 of SASA (Republic of South Africa, 1996a; Van Staden & Alston, 2000).

Other law to be considered during DHs is international law and foreign law (Joubert, 2008). International law is comprised of rules and principles that apply to a number of states by agreement and that are, in this case, relevant to school discipline and in particular international human rights law (Joubert, 2008). Foreign law is the law of another country and includes domestic law and case law, which are based on previous judgments in court cases, to assist in developing legal arguments and clarifying legal principles and concepts (All England Reports, 1995). According to Section 39 (1) of the Constitution (Republic of South Africa, 1996b), when interpreting the Bill of Rights, a tribunal or DH:

1. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
2. must consider international law, and
3. may consider foreign law.

DHs, when considering any legislation, must endeavor to promote the spirit and objects of the Bill of Rights (Republic of South Africa, 1996b).

The duty of school principals, educators and the SGB to create and maintain a safe and disciplined school environment, but it is also their challenge (Joubert *et al.*, 2004). The SMT furthermore has to manage a disciplinary system that has been transformed since the 1994 democratic election in South Africa from a punitive and autocratic system to a democratic, corrective and restorative disciplinary process. A democratic discipline system acknowledges natural justice and the rights of children as in The Children's Act, 38 of 2005 (Republic of South Africa, 2005) and Section 28 of the Constitution (Republic of South Africa, 1996b).

An environment (including a school environment) is classified in Section 24 of the Constitution (Republic of South Africa, 1996b) as safe when it is not harmful to the health or well-being of the learner. According to the Bill of Rights (Republic of South Africa, 1996) all people, including learners in a school, have a fundamental right to human dignity, equality and freedom. The school should not place a child's well-being or education at risk (Republic of South Africa, 1996b). For the school environment to be safe and conducive to learning according to SASA (Republic of South Africa, 1996a), it should have well-cared for facilities, furniture and equipment, clean toilets, water and the absence of any form of harassment. It should also have a functional disciplinary system complying with SASA (Republic of South Africa, 1996a).

The SGB creates a functional disciplinary system by means of a CoC (Republic of South Africa, 1996a). The CoC is aimed at establishing a disciplined, purposeful and safe school environment for the provision of quality education in support of the fundamental rights stipulated by the Constitution (Republic of South Africa, 1996b). It is therefore imperative according to Section 8 (1) of SASA (Republic of South Africa, 1996a) that parents or caretakers must be part of the consultation process when the SGB is in the process of approving a learner CoC, as well as to support the learner in complying with the CoC contemplated in Section 8 (4) of SASA (Republic of South Africa, 1996a).

According to Deacon (AMCI, 2013), the CoC also has to assist and protect the safety of each individual involved in the disciplinary process. The CoC therefore promotes school standards and should not be a mechanism only to punish. It should also promote progressive and restorative action and the enforcement of discipline (AMCI, 2013). The EL uses the CoC to initiate a disciplinary process when learners transgress in terms of the norms and standards as set out in the CoC by the SGB (AMCI, 2013).

A disciplined school has functional school rules, but it is even more necessary for a disciplined school to undertake corrective disciplinary actions against those learners who disrupt teaching and learning or challenge the CoC (Joubert *et al.*, 2004). Van Staden and Alston (2000) describe the school as an agent of the state, which is directly subject to the Constitution (Republic of South Africa, 1996b) and Section 8 of SASA (Republic of South Africa, 1996a) provides that all school rules must be constitutional and subject to any applicable provincial law.

Many school rules appear to have no justifiable educational basis or value; they simply serve as measures of control. School rules should have an educational value and, most importantly, must be valid and must be legally defensible (Van Staden and Alston, 2000). In *R v Jopp*

(1949) the court pointed out the importance of a learner being fully informed of the school rules and knowing what is allowed and what is prohibited. In terms of Section 8 (5) and Section 9 of SASA (Republic of South Africa, 1996a) all teachers must follow due process under all circumstances from classroom disciplinary matters to DHs in order to be accountable and to protect all learners' interests.

In this research disciplining learners or managing discipline in schools is viewed from the experiences of ELs involved in secondary school DHs. Discipline is an action aimed at promoting appropriate behaviour and developing self-discipline and self-control in learners (Rossouw, 2003). Punishment on the other hand, is a facet of discipline that involves a reaction towards inappropriate behaviour by learners to correct and restore harmonious relations (Rossouw, 2003; Squelch, 2000a).

This following paragraph outlines the complexity of the EL's role as guided by the CoC of a school and by legislation. There is a range of sources of law, for example rules, regulations and legal principles that form the basis of discipline policies and procedures for example SASA (Republic of South Africa, 1996a). SASA (Republic of South Africa, 1996a) is the cornerstone of South African school law, subordinate to the Constitution of 1996 (Republic of South Africa, 1996b) and contemplates uniform norms and standards to manage discipline at school (Foster & Smith, 2000). Common law principles applied in DHs include *audi alteram partem*, *ultra vires*, *nullum poena sine lege* and *in loco parentis* (Van Staden and Alston, 2000). There are also rules of natural justice aimed at protecting individuals (learners) against arbitrary and unjust actions (Squelch, 2000b). Common law principles regulate educators' actions regarding discipline, among others, through the rules of natural justice, which are also embodied in Section 33 of the Constitution of 1996 (Republic of South Africa, 1996b). There is also case law that is comprised of court decisions that are recorded in law reports, cases that have established important legal principles, which are relevant to DHs at the present time (Van Staden & Alston, 2000).

In terms of Section 8 (1) of SASA (Republic of South Africa, 1996a) it is imperative that the SGB approve a CoC for learners, as well as support the learner to comply with the CoC (Republic of South Africa, 1996a: Sec.8 (4)). A disciplined school has functional school rules, which should be implemented daily.

The role of the SGB in the disciplinary process and hearings is examined in the next paragraph.

2.6 THE SGB AND DISCIPLINARY HEARINGS

The governance of a South African school is vested in its school governing body (SGB) in terms of Section 16 (1) of SASA (Republic of South Africa, 1996a) while the professional management is the responsibility of the principal and SMT under the authority of the Head of Department. School governance is a function of the SGB, which implies among others the determining of policies and rules to organise and manage the school (Mashile, 2000; Squelch, 2000b).

Governance is concerned with the distribution of power and is often summarised by the question: Who decides? (Buckland & Hofmeyr, 1993). Buckland and Hofmeyr (1993) describe governance as a system of administration and control over education, which includes the formulation of education policies, as well as the adoption, implementation and monitoring thereof. The SGB is directly involved in the governance of the school and in this case the management of discipline. One piece of legislation that is important to an SGB is the Bill of Rights (Republic of South Africa, 1996b), which has a significant impact on the governance and management of the school – especially in areas such as school admission and the management of discipline (Squelch, 2000b). The administrative powers and functions of the SGB must comply with the Constitution (Republic of South Africa, 1996b) and can be tested against Section 33 of the Constitution of 1996 (Republic of South Africa; 1996b; Squelch, 2000b).

Governing structures of independent and public schools are both bound by Section 33 of the Constitution of 1996 (Republic of South Africa; 1996b) and have to comply with Section 8 of SASA (Republic of South Africa; 1996a; Squelch, 2000b). According to Mashile (2000), the SGB has to:

1. perform all functions as set out by SASA (Republic of South Africa, 1996a) and provincial legislation and regulations;
2. set, improve and develop school rules and policies according to which the school must function within the framework of SASA (Republic of South Africa, 1996a).

A school is a place of teaching and learning that can deliver its educational mandate only under safe and secure conditions (Xaba, 2006). School safety encompasses the entire learning environment that includes learners, classrooms, the school campus, educators, parents and the community (Xaba, 2006). A safe school is a place that is free from danger and possible harm, where non-educators, educators and learners can work, teach and learn

without fear or ridicule, intimidation, harassment, humiliation or violence (Squelch, 2001). It is a priority and obligation of the SGB to see that the school is safe and secure for all involved (Squelch, 2001).

It is imperative for the SGB to adopt a learner Code of Conduct (De Waal, 2013, Republic of South Africa, 1996a: Sec. 8(1)), to lay down a standard of moral behaviour that aims at guiding learners' future conduct and safety in civil society in order to become responsible citizens, who have achieved self-discipline and exemplary behaviour (Republic of South Africa, 1998a). The SGB has a shared responsibility to support the school in achieving this goal of learners becoming responsible citizens (Möller, 2000). The SGB also has legal and statutory responsibilities, rights and powers in this process of learner development (Möller, 2000). My knowledge regarding the role of an SGB, gained as a teacher since 2003, resonates with the opinion of the DoE (2008) that SGBs should become more accountable regarding learner discipline, which can be achieved by the functions mentioned in Section 20 (1) of SASA (Republic of South Africa, 1996a; Möller, 2000), compelling the SGB to:

1. promote the best interests of the school and to strive to ensure its development through the provision of quality education for all learners at school;
2. support the principal, educators and other staff of the school in the performance of their professional functions, in particular in determining key policies for the school, such as the disciplinary process;
3. make recommendations to the HOD as part of the disciplinary process.

The CoC of a school drafted in terms of Section 8 (1), (2) and Section 9 of SASA (Republic of South Africa, 1996a) is to be utilised during DHs (Department of Education, 1998) to establish a disciplined and purposeful school environment, dedicated to the improvement and maintenance of a safe school environment. The CoC must provide for a fair disciplinary process to safeguard the interest of all learners and any other stakeholder involved in the disciplinary process. Section 8 of SASA (Republic of South Africa, 1996a) provides that:

1. subject to any applicable provincial law, the SGB of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school (Subsection (1));
2. a code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process (Subsection (2)) (Beckmann & Prinsloo, 2013).

A disciplinary hearing must be conducted by a DC constituted by a SGB in terms of Section 30 of SASA (Republic of South Africa, 1996a), which provides, among others, that a member of an SGB must be the chairperson of each committee established by the SGB, and paragraph 13 (2) of the Guidelines (Republic of South Africa, 1998a), which provides that fairness, in the context of the DH, requires that the decision-making in disputes is undertaken by an impartial body (Valente, 1994). The DH and SGB are considered to be impartial bodies, provided they do not have any personal interest in the DH or its outcome, and do not act with malice or prejudice (Squelch, 2000b).

The promulgation of the South African Schools Act (Republic of South Africa, 1996a) made the decentralisation of decision making in schools possible (Heystek, 2011). SASA (Republic of South Africa, 1996a) involves more stakeholders such as principals, teachers, parents and SGB members in the disciplinary process, thereby increasing objectivity and fairness to justify the disciplinary process and actions taken by the DC (Rossouw, 2001; Roos, 2003). Section 8 (6) of SASA (Republic of South Africa, 1996a) grants parents participatory rights in the disciplinary process, where parents may accompany their child in the DH, or participate as an SGB member acting as the DC (Republic of South Africa, 1996a: Sec. 24(1)). De Waal (2013) points out that the accountability for educating learners is distributed among the education partners that include the Department of Basic Education (DBE), Provincial Departments of Education, School Governing Bodies (SGBs), principals, teachers, parents/caretakers and learners. The main focus of De Waal's paper (2013) is the accountability of parents, in particular in the role as SGB members, to be concerned about school safety and security.

Disciplinary hearings are to ensure that the disciplining of learners is fair and justifiable and that the punishment is not cruel and inhuman. This provides the learner with the right to freedom and security of the person, including the right not to be tortured in any way, and not to be punished in a cruel, inhuman or degrading way (Republic of South Africa, 1996b). The DH is one part of a process that starts with an incident of alleged misconduct and concludes with the alleged offender being found not guilty or guilty and then sanctioned. It is important to realise that, even if a learner commits a very serious offence, the decision of the DC to suspend the learner could be set aside if it fails to give the learner a fair hearing (Squelch, 2000b).

Disciplinary action may be instituted against a learner when there is substantive evidence of misconduct, or when it is in the best interest of the school and its learners for the accused learner to be disciplined (GDE, 2007). The SGB may enforce corrective action regarding

serious misconduct only after the learner has been granted a fair hearing in accordance with Section 8 (5) of SASA (Republic of South Africa, 1996a) where due process has been followed and the principles of natural justice in terms of Section 9 have been adhered to.

Due process (See Paragraph 2.2 above) is a term found particularly in legal language in the USA and specifically in the Fifth and Fourteenth Amendments to the Constitution of the United States, which require the state to provide due process to an individual prior to taking from that person “life, liberty and property” (Kemerer & Walsh, 1994). Comparably in South Africa, the state provides for due process by means of a DH to support the SGB in due process. According to Beckmann (AMCI, 2013) the DH is there to discover the truth, to be just and fair and to adhere to the rules of natural justice enshrined among others in the *audi alteram partem* rule.

Decisions and clear reasons must be communicated to facilitate fairness, proper administration, accountability and openness (Burns, 1998). According to Baxter (1984) all reasons for decisions should be furnished automatically, because “a good administrator would formulate his/her findings and reasons before deciding anyway”. A justifiable decision is a correct and just decision based on reason and capable of objective substantiation (Burns, 1998). “Justifiable” means that a decision must be rational and coherent, and that there must be a rational link between the decision and the reasons given for the decision (Burns, 1998).

The DC must be appointed by the SGB to adjudicate disputes about serious misconduct. This committee must comprise three persons who are members of the SGB or are nominated by the SGB. The chairperson or presiding officer has to be a parent member of the SGB and the remaining members may not be the principal or a learner at the school (GDE, 2007). This particular composition of the DC is intended to ensure not only that the committee is objective and unprejudiced towards all cases presented in DHs, but also primarily that learners are treated fairly and justly and safeguarded against unfair and arbitrary treatment (Joubert, 2008). The primary function of the DC is to ensure a fair and just hearing, to see that justice is done, and to give an appropriate sanction after the charge has been laid and all evidence has been presented.

SASA (Republic of South Africa, 1996a) makes provision for due process, which guarantees that each learner has the opportunity to a fair hearing before such a learner is suspended or expelled. It is firstly imperative that the parents of the accused learner be informed in writing of the proposed action against the learner and when the DH will take place. This letter has to include the charges against the learner, including the date, time and place of the hearing

(Republic of South Africa, 1996a; Squelch, 2000b). According to Prinsloo (AMCI, 2013), the most important character of the DH is to give the learner the opportunity to be heard and to tell his/her side of the story and to present the relevant facts. The learner should not be prohibited from being represented by legal counsel according to Section 3 of PAJA (Republic of South Africa, 2000), in which case written explanation of the charges must be given, while in less serious cases the learner may be represented by a parent, guardian or educator. The written letter has to include the date, time and charge as contemplated in Section 33 of the Constitution (Republic of South Africa, 1996b).

It is evident that the most important principle of the disciplinary process is fairness. There is a great emphasis on protecting learners during the disciplinary process and in DHs, due to an increasing emphasis on the protection of the fundamental human rights of learners as stipulated in the Bill of Rights and the founding values enshrined in the Constitution (human dignity, equality and freedom) (Republic of South Africa, 1996b; Joubert *et al.*, 2004; AMCI, 2013). This principle requires that the accused person understands all the allegations against him or her, and is given a fair opportunity to respond to those allegations. It is essential that the evidence before the DC is fairly evaluated and considered, and decisions must be taken without bias, malice or prejudice against anyone (GDE, 2007). All relevant facts must be put before the DC by the EL. It is the obligation of the SGB, especially when acting through the DC, to ensure that fair procedures are followed in accordance with legal requirements laid down in the statutes dealing with education and administrative justice, for example Section 33 of the Constitution (Republic of South Africa, 1996b; Roos, 2003; Squelch, 2000b).

Procedural fairness requires that the SGB and the EL should follow correct and fair procedures and comply with all procedural requirements (Squelch, 2000b). The Bill of Rights sets out the universally recognised principles of human conduct and provides the foundation on which school policy, process and practices are based (Republic of South Africa, 1996b: Chapter 2; Squelch, 2000b). The Bill of Rights is an important document for the SGB since several provisions have a direct influence on education and the manner in which governors, principals and teachers manage the school. Section 33, the right to just administrative action, is the most noticeable section of the Bill of Rights that affects school discipline and is often the section that presents the biggest challenges to an SGB (Republic of South Africa, 1996b: Chapter 2). Rademeyer (2013) quotes Colditz, the Chief Executive Officer of FEDSAS, who said at the annual conference of the South African Education Law Association (SAELA) held on 9 September 2013 that schools that make recommendations regarding the punishment of learners to provincial education departments, at times get no feedback from the authorities. Many decisions taken by SGBs have been challenged or overturned due to a failure to follow

correct administrative procedures and to apply the rules of natural justice (Rademeyer, 2013; Squelch, 2000b).

In summary, legislation that is important to a SGB is the Bill of Rights (Republic of South Africa, 1996b: Chapter 2), which has a significant impact on the governance and management of the school, especially in areas such as school admission and the management of discipline (Squelch, 2000b). The SGB is making key policy decisions on the mission statement, values, learner restorative practices and the whole disciplinary process. According to Caldwell (2010) parents are allowed to be involved in disciplinary process to improve the safety of the learner or school by means of their representativeness as parent or SGB member on the DC. It is imperative for the SGB to adopt a learner Code of Conduct (De Waal, 2013), to lay down a standard of moral behaviour that aims at guiding learners' future conduct (Republic of South Africa, 1998a). A disciplinary hearing must be conducted by a DC constituted by a SGB in terms of Section 30 of SASA (Republic of South Africa, 1996a), which provides, among others, that a member of an SGB must be the chairperson of each committee established by the SGB (Republic of South Africa, 1998a). SASA (Republic of South Africa, 1996a) provides for the participation of more stakeholders, including SGB members during the disciplinary process, thereby increasing objectivity and fairness (Rossouw, 2001; Roos, 2003). The SGB may enforce corrective action regarding serious misconduct only after the learner has been granted a fair and justifiable hearing, as per section 8 (5) of SASA (Republic of South Africa, 1996a), where due process has been followed and the principles of natural justice in terms of Section 9 have been adhered to.

The quasi-judicial function of the DH to resolve learner transgressions is examined in the next paragraph.

2.7 QUASI-JUDICIAL FUNCTIONS

School disciplinary hearings are similar to court cases or could also be seen as quasi-judicial hearings to resolve learner transgressions (Joubert, 2008). DHs could be explained as independent tribunals or forums that are established to make quasi-judicial decisions (Hopkins, 2006). Similar examples of tribunals are the Commission for Conciliation, Mediation and Arbitration (hereafter CCMA) (Hopkins, 2006). A DH has quasi-judicial functions similar to the functions of a court referred to in Section 166 of the Constitution (Republic of South Africa, 1996b) or of Special Tribunals established under Section 2 of the Special Investigation Unit and Special Tribunals Act, 74 of 1996 (Republic of South Africa, 1996d). For the purpose

of this study, the DH is regarded as a quasi-judicial hearing (forum) at a school, where an EL presents a case before a DC to judge serious misconduct cases.

A DC, constituted in terms of SASA (Republic of South Africa, 1996a), performs a quasi-judicial function when it investigates the conduct of a learner. Exercising a quasi-judicial power or function is not a judicial act, but in a sense and to a degree it appears to be a judicial act (Beckmann & Prinsloo, 2013). A DH therefore has elements of a court hearing, but is not a hearing in a court of law (Beckmann & Prinsloo, 2013; Hopkins, 2006). According to Hopkins (2006) tribunals or DHs are designed to perform administrative functions, or at times to perform judicial functions to make decisions to resolve disputes, or in this research learner transgressions. Where the tribunal or DH does not perform a judicial function, but rather an administrative function, it must still adhere to impartiality and fairness in its decision making (Hopkins, 2006).

The whole disciplinary process, including the role of all parties involved in the case, has to be fair and justifiable (Hopkins, 2006; Joubert, 2008). According to Section 34 of the Constitution of the Republic of South Africa, 1996b) everyone has the right to have any dispute that can be resolved by application of the law, decided in a fair hearing before a court or, where appropriate, another independent and impartial tribunal, or in this case a DH. DHs are always subject to the prescripts of the Constitution (Republic of South Africa, 1996b), whether it is in the form of Section 33 where the function is administrative, or Section 34 where the function is judicial (Hopkins, 2006).

Beckmann and Prinsloo (2013) explain the similarities and differences between judicial proceedings and quasi-judicial proceedings that emerged in the *High School Vryburg case* (Joubert *et al.*, 2004). In this case the judge examined the proceedings of a DH conducted by the SGB regarding a charge of assault with the intent to cause physical harm against Andrew Babeile, a 22-year-old learner in Grade 7 at Vryburg High School (*High School Vryburg*, CA 185/99). It was alleged that during a class break Babeile had stabbed another learner with a pair of scissors. It was also alleged that the learner he had stabbed had done nothing to provoke him. The SGB suspended the learner for serious misconduct. The judge declared the proceedings of the DH null and void. Khumalo J found that there had not been fair hearing, among others, because Babeile's parents had not been notified, and that the DC did not apply the rules of natural justice. The judge also raised his concern about the fact that the chairperson of the DH was a magistrate by profession and that the distinction between a

judicial hearing and a quasi-judicial hearing may have been clouded or jeopardised because of this fact and affected the learner negatively.

One of the important tasks of an EL is to present evidence and put relevant facts before the disciplinary committee (DC). The presentation of evidence is preceded by due process, as explained in paragraph 2.2 of this chapter, which may present many challenges to the EL. Nel (2013) reports that a recent school disciplinary hearing was about a Grade 12 learner who harassed, took money from and forced a 16-year-old learner to drink his own urine. The accused learner in this particular case was found not guilty by the DC due to a lack of evidence presented by the EL. This example of Nel (2013) is but one example demonstrating the lack of understanding or experience by teachers acting in the role as EL. The case raised by Nel (2013) emphasises that educators who are not qualified to perform the quasi-judicial role regarding discipline in education or as EL, should, according to the law, be compelled to acquire the required knowledge and skills (Beckmann & Prinsloo, 2013). It is the aim of this research to discover more about the role and challenges of ELs.

DHs as a quasi-judicial forum or tribunal should be entitled to resolve learner transgressions by the application of law, as long as the DH remains independent and impartial (Hopkins, 2006). It needs to be remembered that when these special functions and quasi-judicial powers regarding discipline were written into SASA (Republic of South Africa, 1996a), the policy makers and legislators must have believed that the role players in these hearings, for example the EL, would be able to discharge their quasi-judicial responsibilities properly and safeguard the interests of all (Beckmann & Prinsloo, 2013).

In summary, school disciplinary hearings are similar to a court case or could also be seen as a quasi-judicial hearing to resolve learner transgressions (Joubert, 2008). DHs could be explained as independent tribunals or forums that are established to make quasi-judicial decisions (Hopkins, 2006). A DC thus performs a quasi-judicial function when it investigates the conduct of a learner. Exercising a quasi-judicial power or function is not a judicial act, but in a sense and to a degree it appears to be a judicial act (Beckmann & Prinsloo, 2013). A DH therefore has elements of a court hearing, but is not a hearing in a court of law (Hopkins, 2006).

For the purpose of this study the DH will be seen as a quasi-judicial hearing (forum) at school, where an EL presents a case before a DC to decide on serious misconduct cases.

The understanding and application of the law by the EL are discussed in the next paragraph in terms of legal literacy.

2.8 LEGAL LITERACY

In South Africa educators have almost unconditional access to an array of laws and rights, for example labour rights in the Constitution (Republic of South Africa, 1996b; Beckmann & Füssel, 2013). Beckmann and Füssel (2013) point out the vital role that teachers play in the provision of education and that they require access to certain labour rights in order to perform their task satisfactorily. One of these tasks may be to act as EL on specialised duty when instructed by the principal according to Section 4.1 in Chapter A of the PAM (Republic of South Africa, 1998b). According to Sections 4.3, 4.4 and 4.5 in Chapter A of PAM (Republic of South Africa, 1998b) the role of an EL may be delegated to the deputy principal, HOD or teacher because they must assist in overseeing learner discipline and the general welfare of all learners. The principal may find a person suitable to be an EL on the grounds of Section 20 (3) in Chapter 3 of the Equity Act (Republic of South Africa, 1998c) as a result of that person's:

1. formal qualification(s)
2. prior learning
3. relevant experience, or
4. capacity to acquire the ability to do the job.

Section 3.2 in Chapter A of PAM (Republic of South Africa, 1998b) and Section 16 in Chapter 3 of the Equity Act (Republic of South Africa, 1998c) indicate that any specialised duties may only be allocated after consultation between the principal and the teacher – in this case the EL. It could be an unfair labour practice if a teacher is expected to play the role of EL when it was not agreed upon after consultation between the teacher and the principal. In terms of item 2 (1) of Schedule 7 of the LRA (Republic of South Africa, 1995) and unfair labour practice means any unfair act or omission that arises between an employer and employee.

Teachers in South Africa enjoy the protection of the Constitution (Republic of South Africa, 1996b) in their workplace and delegated duties. Section 23 of the Constitution (Republic of South Africa, 1996b) provides for collective bargaining at the workplace and for employee participation in decision making. Section 23 of the Constitution (Republic of South Africa, 1996a) provides that:

1. everyone has the right to fair labour practices;
2. every worker (educator) has the right
 - a) to form and join a trade union;
 - b) to participate in the activities and programmes of a trade union, and
 - c) to strike.

All actions and functions of educators are subject to the Constitution (Republic of South Africa, 1996b) and must promote the best interest of the child articulated in Section 28 (2) of the constitution: “A child’s best interest are of paramount importance in every matter concerning the child.” Section 2 of the Constitution (Republic of South Africa, 1996b) provides that the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. This provision binds all educators in all their activities, as does Section 8 (2), which provides that the State (as represented by its employees, the educators) must respect, protect, promote and fulfil the rights in the Bill of Rights (Republic of South Africa, 1996b).

The notion of a developmental dimension emerges from the presentation of the rights of teachers in the United Nations Educational, Scientific and Cultural Organisation/International Labour Organisation (UNESCO/ILO) (1966), “*Recommendation on the status of teachers*” (hereafter the Recommendation), which was the first multi-national reflection on and articulation of the rights and status of teachers (Beckmann & Füssel, 2013). The Recommendation (UNESCO/ILO, 1966) refers to rights, including labour rights, rights to suitable professional preparation, the right to be heard and the right to professional development. It is important for ELs to know their rights as stipulated in Section 9 of the Constitution (Republic of South Africa, 1996b):

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full an equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons.
3. The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, culture, language and birth.

According to research conducted by Schimmel and Militello (2007) and Mirabile (2013) that was motivated by the lack of consistent training in education law among teachers, only 55% of the teachers who participated in their studies indicated that they had had no training in education law. Schimmel and Militello (2007) reported that more than 70% of the teachers indicated that they were interested in learning more about learner due process; and more than 75% were interested in teacher liability for learner injury.

Schimmel *et al.* (2009) are of the opinion that legal training has the capacity to address concerns in cases where educators are not legally prepared to increase their legal competency. Although the Recommendation (UNESCO/ILO, 1966) puts forward a compelling argument in favour of more rights for teachers across the world, it is still largely unimplemented in many countries (Beckmann & Füssel, 2013). Beckmann and Füssel (2013) identify a strong relation between teachers' rights and quality education, or in this research, the relation between teacher's rights and managing the disciplinary process.

Schimmel *et al.* (2009) determined how often secondary school principals are legally threatened and sued, and their knowledge of the rights of learners and teachers as well as how they obtain and disseminate legal information. The research revealed that the majority of principals are uninformed or misinformed regarding school law issues and that 85% of the principals would change their behaviour if they had greater legal literacy (Schimmel *et al.*, 2009). Schimmel *et al.* (2009) are of the opinion that the knowledge about what principals are familiar with in the field of school law and identifying gaps in how they obtain, maintain and disseminate legal information, as well as changes to policy and practices, can support principals to assume the role of law trainer with regard to their staff. This thesis on which the researcher embarked, relates closely to the work of Schimmel *et al.* (2009) with a view to discovering the legal literacy of ELs as well as their training and involvement in DHs.

It is evident that the school principal and teachers who are responsible for ensuring order and safety in school, are undermined (Squelch, 2000b) by their lack of legal literacy. Legal literacy among teachers was assessed by Mirabile (2013), focusing on landmark cases at the highest state and federal levels and seminal legislative acts considered to be familiar to certified teachers. The total mean score for the legal literacy of teachers was 47.2% in the research sample of 218 teachers. This low mark correlates with the 50% obtained in the research done by Schimmel and Militello (2007) on the same topic. The low level marks of legal literacy generated by Mirabile (2013) are not surprising, given the lack of training in education law reported by the teachers. According to Mashile (2000) the low levels of literacy are by far the most limiting factor in governance capacity building. Valuable time is spent on literacy

development instead of understanding the relevant legislation such as SASA (Republic of South Africa, 1996a) or the Bill of Rights (Republic of South Africa, 1996b).

The provisional suspension of learners during an incident at school may test the legal literacy of principals. According to General Notice 2591 (GDE, 2007) and Dickinson (2000) the principal may provisionally suspend a learner from the time the charges of serious misconduct have been laid against the learner until sanctioning by a fair DH. An immediate suspension is enforced to remove the danger and protect the safety of others attending school (Squelch, 2000b). In such cases the suspension provides the EL with the opportunity to conduct an investigation and fair hearing while maintaining safety at school. The New Zealand case of *M & R v S Board of Trustees Palmerston North Boys High School* (2003) and the United States of America case *Goss v Lopez* (1975) correspond with the provisional suspension as mentioned in General Notice 2591 (GDE, 2007).

A random search of learners is another area that may challenge the principal or EL's legal literacy. Section 8A (2) to (10) of SASA (Republic of South Africa, 1996a) allows only designated teachers to be part of a random search of learners, seizure of property and drugs on the grounds of reasonable and fair suspicion that contraband may be in the possession of the learner. De Waal (2011) points out that, with a reasonable suspicion of dangerous items and/or unlawful drugs being on the school grounds, the preferred action by the school is a police search. The principal should immediately act, although the police search is preferred, in the best interest of all learners and teachers according to the merit of the situation, but within the principles of the law, for example the Bill of Rights (Republic of South Africa, 1996b).

It is imperative that the role players in disciplinary proceedings and hearings know the law that applies to the proceedings to safeguard the interests of accused learners, as well as those of all the parties involved in the proceedings and the hearing, in order to fulfil their quasi-judicial roles properly so that the purpose of a hearing is served, namely justice is done to all role players and they are not exposed to the legal consequences of illegal, unreasonable and unfair acts in connection with such hearings (Beckmann & Prinsloo, 2013). The key issue of legal literacy, according to Van Staden and Alston (2000), is that the management of discipline and DHs does not lie in documents, but in the interpretation and application of such documents. Documents, constitutions, statutes, guidelines and school rules remain pieces of paper, unless they are analysed and dissected by means of a workshop or training session and implemented properly (Van Staden & Alston, 2000).

This paragraph will shed some light on the matter of the legal literacy of the educators managing learner discipline, in particular the EL. Schimmel and Militello (2007) and Mirabile (2013) identified the lack of consistent training in education law among teachers, and discovered that only 55% of the teachers who participated in their studies indicated that they had no training in education law. It is imperative that the role players in disciplinary proceedings and hearings know the law that applies to the proceedings to safeguard the interests of accused learners, as well as those of all the parties involved in the proceedings and the hearing in order to fulfil their quasi-judicial roles properly (Beckmann & Prinsloo, 2013).

2.9 CONCLUSION

This chapter suggests that the EL plays an irreplaceable role with regard to a fair disciplinary process (Beckmann & Prinsloo, 2013; Jacobs, 2001). The EL plays a leading role in a misconduct case, from the moment the incident is reported, until acquittal or sanctioning by the presiding officer (Gauteng Department of Education, 2007). It clarifies the involvement of the EL among others during the initial investigation of the case, the enforcement of the CoC, the writing of the charge sheet, as well as arranging a DH with its DC as well as witnesses. The EL has to present evidence relevant to the case and put facts before the DC; lastly the EL gives a report concerning the outcome of the DH.

The EL is directly involved in school disciplinary hearings, which are similar to a court case and could also be seen as a quasi-judicial hearing to resolve learner transgressions (Beckmann & Prinsloo, 2013; Joubert, 2008). DHs could further be explained as independent tribunals or forums that are established to make quasi-judicial decisions (Hopkins, 2006). A DC thus constituted performs a quasi-judicial function when it investigates the conduct of a learner.

Exercising a quasi-judicial power or function is not a judicial act, but in a sense and to a degree it appears to be a judicial act. The DH therefore has elements of a court hearing, but is not a hearing in a court of law (Beckmann & Prinsloo, 2013; Hopkins, 2006). For the purpose of this study, the DH is regarded as a quasi-judicial hearing (forum) at school level, where an EL presents a case before a DC to judge serious misconduct cases fairly.

During a DH the EL should respect the learner's right to freedom and security of the person, including the right not to be tortured in any way, and not to be punished in a cruel, inhuman or degrading way (Heystek, 2011; Republic of South Africa, 1996a: Sec. 8). The DH should be based on fundamental principles of the law (Rossouw, 2003). Administrative justice is a

fundamental principle of administrative law that encompasses the principles of fairness and impartiality (Squelch, 2000b). This chapter illuminates the importance of what the EL must adhere to. Administrative justice and due process protect the individual from administrative abuse by ensuring that all administrative action is lawful, in that it is correctly performed, and that it adheres to certain standards of procedural and substantive fairness (Burns, 1998).

This chapter also emphasises the various guidelines stipulated in SASA (Republic of South Africa, 1996a) to manage misconduct of learners at public schools as well as regulations for a fair disciplinary process as derived from Section 33 of the Constitution (Republic of South Africa, 1996b), and the Bill of Rights (Republic of South Africa, 1996b:Chapter 2) in terms of administrative justice to ensure a fair and unprejudiced disciplinary process. The Bill of Rights is aimed at protecting people against unfair, arbitrary administrative decisions and actions by administrative organs as in the case where a DC needs to make decisions regarding the facts presented by the EL (Republic of South Africa, 1996b; Squelch, 2000b).

There is a range of sources of law of which the EL should take note, for example rules, regulations and legal principles that form the basis of discipline policies and procedures as seen in the Constitution of South Africa, 1996b) and SASA (Republic of South Africa, 1996a). Part of the legislation that is important to a SGB and EL is the Bill of Rights (Republic of South Africa, 1996b: Chapter 2) which has a significant impact on the governance and management of the school, especially in areas such as the management of discipline (Squelch, 2000b). SASA (Republic of South Africa, 1996a) is the cornerstone of South African school law and is essential to an understanding of the norms and standards for managing discipline at school (Foster & Smith, 2000).

We also draw our knowledge or the legal framework for discipline from case law and common law. Common law principles applied in DHs include *audi alteram partem*, *ultra vires*, *nullum poena sine lege* and *in loco parentis* (Van Staden and Alston, 2000). This chapter also discusses the use of natural justice, which is aimed at protecting individuals against arbitrary and unjust actions (Squelch, 2000b).

Additionally there is case law that comprises court decisions that are recorded in law reports, cases that have established important legal principles that are relevant at the present time (Van Staden & Alston, 2000). In this chapter a number of cases are referred to in order to illustrate the application of the law or due process during DHs.

One of the first documents an EL uses to manage learner discipline is the code of conduct of the school. It is imperative according to Section 8 (1) of SASA (Republic of South Africa, 1996a) that the SGB approve a learner CoC, as well as support the learner in complying with the CoC (Republic of South Africa, 1996a: Sec.8 (4)). The adoption of a learner Code of Conduct lays down a standard of moral behaviour that aims at guiding learners' future conduct (De Waal, 2013; Republic of South Africa, 1998a). The CoC guides the school towards functional school rules, but it is even more necessary for a disciplined school to use corrective disciplinary actions in dealing with those learners who disrupt teaching and learning or challenge the CoC (Joubert *et al.*, 2004). School rules are important, but most importantly must be valid and legally defensible as pointed out in the case *R v Jopp* (1949) (Van Staden and Alston, 2000).

A disciplinary hearing must be conducted by a DC constituted by a SGB in terms of Section 30 of SASA (Republic of South Africa, 1996a), which provides, among others, that a member of a SGB must be the chairperson of each committee established by the SGB (Republic of South Africa, 1998a). SASA (Republic of South Africa, 1996a) makes provision for the participation of more stakeholders including parents as SGB members during the disciplinary process, thereby increasing objectivity and fairness in the disciplinary process and actions taken by the DC (Rossouw, 2001; Roos, 2003). Parents can be involved in the disciplinary process to improve the safety of the learner or school by means of their representativeness as parent or SGB member as DC (Caldwell, 2010).

The SGB may enforce corrective action regarding serious misconduct only after the learner has been granted a fair hearing in accordance with Section 8(5) of SASA (Republic of South Africa, 1996a) where due process has been followed and the principles of natural justice in terms of Section 9 have been adhered to. Many decisions taken by SGBs have been challenged or overturned due to a failure to follow correct administrative procedures and to apply the rules of natural justice (Squelch, 2000b).

It has been emphasised in this chapter that the EL must be trained before accepting the role of prosecutor. Beckmann (AMCI, 2013) emphasises that people who play a role in the DH are not necessarily trained in the law and may therefore experience the disciplinary process or hearing as challenging or intimidating. A survey conducted by Militello (2006) identified some of these challenges experienced by educators where administrators and teachers rank education law and in-service training as one of the highest priorities needed to act within due process.

Various methods are used in training educators or ELs in terms of due process and DHs. Watkins and Cervero (2000), for example, discuss the importance of workplace learning or some form of in-service law training according to Hingham, Littleton and Styron (2001) and pre-service training programmes as mentioned by Schimmel *et al.* (2009). The impact of teacher development has the potential to maximise effective school systems in terms of management of discipline and functional schools (ELRC, 2009). The school, SGB and principal should support staff development and training, in particular for ELs, so that they (ELs) can demonstrate an acceptable understanding of policy, regulations and laws to establish practices based on legal standards and fairness (Schimmel *et al.*, 2009).

It could be an unfair labour practice when a teacher is expected to play the role of EL when it was not agreed upon after consultation between the teacher and the principal (Finnemore, 1999). In terms of Item 2 (1) of schedule 7 of the LRA Republic of South Africa, 1995) in which an unfair labour practice is defined as any unfair act or omission that arises between an employer and employee.

According to research conducted by Schimmel and Militello (2007) and Mirabile (2013) that was initiated by the lack of consistent training in education law among teachers, 55% of the teachers who participated in their studies indicated that they had no training in education law. Mashile (2000) views the low levels of law literacy is by far the most limiting factor in governance capacity building.

From the literature reviewed in this chapter it is evident that the EL has a very important role to play in the disciplinary process and DH (AMCI, 2013). It is also clear that the EL has a very challenging role in view of the knowledge of all the applicable laws and legislation needed for the disciplinary processes and hearings to be fair and justifiable.

The following chapter focuses on the research design, elaborating on the research methods used to understand and explain this research topic. It also describe the conceptual framework as well as the theoretical framework.

CHAPTER 3: RESEARCH DESIGN

3.1 INTRODUCTION

Research is a process of steps used to collect and analyse information to increase our understanding of a topic or issue (Creswell, 2008). Creswell (2008) divides research into three fundamental steps: 1) pose a question, 2) collect data to answer the question, and 3) present the answer to the question. My questions relate to the experiences of educator ELs of their role in learner disciplinary hearings. Disciplinary Hearings (DHs) create a platform for the SGB to succeed in its role to establish democratic principles when disciplining learners. The person who plays a central part in the disciplinary process and DHs is the evidence leader (EL).

I conducted semi-structured interviews with a purposively sampled group of twelve participants in an attempt to answer my research question (Huberman & Miles, 2002). This allowed me to formulate an answer through the views of those acting in this role as EL. With this research I aimed to clarify managing due process in learner discipline and the role an EL plays in this process.

3.2 RESEARCH QUESTIONS AND SUB-QUESTIONS

The following research question and sub-questions were used during the semi-structured interviews to generate the transcribed data.

Primary research question

What are the experiences of educator evidence leaders of their role in learner disciplinary hearings?

Secondary research questions

1. What is the role of the EL during disciplinary hearings?
2. What support systems are there for the EL to manage the process?
3. What influence does the DH have in changing learner behaviour?
4. What influence does the DH have on the management of learner discipline?
5. What stakeholders are involved in the process of managing learner discipline?
6. How do ELs ensure a fair disciplinary process and DHs?
7. What are the challenges the EL face?

3.3 RESEARCH AIMS

The main aim of this research is to investigate the experiences and the opinions of educator evidence leaders (ELs) of their role in learner DHs (Leedy & Ormrod, 2001). Firstly I aimed to discover what influence the DH has on the management of learner discipline and what role the EL has during the DH. According to Beckmann and Prinsloo (2013) as well as Joubert (2008) the DH can be regarded as a quasi-judicial hearing, or in terms of Hopkins's opinion (2006), the DH is a tribunal to mediate when resolving the transgression made by the learner.

The second aim was to discover the support systems the EL has to manage this process, for example policy documents. I aimed to understand the knowledge and experience the participants had in terms of law, for example, the Bill of Rights (Republic of South Africa, 1996b), the Promotion of Administrative Justice Act, 3 of 2000 (PAJA) (Republic of South Africa, 2000) or Sections 8, 9 and 10 of SASA (Republic of South Africa, 1996a). ELs have a need for training in law relating to managing learner discipline.

My third aim was to discover what influence the DH has on changing learner behaviour. Since 1995 learners in South Africa are no longer punished with the rod to change poor behaviour (*S v Williams*, 1995), and such punishment is a violation of Section 10 of SASA (Republic of South Africa, 1996a). I aimed to discover if the DH is reaching its goal to change learner behaviour in an educational and democratic manner (Möller, 2000).

Fourthly it was the aim to discover which stakeholders have an important role in the process of managing learner discipline. The first and foremost was the EL and then the SGB's role in policy making in terms of adopting a CoC (Republic of South Africa, 1998a). The SGB has a role to play in the DH as DC as an impartial body to make fair decisions regarding transgression disputes (Valente, 1994). Other stakeholders that play an active role in disciplining the learner include the principal and parents. I also wanted to determine how these stakeholders support the EL to manage a due process.

As a fifth aim I tried to ascertain the influence of the EL's role on managing a fair disciplinary process and DH. This implies that fair procedures are to be followed when a learner has transgressed a school rule, as set out in the CoC (Beckmann & Prinsloo, 2013). Beckmann *et al.* (2010) and Joubert (2008) declare that in a fair process the learner will be informed, as well as given an opportunity to defend or state his/her case. I was interested in whether the participants can distinguish between substantively fair process and procedurally fair due

process (Beckmann & Prinsloo, 2013). The EL's ability to manage a due process may adversely influence the outcome of the DH.

Lastly I aimed to gain insight into the challenges and complexity of the EL's role. In practice the invidious position of the EL may be completely different from that for which the individual signed up. In my analysis of various case studies I identified some challenges that an EL may experience, for example distinguishing between minor and serious cases (*Ward and Board of the Blaine Lake School Unit No 57*, 1971), or the hopelessness while presenting a case against a lawyer (AMCI, 2013), or ignorance of the law (Beckmann & Prinsloo, 2013).

3.4 CONCEPTUAL FRAMEWORK

Figure 3.1 illustrates the central role the EL plays in the process of managing learner discipline. It is a representation of the different areas where the EL plays a role and how these areas are interlinked with one another. The five areas are the following:

1. Role of the educator evidence leader
2. Fair and justifiable disciplinary hearings
3. Role of the DC in DHs
4. Management of the disciplinary process
5. Training for the role as EL

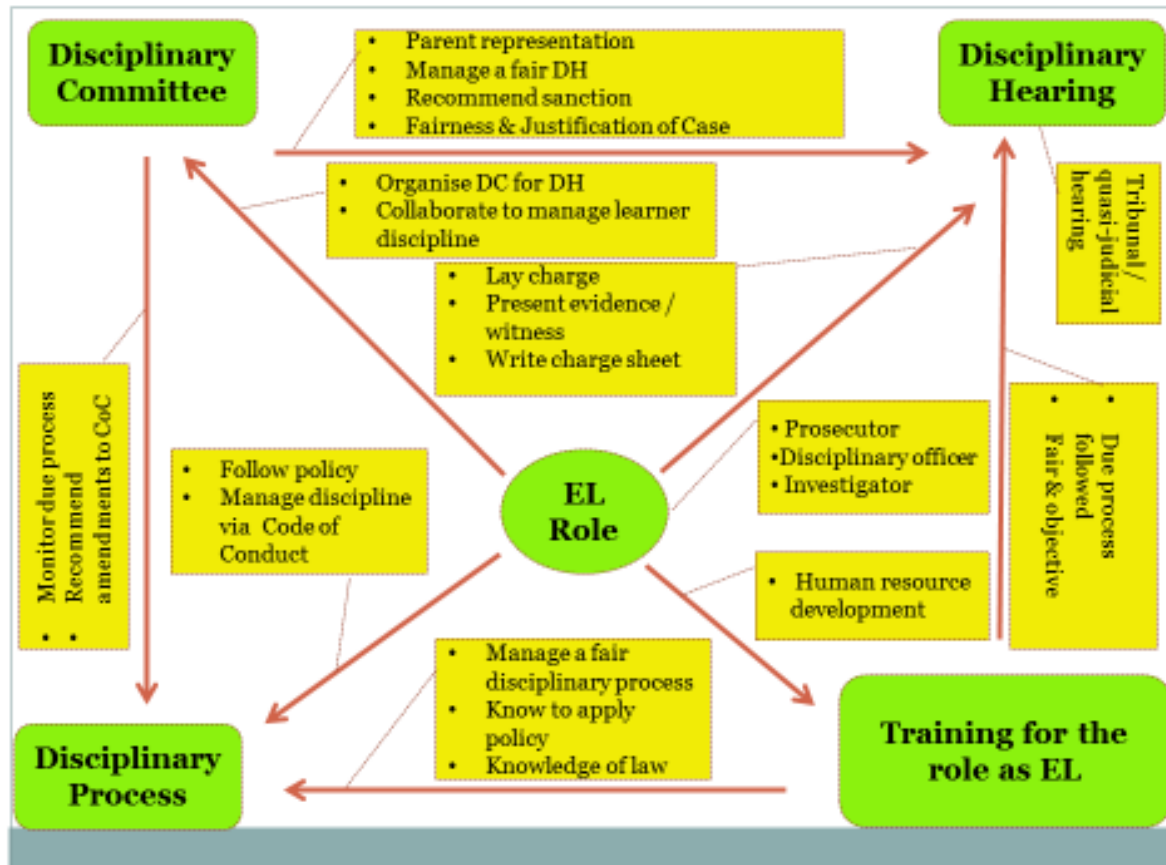


Figure 3.1: The role of the EL (also see paragraph 1.7 of Chapter 1)

3.4.1 Role of the educator evidence leader

The EL is also known as the prosecutor in DHs and is expected to manage an unprejudiced disciplinary process at school (Jacobs, 2001). After transcribing the interviews the data was coded in different lines (See paragraph 3.6.4) where my discourse analysis refers to the line of the participant. For example “participant D (line 250)” means that I’m quoting from line 250 of the transcription of the interview with participant D. According to participant K (line 72) “I should not make up the case. I should present it, because that ensures the fairness of it all.” Figure 1.1 illustrates that the EL is the pivot of a due process when managing learner discipline, and therefore linked to the DC, disciplinary process and DH. The process preceding the DH includes the initial investigation, writing of the charge sheet, preparing witnesses and evidence in support of the case and presenting the former in the DH (Joubert, 2008). The EL has the responsibility to put together a DC at the behest of the SGB consisting of SGB members to manage the DH. It is the role of the DC to ensure a fair DH, which includes the principle of *audi alteram partem* (Beckmann *et al.*, 2010; Joubert, 2008).

The quality work done by the EL is dependent on his or her knowledge of relevant acts, for example the Constitution (Republic of South Africa, 1996b) and SASA (Republic of South Africa, 1996a), as guidance to a just and fair disciplinary process. Knowledge of law and policy was identified as some of the biggest challenges by the participants. Participant D (line 223): “It’s about the interpretation of what it means and what you have to do.” Training of the EL remains a key concept in managing due process and DHs. According to participant B (line 152) being trained “makes it easier” when the EL has to manage learner discipline.

3.4.2 Fair and justifiable disciplinary hearings

Disciplinary hearings are similar to a court case (Joubert, 2008) or could also be seen as a quasi-judicial hearing to resolve learner misconduct (Beckmann & Prinsloo, 2013). For the purpose of this study the DH is regarded as a quasi-judicial hearing or tribunal at school, where an EL presents a case before a DC to judge serious misconduct cases (Beckmann & Prinsloo, 2013; Hopkins, 2006). The main focus of DHs is to ensure that the disciplining of learners is fair and justifiable.

The DH is one part of a process that starts with an incident of alleged misconduct and concludes with the alleged offender being found not guilty or guilty and if guilty, sanctioned as in Section 12 (1) of the Constitution (Republic of South Africa, 1996b). The EL is a very important link in this process from the moment of the incident until the DH and appeal process. Disciplinary action is instituted against a learner when there is substantive evidence of misconduct or when it is in the best interest of the school and its learners (GDE, 2007). It is the task of the EL to gather information with regard to a disciplinary case and to refer serious cases for a DH (GDE, 2007). The SGB, in terms of the DC, enforces corrective action regarding serious misconduct only after the learner has been granted a fair and justifiable hearing as stipulated in Section 8 (5) of SASA (Republic of South Africa, 1996a). Important to a fair DH is due process and to adhere to the principles of natural justice (Republic of South Africa, 1996a: Sec. 9).

3.4.3 Role of the disciplinary committee in DHs

The DC must be appointed by the SGB to adjudicate disputes about serious transgression cases during DHs. This committee must comprise three persons who are members of the SGB, and includes a chairperson (participant A, line 33), where the chairperson or presiding officer has to be a parent member of the SGB (GDE, 2007). The unique composition of the DC as pointed out by participant A (line 33) is not the general rule in South Africa. The SGB can decide on the composition of the DC whether it is a single person or a panel and if this

committee can finalise the case or submit their recommendations to the full SGB as prescribed in General Notice 2591 of 2001 (GDE, 2007). This particular composition of the DC is intended to ensure that the committee is objective and unprejudiced towards all cases presented during DHs, but primarily that learners are treated fairly and justly and safeguarded against unfair and arbitrary treatment (Joubert, 2008).

The DC is to ensure a fair and just hearing to see that justice is done when disciplining the learner, but also to act in the best interest of the learner (Van Staden and Alston, 2000). Beckmann and Prinsloo (2013) explain that the role of the DC is to perform a quasi-judicial function as tribunal when managing a DH. It is the role of the DC to follow procedural requirements to make a reasonable and fair decision. There are procedures (or checklist) to guide the DC during a DH as prescribed in Annexure B of Oosthuizen (2006) and Section 5 of General Notice 2591 of 2001 (GDE, 2007). These procedures include the reading of the charge(s) against the learner, confirming details of attendees, presenting evidence and witness which concludes with the DC deciding on a suitable sanction. Continuity in decision making by the DC is a concern and challenge as discovered after the analysis of the transcribed data.

3.4.4 Due process for learner discipline

The most important principle when managing learner discipline is a fair disciplinary process. Figure 3.1 illustrates that both the EL and the DC have to follow due process or as participant A (line 248) said: “Due process sounds like a list of things that should and should not be done.” It is the obligation of the EL, especially the DC, to ensure that fair procedures are followed in accordance with legal requirements laid down in the statutes dealing with learner discipline and administrative justice set out in Section 33 of the Constitution (Republic of South Africa, 1996b; Roos, 2003). Managing a fair process is a key factor of the EL’s role and determines the success of the DH. Beckmann *et al.* (2010) and Joubert (2008) reiterate that clear reasons for the sanction must be given to the learner by the DC as an important element of due process.

Due process, according to Beckmann and Prinsloo (2013), has to be procedurally and substantively fair. Procedurally fair due process means that fair procedures must be followed when an alleged breach of CoC is investigated, a DH is held and corrective measures are imposed (Beckmann & Prinsloo, 2013). Substantively fair due process implies that a fair and reasonable rule or standard exists, is known, and must have been contravened through misconduct (Beckmann & Prinsloo, 2013).

3.4.5 Training for the role as EL

Figure 3.2 illustrates that the training of the EL is an important link in the management of the disciplinary process and DH. According to Beckmann (AMCI, 2013) people who play a role in the DH are not of necessity trained in law and may therefore experience the disciplinary process or hearing as challenging or intimidating. This fact is also echoed by the participants, for example participant G (line 25): “I need more training in this role,” and participant J (line 258): “It is important that more training be made available for an EL.” A study conducted by Schimmel and Militello (2007) and Mirabile (2013) explicate the lack of consistent training in education law among teachers where 55% of the teachers who participated in their studies (See paragraph 2.2 of Chapter 2). It is self-evident that the training of the EL is vitally important before he or she may act the role as EL. A number of cases adjudicated in South African courts underscore the need for training the EL (Beckmann & Prinsloo, 2013); for example, the difficulty of the demands that disciplinary hearings place on role-players and the challenges they face in handling the issues. The training of the EL in terms of human resource development will be discussed in paragraph 3.5.

3.5 THEORETICAL FRAMEWORK

One has to understand the discipline process to discover the aim of a DH. The theoretical framework of this study was focused on skills and human resource development in an attempt to clarify the role of the ELs in managing learner discipline and DHs.

The first dimension is the legal principles and policies guiding the ELs’ actions during the process. Managing learner discipline in a school requires legislation and regulations that prescribe discipline and punishment in schools (Squelch, 2000a). Some of the documents I studied to better understand managing learner discipline were the CELP manual (Joubert, 2008) and Circular 74 (GDE, 2007). Firstly, not all participants were familiar with these documents, for example participant B (line 298) who said: “There are no resources available, the school doesn’t have the resources”. This participant did not even mention SASA (Republic of South Africa, 1996a) or the Bill of Rights in Chapter 2 of the Constitution (Republic of South Africa, 1996b).

Secondly, there is a lack of understanding of these documents, for example participant I (line 150) who pointed out: “I really struggled and I am quite good at reading English and can understand English very well.” According to Jacobs (2001) and Circular 74 (GDE, 2007) the EL has to manage an unprejudiced process and comply with all the procedures as outlined in SASA (Republic of South Africa, 1996a) and all rules and procedures in terms of the CoC.

The second dimension of the framework concerns the characteristics of the DH. The work of Beckmann and Prinsloo (2013) explains the characteristics of the DH as a quasi-judicial hearing to investigate the alleged transgression of the learner. DHs are also explained as independent tribunals or forums that make quasi-judicial decisions (Hopkins, 2006). To a certain degree it appears that the function of the DH seems to be a judicial act (Beckmann & Prinsloo, 2013); this is easily confused by the DC and ELs. According to participant C (line 177): “We do it exactly the same as court procedures and principles” and participant J (line 97) added: “It is like a labour dispute case, it is not a criminal case.” It is clear in the literature and from the interviews that the DH creates much confusion and generates much debate among DCs and ELs. The work done by Beckmann and Prinsloo (2013) and by Hopkins (2006) indicates that a DH has elements of a court hearing, but it is not a hearing in a court of law. Participant D (line 237) viewed the DH as “not a law process, it’s an education process, which wants to discover what is right and wrong”.

The third dimension is that of due disciplinary process. The management of the disciplinary process implies different stakeholders and policy documents, for example Section 8 (5) of SASA (Republic of South Africa, 1996a). The main stakeholders are the EL, SGB as DC, parents and DBE that play a role during different parts of this process to discipline the learner (Republic of South Africa, 1996a). There are conflicting views in the interpretation of the policy by the stakeholders, which have an impact on the fairness of this process. One such example that stood out was what participant D (line 6) said: “The chairman has his own vision of how things should happen.” It is the opinion of Prinsloo that procedural fairness and substantive fairness are two independent requirements to ensure a fair DH (AMCI, 2013). The legal principles inherent in due process are part of South African law, but the implementation of these legal principles leaves much to be desired (Beckmann & Prinsloo, 2013).

The fourth and last overarching dimension is the importance of skills development and training of the EL. According to the Skills Development Act, 97 of 1998 (Republic of South Africa, 1998d) the workplace has to establish learning or training programmes, which in this study is essential for the EL. Developing the skills of the EL will increase the quality of work done (Finnemore, 1999), and will have an impact on the fairness of the process. This theoretical framework centres on human resource development, in particular in-service training of the EL. A lack of training may adversely affect an EL’s ability to make fair judgments in the disciplinary process, as well as during the DH.



In applying these four dimensions I was able to construct an understanding of the complexity and very unique role of the EL. The issues discovered in terms of the quasi-judicial characteristic of DHs, as well as the need for understanding and applying law, stress the necessity for change in the theoretical framework.

3.6 DESIGN

This qualitative design relied on the views of participants to guide the research and the use of inductive practices to reach conclusions about the set interview questions (Creswell, 2008). This design was ideal as the method lends itself to interpretations of the participants' view on the role of the EL in learner discipline. The qualitative research design allowed the researcher to understand and interpret the experiences of the participants, and by doing so giving them a voice, which otherwise would not be heard. This research design is characterised by the way in which an in-depth study is context bound to understand and describe the educational phenomenon of the EL's role in DHs (Coolican, 1999).

According to Creswell (2008) the qualitative research design has six main characteristics:

1. *Identifying the research problem:* I identified the research problem through challenges I experienced as EL, as well as through coffee table discussions with colleagues in neighbouring schools experiencing the same challenges as I did. Extensive reading on the topic and attending a seminar on the essential skills for role players in education disciplinary hearings and tribunals (AMCI, 2013) made it clear that little is known in educational circles about the practice and the specific role of the EL.
2. *Reviewing the literature:* I read a wide range of literature relating to learner discipline and available policy documents closely to gather an idea of the nature of this phenomenon. Only after interacting with the participants I got a better understanding of the role of EL to create and add knowledge to this specific phenomenon. The literature review assisted in identifying the research problem and justifying the need for exploring this particular phenomenon.

3. *Specifying a purpose*: This study seeks to understand the role of an EL through the experiences of educators acting this role in learner discipline. The theoretical framework concerning skills and human resource development guided the research more specifically: seeking to understand how ELs manage a due process and the impact of DHs on managing learner discipline.
4. *Collecting data*: The data was collected via interviewing twelve information rich participants and a thorough literature review. I also studied documents that were made available by the participants, although I was not allowed to use them in my report.
5. *Analysing and interpreting data*: The raw data was transcribed into text. The data was divided into meaningful themes and theme clusters and aligned with existing literature. The making of field notes enhanced this qualitative design, due to the lessons learned during the interview process.
6. *Reporting and evaluating research*: The nature of qualitative research tends to be subjective and utilises a flexible format for reporting. This report required sufficient data to convince the reader that it is a true and realistic account of the phenomenon.

A qualitative research design lends itself to multiple designs, for example a case study design that can be used in a qualitative approach. A case study design entails a comprehensive and systematic investigation of a number of cases, investigating the role of ELs managing learner discipline from the inception of the incident to the conclusion of the DH (Brundrett & Rhodes, 2014). I studied the experiences of 12 (twelve) ELs' role in learner disciplinary hearings in different secondary schools. A case study can be defined as an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context (Yin, 2009). According to Yin (2009) a case study design favours a qualitative research method, due to the generation of detailed information. Information was generated by means of interviewing participants that were purposively selected, with the preference of ELs in secondary schools involved in disciplinary processes and DHs (Bless & Higson-Smith, 1995). The participants were given the opportunity to describe the role of the EL from the inception of the incident to the conclusion of the DH during the interview (See Appendix 2). A case study is also bounded and in this case it was bounded by the fact that only a small number of schools had employees that could assist by responding to questions.

The research required a thorough literature review and careful and thoughtful posing of questions to understand the complex social phenomenon, namely the involvement and role of ELs in the disciplinary process and DHs (Yin, 2009). The case study design was very useful to better understand the role and practice of ELs and their involvement in DHs, when very little was known about this practice (Leedy & Ormrod, 2001). This design facilitated the collection of large amounts of information and detail regarding the research topic, which allowed the researcher to examine and understand a wide range of raw data (Wimmer & Dominick, 2000). The design furthermore supported the researcher in explaining the phenomenon and not only describing it (Yin, 2009). Another advantage of this type of design was that it created new ideas that emerged from vigilant and detailed observations of the participants during the interviews (Lindegger, 2002).

The researcher could also have viewed the study form a phenomenological study which focuses on the gathering of information through inductive qualitative methods to portray the perspectives of the participants in the role as EL (Moustakas, 1994). Husserl (1970) described pure phenomenological research as a perspective free from preconceptions and to describe rather than to explain. Phenomenology places a strong emphasis on interpreting the phenomenon and to make meaning of it (Brundrett & Rhodes, 2014), but the researcher decided on a case study design as the most suited method to interpret the phenomenon.

3.6.1 Research Methods

3.6.1.1 Approach

I made use of a qualitative research approach, due to the nature of my research question, which allowed me to describe and understand the role of ELs through the experiences of educators acting this role in managing learner discipline (Maree, 2011). The responses were generated through semi-structures interviews and conducted in the natural setting of the participants (Merriam, 1998). A qualitative approach was preferred to a quantitative one, due to the need to communicate with the ELs via semi-structured interviews. This approach allowed the participants to elaborate extensively on their past and present experiences regarding their role of EL.

3.6.1.2 Paradigm

I viewed the study from an interpretivist paradigm (Maree, 2011), which follows a subjectivist epistemology, where the researcher cannot separate himself from what he knows. I relied on an interpretive approach based on naturalistic methods, which included interviewing and analysis of existing text (UIR, 2012). This approach to interview participants regarding the research topic collaboratively constructed a meaningful insight into the reality regarding the EL's role (Brundrett & Rhodes, 2014). The epistemology of this research was constructed on the triangulated knowledge gained from the semi-structured interviews, an extensive literature review, as well as the interpretation of various case studies. My aim was to construct the role and expectations of the EL managing learner discipline and DHs among others from the responses of the participants. Constructivism adheres to a realist position that assumes multiple and equally valid realities (Schwandt, 1994). Knowledge was constructed from the multiple perspectives of the participants actively managing learner discipline as EL (Brundrett & Rhodes, 2014).

3.6.1.3 Design

The research made use of a case study design to interpret the phenomenon (Brundrett & Rhodes, 2014). McMillan and Schumacher (1997) indicate that such a design focuses on the phenomenon that the researcher selects to understand in-depth, regardless of the number of sites, participants or documents involved in the study. Each separate interview was seen as a different case study, where the researcher had an opportunity to discover more about the EL's role via the perspective of each participant. According to Henning (2004) phenomenology implies that participants sketch their experiences in their own words by means of reflective interviews. Interview schedules were used in this study during the interviews to organise the appointments for each interview (See Appendix 2). The interview questions supported the participants in structuring their thoughts on the research topic, see (See Appendix 2).

3.6.2 Sampling

In using a qualitative approach, I tried to develop an in-depth exploration of the educational phenomenon by purposively selecting individuals and sites that could help me to understand the phenomenon (Creswell, 2008). Data was collected from participants who had been purposively (within the working area of the researcher) selected. Purposeful sampling gave the researcher the opportunity to hand-pick the participants relevant for this research, in order to develop a sample large enough to obtain the required traits and knowledge within the role as EL (Black, 1999; Creswell, 2007). The sampled participants were those who were involved

in learner DHs and who had relevant experience as EL and of the disciplinary system of a school.

The sample size had a significant influence on the findings of the study. Responses were generated from twelve participants acting as ELs in eight different secondary schools, which included public and independent schools. Qualitative research is characterised by relatively small groups of participants (Patton, 1990), as indicated by the twelve information rich participants. The research area covered two districts of the Gauteng Department of Education. Five of the schools were ordinary secondary public city schools and two were independent schools. One school was a school for learners with special educational needs (LSEN) in a township. Two of the schools were major independent schools in the Gauteng Province. The reason to include the two independent schools was to compare the experiences of ELs in the two different domains of secondary teaching in South Africa, to give more definition to the EL role. The participating schools represented public and independent schools, previously disadvantaged (township) schools, as well as a balance between single medium and parallel medium schools. Four of the schools were represented by two ELs and the rest had only one EL per school. The twelve identified participants were sufficient to ensure that there was adequate information rich data, as well as diverse information to increase reliability. It was important to get a range of views on the research topic, as these interviewees produced “radically different” and at times “contrasting views” that played a central part in modifying identified patterns (Seale, 2004).

3.6.3 Data Collection

3.6.3.1 Semi-structured interviews

I collected data for this qualitative research via semi-structured face-to-face interviews with participants acting the role of ELs. Interviews are by nature social encounters between interviewer and interviewee to produce versions of the latter’s past, present or future actions, experiences, feelings and thoughts (Seale, 2004). These face-to-face interviews enabled the researcher to gain better insight into the research topic and lived experiences of the people acting as ELs (Atkinson & Silverman, 1997; Maree, 2011). The aim of the semi-structured interviews was to gain in-depth descriptions of the experiences and opinions on the role of those acting as ELs during disciplinary processes and DHs (Leedy & Ormrod, 2001). Predetermined open-ended questions guided the researcher during the interviews (See Appendix 2) where the participants were encouraged to share their experiences and opinions as ELs (Greeff, 2002).

The interviews brought to my attention what the participants think, feel and do in their role as EL, giving me their subjective reality (Henning, Van Rensburg & Smit, 2010). The researcher gathered data by means of (Nieuwenhuis, 2014):

1. watching or observing the participant during the interview;
2. talking to the participant throughout the interview and showing interest in the meaning the participant gave to the research topic;
3. reading a broad literature field regarding the research topic.

According to Holstein and Gubrium (2003) interviewing is a unique form of conversation, which provides the researcher with empirical data about the social world by asking the participants to speak about their lives and experiences. The ease with which the participants wanted to share the experiences and views on the research topic was noted in the researcher's field notes. A voice recorder was used to record the data collected to make it easier for data to be transcribed and to assist the researcher in reviewing during data analysis and clarification (Kanjee, 2002; Neuman, 2000).

The interviews enabled the researcher to gain the trust and cooperation of the participants by establishing a relationship with them and associating with their challenges as EL, which in turn made the participants feel at ease and increased the response rate (Leedy & Ormrod, 2001). The interviews were scheduled for 45 to 60 minutes, but the average duration per interview varied between 70 to 90 minutes. The majority of the participants continued to discuss related topics with the researcher long after the interview had been concluded. This was a very positive indicator for me as researcher regarding the participants' interest in the research topic and the passion they had for their role as ELs.

3.6.3.2 Analysis of case law

The researcher also made use of the study of court cases as a third method of data collection, for example: *De Kock v The Head of Department of the Department of Education, Province of the Western Cape heard in the Supreme Court of South Africa: 12533/98* and *Le Roux v Dey CCT 45/10 (2011) ZACC 4*. The ELs referred to court cases relevant to their life word to build knowledge regarding the challenges they faced and experienced. This method supported the researcher in gaining information rich knowledge in terms of the EL role, including the concept of fair and justifiable DHs.

3.6.3.3 Document analysis

The participants only mentioned these cases during the interviews; none of them allowed me to view any documented case study. Two of the schools showed me an example of their Code of Conduct and how their disciplinary process works, with the agreement that I would not share the content thereof. Some of the participants shied away or changed the course of the discussion on request to view documented DH cases. The analysis of such documents has the potential to substantiate the findings generated during the interviews (Maree, 2011). This left me as researcher wondering why they did not want me to view these documents. I concluded after long deliberation, after the analysis phase, that the participants might have wanted to protect the name of their school or the learner, and also protected their own actions taken during the course of the case.

3.6.3.4 Literature review

The first and foremost data collection method was through an extended and in-depth literature review (See Chapter 2). It was my aim to collect data until there were no more new ideas, concepts or answers that could be generated, thereby reaching a saturation level.

3.6.4 Analysis and Interpretation

During the data collection phase I made use of various ways to collect the data to ensure its clarity. I had to use different methods of approaching the data, to look at the data from different viewpoints, ensuring that I understood the true meaning behind the data (Henning, Van Rensburg & Smit, 2010). This entails that the researcher observes the phenomenon from several angles via interviews, document analysis and literature review, as well as studying cases about discipline to obtain as much knowledge as possible (Maree, 2011; De Vos, 2002). In conjunction with the data gathered from the interviews the researcher analysed DH documents by means of document analysis, albeit to a limited degree. The documents included the CoC and the disciplinary process of the school, which supported the researcher in better understanding the research topic (Kilbourn, 2006). Documents can give structure to identities, circumstances and facts about society; in this research it was necessary to discover the details of disciplinary processes and DHs to better understand the role and practice of the EL (Seale, 2004).

3.6.4.1 Analysing qualitative data

Discourse analysis

According to Creswell (2008), in a qualitative design, the analysis of data entails describing the information gathered and developing themes within the data. It was of paramount importance that I had to immerse myself in the data and familiarise myself with the information by means of discourse analysis (Struwig, 2007). Discourse analysis is when the researcher studies the patterns within the data (ways of talking and behaving), or explaining the broader context in which the text functions (Struwig, 2007). The aim of discourse analysis is to discover patterns of communication that have functional relevance for one's research (Struwig, 2007). This kind of analysis looks for symbolic use of language and clues that indicate how participants interpret their reality, allowing the researcher to see a "broader social and historical context and the conventions within which the text has been created and the way in which it has been created" (Henning *et al.*, 2010). This process entails that the researcher takes all the collected data, including the field notes, mentioned cases during the interview, as well as interview transcripts to triangulate the data and shape a clear understanding of the information.

Content analysis

The researcher made use of a case study design to focus on conducting content analysis by identifying patterns to rationalise the role and practice of ELs (Maree, 2011; Huberman & Miles, 2002). The researcher searches for behaviour, meaning, relationships, conditions and consequences of those acting in the role of EL (Terre Blanche & Kelly, 2002). Content analysis is an inductive and iterative process where the researcher needs to look for similarities and differences in a text that would corroborate or disconfirm theory (Maree, 2011). This systematic approach helped me to identify patterns in the content (Maree, 2011). The rich information generated from the participants is seldom simplistic and requires more complex analysis procedures to illustrate the reality of the participant (Henning *et al.*, 2010).

I used these two data analysis methods to break up all the data into units or themes and putting them back together in a new configuration, to add new meaning about the research topic.

3.6.4.2 Preparation for data analysis

The content analysis entailed the preparation of the interview data by organising the raw data after it had been transcribed from the audio material. I coded all the raw data line by line for each interview in terms of grounded theory (Barney & Straus, 2012), using the ATLAS.ti

version 7.5.7 qualitative data analysis software program, and identifying where the data was originally obtained (Maree, 2011). According to Maree (2011) coding is the division of data into meaningful units, and marking segments of data with symbols, descriptive words or unique names. Coding can also be regarded as markers that are used to rationalise the data gathered for each interview (Seidel, 1995). I coded only what the participants had said in the interview according to the constructivist theory (Schwandt, 1994). The coding units were generated using the ATLAS.ti software program and included words or segments of each sentence.

This phase of data analysis was very labour intensive and time consuming, but it allowed me to rationalise the complexity of the large number of codes. “The identification of themes provides the complexity of a story and adds to the insight into understanding individual experiences” (Creswell, 2008). The researcher made use of inductive coding that allowed him to examine the data directly and to let the codes emerge from the data to be compared with one another (Maree, 2011). “I don't know how it works in court” and “EL only teacher; not a lawyer” are some of the codes that emerged, which generated a theme, for example, “No law knowledge.” The themes gave me insight into the vast number of codes that were generated to understand the experiences of the ELs (See Appendix 3). I kept on coding each transcript until there was a repeat of similar codes, which implied that the saturation point had been reached and all codes had been exhausted.

After the coding process the researcher grouped the coded data into themes and theme clusters, after which he identified patterns from the coded data. This was done to reduce data into manageable categories. It is imperative during the process of data analysis is to “read and re-read the textual material”, which leads to ideas and concepts emerging (emergent themes) (Richie *et al.*, 2013). This iterative process led to the discovery of the themes and patterns within the analysed data.

In this process of data analysis the method of crystallisation supported the researcher to generate meaningful data. The process of examining and reading the data (immersion) was temporarily postponed in order to reflect on the analysis experience and attempt to identify and articulate patterns or themes evident during the immersion process (Cohen & Crabtree, 2006). This process was continued until all the data had been examined and patterns had emerged from the data that were meaningful and could be verified (Cohen & Crabtree, 2006). The data codes were descriptive summaries of information the participants had provided. The ATLAS.ti software program has a network view function where all codes may be viewed grouped under each theme. The network view of the ATLAS.ti software program allowed me to group into themes codes that were similar, and themes into theme clusters. The codes and

themes identified are illustrated as mind maps within the network view to make sense of the large number of codes (See Appendix 3). The mind maps of each theme cluster supported me during the data crystallisation phase (See Figure 3.2).

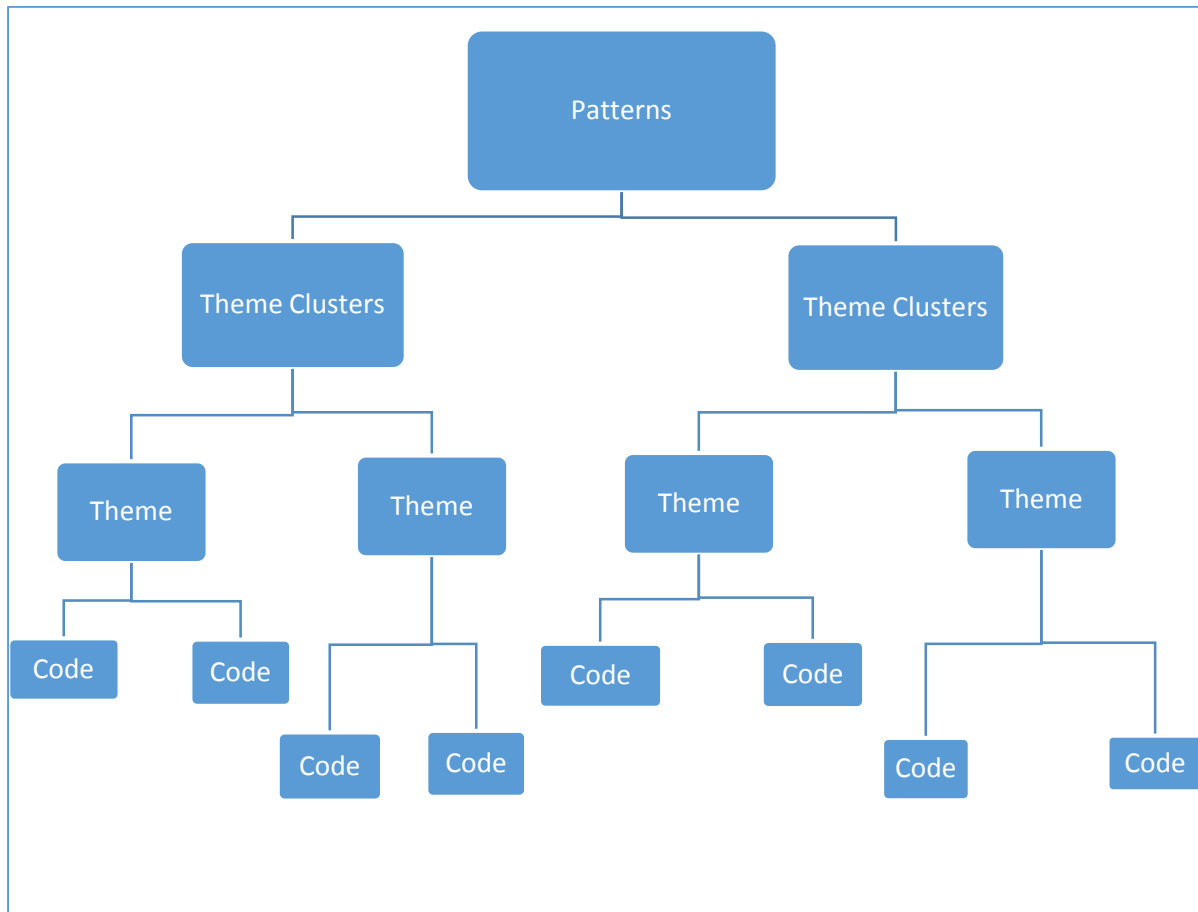


Figure 3.2: Data Crystallisation

The ATLAS.ti software program enabled me as researcher to obtain an analytical understanding of the data. This process of data analysis increased the multiple perspectives on this research topic (Maree, 2011). During the last stages of the data analysis process I was able to draw conclusions from the analysed data regarding this research topic.

3.6.4.3 Data interpretation

All the research data was analysed, interpreted and integrated using triangulation. Triangulation creates multiple perceptions of the data to clarify meaning, to verify the reliability of an observation or interpretation (Stake, 2000). The triangulation methods for this research included the interpretation of an extensive literature review, findings generated from the interviews (content analysis) and the documents made available by the participants (document

analysis) (Maree, 2011). Themes and patterns generated from the coded data facilitated the verification and validity of the findings (Maree, 2011). Interpreting the data meant that I had to take a few steps back in formulating a subjective opinion about this phenomenon. This study identified four dimensions of a theoretical framework to inform and assist the analysis of the data as described in paragraph 3.5 of this chapter.

Theoretical framework dimension 1: Legal principles and policies to help guide the EL's actions during the process.

Theoretical framework dimension 2: Clarifying the characteristics of the DH.

Theoretical framework dimension 3: Managing a due disciplinary process.

Theoretical framework dimension 4: Discovering the importance of skills development and training of the EL.

These theoretical framework dimensions supported me in making sense of the following patterns that were identified during the data analysis:

1. Disciplinary hearings as mechanisms to manage learner discipline.
2. Poor support systems that have an impact on discipline management.
3. Disciplinary hearings changing learner behaviour.
4. The necessity of stakeholders in due process.
5. Managing a fair disciplinary process and hearing.
6. Invidious position as EL.

These patterns are discussed in more detail in Chapter 4.

3.6.5 Trustworthiness

According to Mitchell (1993), when a high degree of trust is achieved early in the research, it gives the researcher the “freedom to look and ask”; which is essential for semi-structured interviews. Trust refers to a relationship between the researcher and the participants. It also applies to the report and the discursive practices, defining the standards for presenting both the researcher and the work as trustworthy (Fine, 1993). Trustworthiness is an important component of qualitative research (Maree, 2011). Trustworthiness is the way in which the

researcher is able to persuade the reader that the findings are worth paying attention to, transferable and that the research is of high quality (Johnson & Turner, 2003).

To increase trustworthiness the researcher had to prefigure the method of analysing the data before it was collected (Nieuwenhuis, 2014). This was done by posing considered research questions and sub-questions. The quality and relevance of these questions were tested during a pilot study to refine the questions before the initial interviews started. Part of the prefiguring process was to know the theoretical position available on the research topic. The researcher had to find gaps in the literature after an extended literature review (Nieuwenhuis, 2014). Knowing my own preconception and biases as EL, I had to increase trustworthiness by means of consistency checks, as well as keeping in contact with the participants for member checks. I made use of three objective readers, one of whom is a language teacher, the other a Head of Department of English, as well as a professional linguist during the final phase of the research.

Before each interview every participant was requested not to betray, mislead, lie or to put up a front during the interviews (Seale, 2004). The researcher incorporated an independent party to review the collected data and the use of the ATLAS.ti software program (Stake, 2000). This person was employed by the University of Pretoria to train the post-graduate students in the use of the ATLAS.ti software program. The utilisation of this coding software program increased the trustworthiness of the research and facilitated the analysis of the extensive data.

The researcher also did member checking after transcribing each of the interviews. This gave the participant the opportunity to verify the transcripts, to ensure that each version of the interview transcripts was correct and truly reflected his or her experiences as shared during the interviews (Poggenpoel, 1998). The advantage of validating the findings is that the researcher determines the accuracy or credibility of the findings (Creswell, 2007; Poggenpoel, 1998). It was my aim to ensure that my findings were well-grounded in the literature and supported by the data that I had collected (Webster & Mertova, 2007). The findings did indeed occur as the researcher claims, due to the above mentioned actions being taken to increase trustworthiness (Durrheim & Wassenaar, 2002).

The researcher did his level best to eliminate any bias that might be brought to the study by constantly reflecting on the research process (Maree, 2011). It was very challenging, almost impossible, in this qualitative research to separate myself from the research topic. My passion for this research topic, as well as my personal experience as EL might have compromised my objective opinion. The knowledge generated in this research was made possible through the

collaboration between participant and researcher during the interview phase. Researcher bias was unavoidable during the data gathering phase, but I endeavoured to minimise it through being objective and by ensuring that only the information produced by the participant was reflected on. The data was triangulated by using different data sources, namely document analysis, transcribed interviews and field notes, thereby testing its trustworthiness. I constantly reminded myself not to generalise the findings, but to understand the perspectives of each participant. The findings of this research are therefore not generalisable (Maree, 2011).

The case study design was time consuming due to large quantities of data that the researcher had to analyse (Wimmer & Dominick, 2000). The use of multiple cases supported the researcher in establishing a range of views and opinions, which decreased the generalisability of the research (Wisker, 2001). The researcher made use of rich descriptions of the interviews and document analysis, to make the meaning clear (Creswell, 2003; Mayan, 2001). The detailed data accumulated document analysis and interviews contributed to the transferability (Creswell, 2003; Mayan, 2001). It was the aim of this qualitative interpretivist study not to generalise, but rather to provide rich descriptions of the participants' experiences and opinions of their life world as ELs (Maree, 2011; Brundrett & Rhodes, 2014).

Internal validity was increased by the researcher by means of accurately describing the context of the research topic (Mayan, 2001). The researcher increased the credibility of the research when the conclusions of the research stemmed from the collected data. Credibility was furthermore enhanced by triangulating the collected data, document analysis and field notes, to determine any inconsistencies in the findings (Durrheim & Wassenaar, 2002). It was the intent of the researcher to produce findings that were believable and convincing and not to present negative or inconsistent findings to increase the credibility of the research (Durrheim & Wassenaar, 2002).

3.6.6 Ethical Considerations

Ethical clearance for conducting the research had to be obtained from the University of Pretoria. A letter of consent that explained the research process, elaborating on the aim, design, research methods, sampling and analysis of the data was drafted by the researcher (See Appendix 1). This letter was sent to the HOD of Gauteng and thereafter to the district office, to be signed by both district directors. Clearance certificates and letters allowing the researcher to conduct the research may be viewed in the Appendix section (Appendix 4). These letters gave the researcher permission to proceed with the interviews at the identified

schools. Thereafter a consent letter was sent to the various school principals, SGBs and the intended participants, acting as ELs (See Appendix 5).

The researcher called every principal of the identified schools to introduce himself, to explain the purpose of the research and to arrange the date and time for the interviews. This courtesy telephone call was made after the delivery of the consent letters to each school. The letters were delivered to each school via courier, due to the workload and responsibilities of the researcher. The researcher emphasised the voluntary involvement of the participants at the start of each interview. It was requested that the principal discuss the purpose of the research with the participants prior to the participants accepting the consent letter in the case where the principal was not the EL. It was anticipated that the available number of participants might be limited, where only four of the eight schools had two ELs, due to the specialisation of the role of EL.

In a sense the participants may have experienced that they had no choice but to participate, being the only ones acting this role at the school. The researcher made special notations during the initial stages of each interview in the field notes, indicating that the participants willingly participated in the interviews. The request was that the participants had to read the consent letter prior to the interview to gain clarity on the research topic and to sign the consent letter. The signed consent letters provided proof that the participants were willing to be voluntarily involved in this research. All twelve participants voluntarily engaged in face-to-face, semi-structured interviews (Maree, 2011). The intent of the consent letter was to gain the trust of the participants and to convince them that their participation, views and opinions were of great value to the researcher (Maree, 2011). The letter reiterated that they would be treated professionally and with confidentiality throughout the interview. Participants were informed that they might withdraw at any stage during the process if they wished to do so (Maree, 2011; Seale, 2004).

The consent letter included the contact details of the researcher for the use of the participant to confirm participation (See Appendix 1). The researcher obtained verbal informed consent from the participants after they had been contacted on return of their telephone call, stating their willingness to participate in this research. The interviews were conducted in English and Afrikaans, depending on the preference of the participant. Allowing the Afrikaans-speaking participants to express themselves in their mother tongue gave those participants the opportunity to explain their role as EL in more detail, as well as express their feelings. It was the responsibility of the researcher to translate the interviews that were conducted in Afrikaans into English before the interviews were transcribed. The translation, transcribing and member

checking of the Afrikaans interviews were time consuming to ensure the correctness of the translation. Member checking of these Afrikaans interviews translated into English was of paramount importance to capture the true meaning of what was said during these interview. The researcher made use of a trained linguist to verify the quality and correctness of these translations. None of the participants requested a translator during the interviews despite the fact that English was not their mother tongue.

After each interview the researcher made use of the opportunity to ascertain whether or not the participant would be available and willing to participate in follow-up interviews at a later stage (Maree, 2011). This was planned to clarify concepts or incidents of voice recordings that were of poor quality. There were no follow-up interviews, but two of the participants replied via email after the member checking phase. These two interviews were conducted in Afrikaans and these two participants made changes to the translated version of their interviews. All participants had to review their transcription of the interview, which was communicated via email and had to be signed. The signed transcript was requested by the researcher to verify the content of the transcription to be true and to ensure confidentiality (Maree, 2011).

The participants did not show any signs of discomfort during the course of the interview and none of the participants were exposed to any undue physical or psychological harm (Leedy & Ormrod, 2001). It was evident during the interviews that the ELs had knowledge and experience of disciplinary cases that were sensitive and confidential. The participants were willing to share some detail of these cases to describe the challenging experiences of an EL.

They did not allow the researcher to view the documentation of these cases, although it was requested by the researcher. My only conclusion was that the participants wanted to protect their actions during these cases, as well as the integrity of the school and learner. The researcher reassured the participants that their contributions would not be disclosed to the public. The researcher was honest, respectful and sympathetic regarding all information shared by the participant. There was not one participant who requested to be debriefed after the interviews, or to be referred to a professional who provided such a service (Maree, 2011).

All participants involved in the research were aware of the general agreements about what is proper and improper during an interview, as well as confidentiality (Strydom, 2002). The researcher therefore abided by all the ethical guidelines as set out by the Ethics and Research Committee of the Faculty of the Education of the University of Pretoria, to protect the privacy of each participant (Maree, 2011). Participants may rightly fear the consequence of confidential knowledge being disclosed during the research, due to the sensitivity of learner

DHs (Punch, 1994). The researcher was therefore obliged to protect the participants' identity, places of work, and the location of the research (Seale, 2004). I broadly described the schools as situated in two districts in the GDE. The necessary precautions were taken to protect the anonymity of the participants during the coding process, the reporting of results and even the stored transcripts (Maree, 2011). The ATLAS.ti software program assigned codes to each transcribed interview, namely participant A to participant L. The pseudonyms/codes were used because the data representing personal details, opinions and experiences was confidential.

To minimise any risk that might arise, one-on-one interviews were conducted. This was in case any heinous discovery was made during the interview, such as unlawful practices or sensitivity associated with learner DHs. The researcher was obligated according to the ethical considerations not to share the information with anyone. There was a clear understanding between the researcher and the participants regarding the confidentiality of the results and findings of the research. Any information and responses shared by the participants during the research was kept confidential and the results were presented in such a manner that the identities of the participants were protected and that they therefore remained anonymous (Seale, 2004). As soon as the research had been completed the researcher, as per the University rules, made all the audio recordings of the interviews and of the raw data available to the University of Pretoria for safekeeping for 15 years (Burns, 2000). Neither the names of interviewees nor their schools were published in any way and they were identified through codes and pseudonyms only.

3.6.7 Limitations

I had to rely on an extensive literature review to shape my conceptual and theoretical framework. In empirical work much has been written about learner discipline, but without any reference to interviews regarding the EL managing this process. My position as deputy principal and the duty to manage school discipline may have had an influence on my understanding of the conceptual framework of this research field, subjecting me to subjectivity. My personal experiences and opinions may have had the potential to influence my objectivity. I therefore continuously had to reassess my position as researcher, not to immerse myself personally in this research topic.

The research might be limited by the number of information-rich participants acting as EL at the selected schools. Four of the schools had only one participant owing to the complexity and specialisation of the role as EL. I did not at any point find that the participants produced information to impress or to lie about their experiences, commonly known as the Hawthorne

effect (McMillan & Schumacher, 2001). It was observed that each participant was truthful and honest regarding his or her experiences as EL. It was imperative that the researcher convince the participants to share their experiences truthfully.

I anticipated that the participants might get side-tracked during the interviews. The researcher had to re-direct the participant's attention to the research topic during the interview, due to a loss of words or other managerial responsibilities. There were instances where the participants discussed the importance of financial management training (Participant D, line 280), the DHs of teachers (Participant L, line 140) or managing the school as a business (Participant K, line 226). Other topics had an indirect relation to the research topic, for example parents addicted to drugs (Participant I, line 179), a learner being raped (Participant J, line 93) or assaulted at home (Participant I, line 64). There were a number of occasions where the participants asked definition or clarification of the researcher, for example what other schools do regarding disruptive behaviour (Participant C, line 508), amendments of school law (Participant I, line 93) or different types of sanction at other schools (Participant G, line 181). It was the responsibility of the researcher to motivate the participant to remain objective and focused on the topic throughout the duration of the interview.

It was identified during these interviews that the participants were very frustrated by and annoyed at various factors, for example random searches of a learner (ELRC, 2009: Sec. 21), teachers misusing the ELs, lawyers attending DHs, lack of support by the DBE or the changing perspective of DCs regarding managing DHs. In all these identified causes of frustration none of the participants made comments that were offensive to the education department, the school, the principal, the SGB or learners. It was praiseworthy to see how all the participants wanted to protect the name of their school, the learners and the disciplinary process.

Some of the legal principles and disciplinary concepts introduced in the interview were not well known to a large portion of the participants. In these instances the researcher had to ask secondary questions to clarify the interview questions. These secondary or clarification questions carried the risk of potentially leading the participant, influencing the trustworthiness and validity of the generated data. The researcher was not too concerned about whether the interview questions or gestures were "too leading" or "not empathetic enough" and simply continued to interact with the participants in an ordinary manner (Seale, 2004), as these causal relations are often hard to test (Lindegger, 2002). The leading questions had to be asked at stages when the participants did know how to express themselves. This might have influenced the validity of the data, due to the inexperience of the researcher or the participants not understanding the question (Lindegger, 2002).

It is understandable that the participants were reluctant to share records of meetings of DCs and DHs with the researcher as it could reflect negatively on their schools and their learners. I did not exert any pressure on them to release information they were not willing to make available to me.

The fact that any research has limitations in some way of form creates an opportunity for other researchers to explore the gaps that were created.

3.7 CONCLUSION

This chapter elaborates on the qualitative research design to discover the experiences and opinions of educator evidence leaders (ELs) in their role in learner DHs. This research aimed to discover:

1. the influence of DHs on the management of learner discipline
2. the support systems the EL has to manage this process
3. what influence the DH has to change learner behaviour
4. the necessity of stakeholders in this process to manage learner discipline
5. the influence of the EL's role to manage a fair disciplinary process and DH.

The researcher departed from the following conceptual framework in discovering this phenomenon:

1. role of the educator evidence leader
2. fair and justifiable disciplinary hearings
3. role of the DC in DHs
4. management of the disciplinary process
5. training for the role as EL

The first dimension of the theoretical framework clarified that the role of the ELs is guided by legal principles and policies during the process. The second dimension of the theoretical framework is the characteristics of the DH. The third dimension is a due disciplinary process. The fourth and last umbrella theoretical dimension is the importance of skills development and training of the EL.

This research used a qualitative research method where participants were purposively sampled for semi-structured interviews. This design was ideal as the method lends itself to allow interpretations of the participants' view on the role of the EL in learner discipline. The data was presented using the ATLAS.ti software program to show coded transcriptions to produce themes and patterns. Discourse analysis and content analysis were used to determine the patterns within the data (Struwig, 2007; Maree, 2011), and data was triangulated to enhance its validity. Trustworthiness was increased by means of consistency and member checking in order to avoid the researcher's own preconception of an EL. The researcher made use of rich descriptions of the interviews and documents analysis to ensure transferability (Creswell, 2003; Mayan, 2001). Ethical clearance was obtained from the University of Pretoria, HOD of Gauteng, district offices, principals and participants before the first interview could be conducted (See the Addenda section).

This chapter also points out the limitations identified in this study, for example the limited number of information-rich participants acting as ELs and participants being side-tracked during the interview; it also points out that the researcher could have asked leading questions.

The next chapter deals with presenting and interpreting the generated data. It will elaborate on the interpretivist paradigm used to explore the role of ELs as the participants experienced it (Maree, 2011; Brundrett & Rhodes, 2014). The data analysis generated six patterns (See paragraph 4.2 of Chapter 4) to describe the role and function of the EL.

CHAPTER 4: DATA PRESENTATION AND INTERPRETATION

4.1 INTRODUCTION

This research is a qualitative design that is context-bound. It aims to understand and describe the phenomenon of the EL's role in DHs (Coolican, 1999). I described the phenomenon through field research since the semi-structured interviews were conducted in the natural setting of the participants (Merriam, 1998). A qualitative approach was preferred to a quantitative one because of the need to communicate with the ELs via semi-structured interviews. This approach allowed the participants to elaborate extensively on their past and present experiences regarding their role as EL.

This study follows an interpretivist paradigm (Maree, 2011). In terms of subjectivist epistemology it is accepted that researchers cannot separate themselves from what they know. An interpretive approach relies on naturalistic methods that include interviewing and analysis of existing text (UIR, 2012). This approach to interviewing participants regarding the research topic constructed a meaningful reality (UIR, 2012). It was through the interpretivist paradigm that I could explore the role of ELs as the participants experienced it (Maree, 2011; Brundrett & Rhodes, 2014). The data analysis generated six patterns (See paragraph 4.2) to describe the role and function of the EL.

4.2 ANALYSING THE DATA

I collected data from participants performing the work of ELs in learner disciplinary hearings. A comprehensive literature review was conducted before analysing the data generated from the interviews. Interviews are by nature social encounters between interviewer and interviewee to produce versions of the latter's past, present or future actions, experiences, feelings and thoughts (Seale, 2004). The data was collected from twelve participants acting as ELs in eight different secondary schools, which included public and independent schools.

Qualitative research is characterised by a relatively small group of participants (Patton, 1990), as illustrated by the twelve information rich participants. The research area covered two districts of the Gauteng Education Department. Five of the schools were ordinary secondary public schools. One school was a school for learners with special educational needs (LSEN). Two schools were independent schools in the Gauteng Province. Significant information was generated from both public and independent schools, but differences were noted in expulsion cases.

The DHs in public schools are more challenging than in independent schools, due to public schools operating under instructions of the Department of Basic Education (DBE) and with a number of stakeholders participating (field note participant K, line 10). There are more stakeholders in the public school process; for example DC, district officials and HOD of DBE, to confirm and accept the recommended sanction (field note participant K, line 9). The logic behind more stakeholders might be to ensure that a fair decision is made in terms of the learner (See paragraph 4.4).

Two independent schools were included to understand the experiences of ELs in the two different domains of secondary teaching, as well as to give a richer description of the EL's role. The schools represented public and independent schools, previously disadvantaged (township) schools, as well as a balance between single medium and parallel medium schools. Four of the schools were represented by two ELs and the rest had only one EL per school. The low number of available ELs was one of the first indicators that the role of EL is unique and challenging, which will be discussed in paragraph 4.4 of this chapter. The twelve identified participants were sufficient to ensure that there was adequate, diverse and sufficient information to understand the role of the EL fully. A summary chart of participants illustrates the diversity of the sampled group in terms of their years of experience, roles and school size (See table 4.1). It was important to assess "radically different" and at times "contrasting views," which played a central part in modifying identified theories (Seale, 2004) regarding the ELs' role. One can understand the reality of the ELs' role through the interpretation of their knowledge constructs (Cohen, Lawrence & Morrison, 2005).

Table 4.1 Summary chart of participants

Participant	Gender	Years of experience	Size of school	Role at school
A	Male	6 years as EL 15 years as Principal	Large (875-1575 learners)	Evidence Leader
B	Male	20 years as EL	Large	Evidence Leader and Deputy Principal
C	Female	7 years as EL	Large	Evidence Leader
D	Male	6 years as EL 10 years as Deputy Principal	Large	Evidence Leader and Deputy Principal
E	Male	15 years	Medium (455-840 learners)	Evidence Leader and Principal
F	Male	6 years	Medium	Evidence Leader
G	Female	5 years	Medium	Evidence Leader and Principal
H	Male	2 years	Medium	Evidence Leader
I	Female	10 years	Large	Evidence Leader and Deputy Principal
J	Female	3 years	Large	Evidence Leader
K	Male	7 years Independent School 9 years Public Schools	Large	Evidence Leader and Deputy Principal
L	Male	2 years as EL 7 years as Principal	Medium	Evidence Leader and Principal

After all the data had been transcribed, I made use of interview questions (See Appendix 2) to identify themes. Several themes emerged via the use of open coding (See table 4.2). The interviews generated 275 pages of data, which produced 3 532 codes and 33 theme clusters for analysis. After working through the data systematically it became clear to me that all these themes could be divided into the following six patterns:

1. Disciplinary hearings as mechanisms to manage learner discipline.
2. Poor support systems that have an impact on the management of discipline.
3. Disciplinary hearings changing learner behaviour.
4. The role of stakeholders in ensuring due process.
5. Managing a fair disciplinary process and hearing.
6. The invidious position of ELs.

The focus was on the discourse underlying the transcribed data to find the deeper meaning of what the participants were trying to communicate.

4.3 ANALYSIS OF DATA

Data was transcribed by listening to the audio-recorded versions of the interviews and converting them to text using a word processing program. After transcribing each interview I viewed one interview at a time and read through it again to ensure that it was a true version of the recorded interview. Member checking was done immediately after the transcribed version of the interview. In the process of checking and re-checking the transcribed interview, I noticed certain patterns within the data (See table 4.2). I made a list of certain words and phrases, which I deemed important (See Appendix 6). With the use of the ATLAS.ti qualitative research software program I generated codes via the use of open coding and grouped these codes into themes (See Appendix 3). The codes with similar characteristics were grouped together as themes within each theme cluster and were sorted by means of a mind map (See Appendix 3). These bundles of themes clarified the theme clusters that emerged. Viewing the data and reviewing the themes and theme clusters numerous times led me to the unique patterns for this research (See Appendix 3). This served as the beginning of my framework. I kept on scrutinising the codes, themes and themes clusters to see if some of them might not have the same meaning that could be represented by a single word or expression to determine larger entities among them. During this process of producing themes and theme clusters I periodically made use of an “outsider” to view the quality and trustworthiness of the themes. This outsider perspective kept me on course in this detailed web of data bundles to make interpretations. The table below presents the layout of the themes and theme clusters that produced the patterns.

Table 4.2 Patterns, theme clusters and themes

PATTERNS	THEME CLUSTERS	THEMES
Disciplinary hearings changing learner behaviour	Application and implications of sanctions	Change of ruling
		Educational consequences
		Aggravated circumstances
		Suspension duration
		Assault, drugs and behaviour
		Suspension/expulsion
		Educational value
		Communication with stakeholders
		Alternative punishment
		Lawful punishment
	Managing learner discipline	Social circumstances
		Assault, behaviour and drugs
		Educator responsibility
		Teacher training
		Creative discipline techniques
		Being consistent
		Educational value
		Impact of punitive discipline
	Internal suspension	Solving discipline problems
		Cooling off period
	Impact of DH	Educating the learner
		Managing learner discipline
		Changing poor behaviour patterns
		Learner tense during DH
		Democratic management of discipline
		Parents removing learner/no record
		Parents discovering the truth
		Parents using DH to accuse others
		Feedback emphasis fairness/effectiveness of process
		EL sympathetic towards learner/parent
		DH not successful with all learners
	Corrective and restorative actions	Pedagogical perspective
		Alternative discipline techniques
		Guiding learner to change behaviour
		Learner deserving a second chance
		DH replaced punitive system

PATTERNS	THEME CLUSTERS	THEMES
		Suspension/expulsion as correction
		Learner showing no remorse
		EL as educator
		Referring learner to social worker
		Educationally change direction
		DH to build the learner
		Educational discipline process
		IDH early restorative action
		Considering social circumstances
		DC with objective perspective
		Mediation before DH
		Learner to change attitude
		Using DBE support services
Managing a fair process and hearing	Perspective of teacher/parent regarding EL	Teacher transferring responsibilities to EL
		Unrealistic expectations of parents
		Prejudice of parents
		Over-protective parents
		Misuse of EL as disciplinarian
	Appeal process	DBE changes outcome
		Fair process
		Unfair process
		DC managing appeal
	Principle of fairness in process	EL's role improves fairness
		EL's lack of law knowledge
		Policy/CoC guide process
		Postponing process for educational value
		Learner intimidation
		Open two-way communication
		Role of an impartial party
		DBE regulating fairness
		Stakeholders, facts and documentation
	Ensuring due process	Fairness steps
		Communication/documentation
		Protecting learner identity
		Both sides of the story

PATTERNS	THEME CLUSTERS	THEMES
		Lawful process and representation
		Keeping parents informed
		DC needing more time to make decision
		DBE changing outcome
		Question/appeal process
		Independent person investigation
		Minimising double standards
		Educational value
		Accommodating cultural/language differences
		EL chance to explain actions during the due process, including acquaintance with the rules
	Documentation used in DH process	Teachers' report
		Paper trail of case
		Communication with DBE
		Charge sheet as notice
		Behavioural sheet: parent communication
		Detailed written warning
	Evidence in DH case	Record transgression on database
		Supporting DC sanction
		Use as aggravating considerations
		Time-consuming
		Video footage crucial evidence
		Proving case beyond reasonable doubt
		Challenges with drug evidence
		No evidence no case
	Role of witness in process	Crucial video footage
		Giving written statements
		Clarifying details of case
		Willing to testify
		Need for reliable witness
		DH using valuable time
		EL sympathetic towards witness
		Learner afraid to testify in DH
		EL acting as witness

PATTERNS	THEME CLUSTERS	THEMES
		Over-protective parents
The invidious position of ELs	Experience as EL in process	2 – 7 years' experience
		Pre/post-apartheid experience
		Becoming streetwise
		Double role
		Limited experience and knowledge of law
	Challenges experienced by EL	Contradiction in psychological/school report
		Dual role as EL/disciplinary head
		Learner having no respect for DH
		Difficult to write minutes
		5-day notice/charge sheet
		Lawyers and law terminology
		Gathering evidence
		Suspension does not scare learner
		Teacher not taking responsibility
		Policy interpretation/implementation
		Witness does not attend DH
		Witness changing statement in DH
		DH very time-consuming
		Not trained as EL
		Learner drug abuse
		Conflict between EL and principal
		Enrolling expelled learners
		EL role emotionally draining
		DCs changing approach every three years
		Conflict between EL/DC
		Not enough DC members
		Parents blaming school/EL
		Parents not involved in process
		DBE making process difficult
		Translation in DH
		No guidance to manage process/DH
		Difficulty with cross-examination
		EL role time-consuming

PATTERNS	THEME CLUSTERS	THEMES
		DH difficult during examinations
		Learner having more rights than EL
	Risk avoidance and the EL's role	Not emotionally involved
		Not an ex-police officer
		Not fabricated evidence
		Not be a hanging judge
	Field notes	Interest in research topic and findings
		Clarification of EL role
		Experience = insight & confidence in process and role
		Challenges and frustrations as EL
		Longing to share experiences and knowledge
	Questions of enquiry by participants	Need for guidance
		The next EL
		Role/function of EL
		Impact of sanction regarding rehabilitation
		Disciplining learners
		Training/development of EL
	Untitled codes associated with EL's role	Parent involvement
		Learner perception of right/wrong
		Financial management
	Role/ expectations of the EL	Gathering all information/evidence
		Written version of case/minutes
		Loving the role
		Investigating witness version of case
		Educational value
		Not accusing learner
		Show teacher skills
		Fair and objective
		Best interest of school/learner
		Reading charge sheet in DH
		Following policy/process
		Needing knowledge of the law
		Gathering evidence/statements
		Recommending sanction in DH
		Presenting case/charge to DC

PATTERNS	THEME CLUSTERS	THEMES
		Communicating with parents/staff
		Building/keeping record of disciplinary case
		EL role hard work/complex
		Anticipating what next in process
		EL's important role in process
		Presenting aggravating circumstances
		Follow principals' instructions
		Collaboration with other EL/disciplinary officer
		Protecting teaching profession
		Applying creative discipline
		Ensuring order and discipline
		Not fail the learners
		EL is new role
		Being prepared
		EL role future of education
		Confused about EL role
		Acting as accuser/prosecutor
		Learning through experience
		Reporting serious case to police
		Putting DC together for DH
Disciplinary hearings as mechanisms to manage learner discipline	Characteristics of DH process	Searching books and bags
		Managing serious transgression cases
		DH parallel to police case
		Public school DH more complex than IS
		DH communication with parents
		DH final step in disciplinary process
		DH court of law elements
		Best interest of learner/educational value
		Managing with set procedures
		Long hours/late nights
		IS more alternatives to manage DH
		DH method to manage discipline
	Various DH case studies	Unstable household

PATTERNS	THEME CLUSTERS	THEMES
		Fraud
		Assault
		Theft
		Substance abuse
		Arson
		Verbal abuse
		Bullying
		Pornography
	Alternatives to DH	Internal DH (IDH): minor transgressions
		Category 1 and 2 transgressions
		Merit system
		Pre-hearing: fact finding
		IDH: aggravating in DH
		IDH not complex
		Disciplinary conversation
		IDH: verbal warning
		IDH: principal/parent/teacher/witness
		Suspension/detention
		IDH giving DH authority
	Requirements for DH	Certain amount of debit points
		Extreme behaviour
		Repeated transgressions
The role of stakeholders in ensuring due process	DC members	Sharing chairman among schools
		EL acting as DC
		New DC every three years
		More DC members: fairness
		New DC for every DH
		DC having no legal background
		Chairman appointing DC
		DBE/IS council highest authority
	Role of DC in DH	Questioning learner in DH
		Objective decision-making
		Acting according to policy guidelines
		Giving fair sanction in DH
		Remaining neutral/listening to both sides
		Staying focused on case

PATTERNS	THEME CLUSTERS	THEMES
		Acting in best interest of learner/teacher
		Act with pedagogical skills
		Chairman with law background
		Appointing DC members
		Managing DH proceedings
		Guiding/advising EL
	Impact of lawyers on DH	Managing DH as court of law
		DC chairman with law background
		Complicating DH proceedings
		EL limited experience with lawyers
		Over-protective parents use lawyers
		Prolong DH proceedings
		Intimidating, pressurising EL
		Postponing DH until school has law representative
	Role/function of SGB	Cannot be a teacher
		Representing the community
		Writing/reviewing policy
	EL delegated authority	Forced to be EL
		Accepting role as personal choice
		Principal delegating authority
		Principal instructing EL
		Educator with knowledge of the law and managerial skills
		Need for more than one EL
		DBE overturning outcome
Poor support systems having an impact on the management of discipline	Role of CoC in process	Managing transgression/suspension and correction
		Personal documentation of school
		Standardisation of discipline
		Agreement between school/learner/parent
		Accessible to all stakeholders
		Managing learner discipline
		Guideline for EL/DC
		Implementation of education law
	Policy and process	EL role developing with experience
		Structured process

PATTERNS	THEME CLUSTERS	THEMES
		Following standardised policy/process
		Need for a detailed policy
		Guiding process lawfully
		Encouraging fairness
		Deviating from policy to help learner
		Noticing period to prepare for DH
		Process in line with policy
		Policy guiding EL role
		CoC explain policy
		Recording transgressions for aggravating
		Law prescribing fair process
		Revising policy in best interest of the learner
		DBE regulating fair process
		DC complying with policy
		Need for training to apply policy
	Search/test procedures for DH case	Police assistance
		Specify procedures for substances
		Isolating learner from others
		Searching on principals' instruction
		Following lawful procedure
	Training and knowledge of EL	Qualified teacher having no knowledge of education law
		Advice from FEDSAS & Independent Schools Association of South Africa (ISASA) & Lawyers
		No knowledge of law
		Advice from DC chair
		Learning through trial and error
		Read case studies/law documents
		No formal training as EL
		Workshops on disciplinary management
		Need for process/charge, sheet/policy guidance
		Need for training of DC/principals

PATTERNS	THEME CLUSTERS	THEMES
		No DBE training; only workshops
		Uncertainties of EL role
		Collaboration with other ELs
		Needing teaching experience
		Needing more training
		Training is expensive
		Needing more research on EL role

4.4 INTERPRETATION OF DATA

As part of the ethical clearance explained in paragraph 3.6.6 of Chapter 3, I allocated different letters of the alphabet as pseudonyms to represent the participants. I coded the data line by line (See paragraph 3.6.4) where the discourse analysis refers to the line in the transcription of the participant's interview, for example "participant D (line 250)".

4.4.1 Disciplinary hearings as mechanisms to manage learner discipline

This paragraph discusses the pattern discovered in the codes associated with the role of the disciplinary hearing and the internal disciplinary hearing to act in the best interest of the learner. In the paragraphs below the word "pattern" will refer to patterns discovered in the responses of the participants to questions posed to them.

4.4.1.1 Role of the disciplinary hearings

South African schools have been managing learner discipline through DHs since 1996 according to the participants representing public and independent schools. All the participants believed that DHs are important in managing learner discipline. Learner discipline, according to Creecy (2013), is urgently needed in schools, and all stakeholders of the school should be involved. The various stakeholders in the school have the responsibility of assisting the learner to develop fully (Republic of South Africa, 1996b). According to participant F (field note, line 18) more stakeholders should be involved in the process of learner discipline, which will allow the process to continue. According to Cameron (2014) the lack of discipline in schools is far too complex for teachers to handle on their own.

The mechanism to manage learner discipline in schools is the DH. The DH is managed by the DC and the EL, which can be very complex (participant A, line 103). The DH process requires a person to take minutes, to record the proceedings, persons attending the DH, and what was discussed and decided, witnesses, documentation and evidence presented (participant H, line

89). There are certain procedures during the DH, for example confirming the particulars of the learner, what the learner pleads, presenting evidence and witness (participant G, line 128). It is imperative that the disciplinary process be well-structured to manage the transgression cases fairly (Republic of South Africa, 1996b). It was the perspective of the participants that the DH should be the final step in the disciplinary process to address the transgressions of learners; *“it should actually be the last resort or the point of no return”* (participant D, line 268).

The DH has to correct the learners' behaviour and bring the learners to an understanding that they have done wrong (participant H, line 179). Participant H (line 181) identified the need of educators for having more tools to manage learner discipline: *“Those techniques should be looked into; how to empower educators in trying to correct this behaviour”*. It is the aim of the DH to prove to the learners that they have broken a rule, which can result in suspension or expulsion (participant E, line 42 and participant K, line 67). This underscores the work of Beckmann and Prinsloo (2013) on substantively fair process in connection with a rule or standard exists and that has been contravened, as well as paragraph 7 of schedule 8 of the LRA (Republic of South Africa, 1995).

A fair DH requires that the procedures during the DH be similar to a court of law (participant I, line 242), where the process is fair (field note participant B, line 18). *“The witness testifies ..., the person who committed the offence also states his side of the case. It has some elements of the court”* (participant E, line 96). It is of paramount importance to listen to the learner's side of the story during the DH and allow him/her to admit or deny guilt (participant C, line 162). This characteristic of a fair DH is therefore compulsory before a learner may be suspended or expelled (participant L, line 117). It is evident that common law principles as discussed by Van Staden and Alston (2000) are applied by the ELs and DCs during the discipline process, for example *audi alteram partem*. The opinion of participant J (line 97-99) regarding the DH was that *“it is like a labour dispute case, it is not a criminal case. A learner will always be handled in a different way, even in a court of law. I suspect that there might be schools that treat it like a criminal case in a court of law”*.

A DH case against a learner builds up over a period of time (participant K, line 82 and participant A, line 45); consequently certain procedures have to be followed for a DC to find the learner guilty (participant A, line 142 and participant D, line 12). The participants were of the opinion that the DHs are complex due to the technicality of the law (participant B, line 209 and participant I, line 243). According to participant F (line 41) the DC has to prove beyond reasonable doubt that the learner is guilty. Disciplinary action may be instituted against a learner when there is substantive evidence of misconduct (Gauteng Department Education,

2007:4). The participants were of the opinion that the disciplinary process and DH have to be managed according to relevant policies (participant D, line 24), but not like a court of law. This corresponds with the work of Hopkins (2006), as well as Beckmann and Prinsloo (2013) that the DH has elements of a court hearing, but it is not a hearing in a court of law. However, the burden of proof in DH is not that of “beyond a reasonable doubt” but guilt has to be established “on a balance of probabilities”.

It was the opinion of participant K (line 219) that the public school DH is more complex than the DHs in independent schools. Participant K had seven years’ experience managing learner discipline at an independent school and prior to this he had the same role for nine years in a public school (field notes participant K, line 6). This participant was convinced that the DHs in public schools were more complex: *“I don’t have all the governments’ red tape”* (participant K, line 21). He was also of the opinion that public schools have a much longer process than independent schools (participant K, line 222). He seemed doubtful regarding the success of a public school DH: *“There are many nitty-gritty things in the public school with little chance of success”* (participant K, line 223). Participant L, an EL at the second private school, indicated that they added a mechanism to manage learner discipline before the formal DH proceeded. This mechanism is the internal disciplinary hearing (IDH) (participant L, line 3 and 139). Reviewing the opinion of participant K and L it was clear that the DH process should be logical and manageable for the EL (field note participant G, line 21).

4.4.1.2 Role of internal disciplinary hearings

Managing learner transgressions internally

Internal disciplinary hearings are not implemented by independent schools only; a number of the public school participants mentioned the use of IDHs to help manage minor transgression cases. Some of the offences mentioned for an IDH included repeatedly leaving books at home, repeatedly not doing homework, regular lateness for class or non-intentional fights at school (participant H, line 123 and participant A, line 28). The case of *Van Biljon v Crawford* (2007) is one example of dealing with certain offences in an informal manner. The management of the serious transgression cases is referred to the DH as guided by the regulations of General Notice 2591 of 2001 (GDE, 2007). The IDH is an alternative mechanism to help manage learner discipline: *“It’s the school’s own disciplinary system”* (participant A, line 36). The actions taken by the IDH for a number of minor transgressions accumulate to a serious case, which will then be referred to a DH. *“By the time you actually get to the DH, this matter has grown so serious that there is little chance for the pupil ..., he will at least be suspended”* (participant K, line 50). The IDH supports the EL and school to manage learner transgressions internally before handing them over to the SGB during a DH (participant J, line 39). I noted

during the interview of participant D that the IDH gives the DH more authority and creates the perception among learners that the DH is a very serious matter (field note participant D, line 11). The fact remains that only serious misconduct should be referred to DHs, as seen in the United States case law of *Ward and Board of the Blaine Lake School Unit No 57* (1971) and as determined in section 9 (1) of SASA (Republic of South Africa, 1996a).

Reducing long hours of disciplinary hearings

Certain DH cases may require the support of the local police force, but they may continue for two to three years (participant C, line 368). These cases are very difficult to manage because the school, district office, provincial office and local police will be involved to manage the case (participant K, line 241). One big concern for some participants is the long hours associated with DHs, especially the very difficult cases. Some DHs may last for three hours (participant C, line 151) and in extreme cases three to five days (participant C, line 158). Each DH case is unique (participant H, line 107). The DHs take place mostly after hours in the evenings due to the work obligations of the DC members (participant H, line 121). The manner in which the DC manages the DH also has an impact on the duration of the DH. Some DHs are prolonged due to the DC being distracted or due to a difference of opinion and at times it may be a show-off contest (participant A, line 170) between the DC and lawyers.

One big advantage of the IDH according to participant H (line 122) is “*the internal ones are handled during school time*”. The IDH is implemented to avoid the DH; “*We had a lot so far this year to try and avoid DHs that are 24 hours long*” (participant C, line 233). Participant C (line 64) complained that “*one DH almost lasted about 40 hours. This also frustrated me, because I didn’t know it and I had to learn it the hard way.*” According to participant D (line 81) the EL and school will do everything possible to avoid the complicatedness of DHs, which was also noted in my field note on participant C (line 41). This action to break down the DH into a number of IDHs raised some concerns as explained by participant D (line 105): “*The parents have the perception that you have something you want to cover up. It usually happens when parents aren’t happy with the ruling by the DH.*” Some participants mentioned that there are cases where parents choose not to follow the disciplinary process or to collaborate with the school (participant K, line 100 and 147). These parents have their own perception of what should happen or want the process to be managed like the disciplinary processes at their work place (participant I, line 218).

A fact-finding meeting in support of the disciplinary hearing

The IDH panel consists of the EL and principal (participant A, line 29), without the participation of the SGB (participant C, line 224). Minutes of these hearings have to be signed by the parent and kept on the learner's file (participant L, line 8) because the IDH forms part of the disciplinary process (participant C, line 242). The minutes of the IDH may also be used as aggravating circumstances during a DH case (participant C, line 248 and participant K, line 47). The IDH is a fact-finding meeting (field note participant E, line 11 & participant F, line 9), where evidence is essential to establish what happened (participant E, line 6). IDHs are subject to due process and may not be used to circumvent a DH.

Implementation of temporary suspension

The IDH panel normally gives a verbal warning as sanction (participant A, line 22 and participant L, line 9) and in certain cases may suspend a learner, depending on the seriousness of the transgression (participant K, line 50). According to Van Staden and Alston (2000) the principal may in exceptional circumstances place a learner on suspension without a hearing. These circumstances include violence or being under the influence of an illegal substance. *"With physical fighting between learners, ... we immediately send both learners home for three days to cool down and then we schedule the DH"* (participant A, line 220). According to General Notice 2591 (Gauteng Department of Education, 2007) and Dickinson (2000) the principal may provisionally suspend the learner for serious misconduct. In *Maritzburg College v Dlamini* (2005) it was found that the interim suspension of a learner is lawful pending the decision whether the learner is to be expelled. In this case the HOD failed to confirm the expulsion. This action to suspend the learner temporarily as a result of the IDH is implemented by both public and independent schools. The risk associated with suspending the learner during an IDH is that the principal or EL may be guilty of *ultra vires* conduct, acting outside his authority (Van Staden & Alston, 2000).

Improving transparency of the disciplinary process

There were a number of advantages associated with the IDH identified. The aim of the IDH is to involve the parent proactively in the case (participant J, line 200). According to participant K (line 202) the parents and the school are in a partnership: *"We and the parents are in a partnership to educate the learner."* *"We really like to help the learner, but parents need to assist too"* (participant J, line 206). Participant H (line 105) said in terms of correcting poor behaviour, *"check what the parent has done to try and correct this behaviour before it can lead to a DH"*. *"It gives us an opportunity to find out from the parents whether there are any problems or situations that we might be unaware of. There might be something going on at*

home that we can assist with and reach out to the learner to help them” (participant J, line 48). The IDH is similar to a disciplinary conversation between the school, learner and parent (participant D, line 260). *“The disciplinary conversation to me has a greater educational outcome than the DH”* (participant D, line 267). Learners are also more willing to communicate in IDHs than in DHs (participant D, line 74) and prefer IDHs to DHs (participant J, line 41). Participant D (line 197) believed that the IDH is a mediation process between school and parent regarding the best interest of the learner. A mediation process allows the parent to negotiate an acceptable sanction for the transgression with the school (participant D, line 193).

Most schools make use of a debit points system when managing learner discipline (participant B, line 47). The learner is referred to a DH after a certain number of debit points have been accumulated (participant B, line 30). This would be to manage the minor transgression cases in the school. Some schools make use of a merit system to grade each transgression for an IDH to take place (participant H, line 124). The transgressions are divided into different categories as decided by the principal and SGB (participant A, line 38) and explained in the CoC of the school (participant A, line 41). Section 8 (4) of SASA (Republic of South Africa, 1996a) provides that all learners attending a school are always bound by the CoC of the school. There are also extreme transgression cases where a learner may be directly referred to a DH or when there is a repeat of the same transgression (participant A, line 30). Some of the transgressions identified by the participants include fraud, arson, bullying, pornography and verbal abuse. Participant I (line 203, 220), participant C (line 245) and participant D (line 138) indicated that mobile phones were the most common item to be stolen by learners. According to the participants the three highest priority transgressions that most often constitute the reason for a DH were assault, theft and substance abuse.

Assault cases are no longer “ordinary” boy versus boy fights during break time. Recently fights have increasingly occurred between girls (participant C, line 62). These cases tend to attract much attention. Learners upload incidents on their electronic devices such as cell phones and share them on social media, thereby damaging the image of the school (participant C, line 286). Participant C (line 102), participant B (line 195) and participant G (line 62) referred to difficult assault cases where learners used scissors to stab others. Another participant mentioned a case of a learner who assaulted a housekeeper at their hostel where after the housekeeper wanted to open an assault case at the local charge office (participant E, line 103). Disciplinary cases of this kind are challenging to manage and require a great deal of documentation (participant C, line 62). The majority of the participants were concerned about substance abuse in their schools, most commonly alcohol (participant F, line 82), marijuana (participant G, line 216) and cathinone (Khat) which causes excitement and euphoria

(participant C, line 130). In these cases the learner is immediately brought before a DH before this substance is sold to others in the school (participant A, line 319), infringing on the safety of all at school.

4.4.1.3 Disciplinary hearings to act in the best interest of the learner

The role of the DH is to manage serious transgression cases at school (Joubert, 2008). One of the important characteristics of the DH is to communicate with parents, which should be the first step in the process according to participant H (line 4). The DH should explain step-by-step to the parent what has happened and what impact it has on their child (participant A, line 228). These step-by-step actions constitute due process, where reasons are given for decisions taken by the school and must be communicated from the moment of the incident, as well as during the DH (Beckmann *et al.*, 2010; Joubert, 2008). It is best to start the DH process as close to the incident as possible in time (field note participant C, line 36). Participant D (line 20) identified the importance of the parent-school relationship in solving the problem together. This collaborative arrangement between parents and school supports the purpose of DHs (participant B, line 292), namely to pursue what is in the best interest of the learner as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b).

A search of the learner's books may be requested in preparation for the DH, to ensure the learner's academic progress is monitored (participant J, line 70). During such a search things like Satanism may surface (participant I, lines 108, 114 & 115). This is very important information to be shared with the parent. A teacher's report on the learner's progress and behaviour in class may also be requested as additional information before the DH takes place (participant B, line 91). The DC needs as much as possible information regarding the learner and the case to make an informed decision. According to Burns (1998) a justifiable decision is a decision based on reason and objective substantiation. Each DH is unique: "*You can't expect the same DH or the same results*" (participant A, line 295). It is for this reason that participant C (line 182) suggests that the DC should take more time before making a decision regarding the sanction.

It is extremely difficult to act in the best interest of the learner with uncooperative parents as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b). The inability of the parents to cooperate with the EL during the disciplinary process (participant I, line 163; participant H, line 112) is prolonging the restorative process of the learner. The DH should be learner-centred (field note participant K, line 20) and should protect the rights of the learner, essentially the right to education (participant I, line 267). The DH should promote quality education and guarantee all rights of learners and their safety (DoE, 2008). Participant B (line

211) described the DH as a little court case and stressed that the aspects of human dignity and educational value should never be lost sight of (participant L, line 110 and participant K, line 240): *“It’s not a law process, it’s an educational process which wants to discover what is right and wrong”* (participant D, line 237). *“We are not here to send them to jail”* (participant K, line 143). All role players should understand the bigger picture, namely what the best interest of the learner is (participant A, line 348). The DH consequently acts as a two-sided sword that considers and protects the interest of the learner and the school, but also sanctions offences (participant K, line 232).

Summary

I discovered that the perspective of some schools is to remove learners with extreme behavioural issues from the school via the DH. One such example is participant D’s point of view (line 268): *“it should actually be the last resort or the point of no return.”* According to participant G (line 48) the DH is *“the perfect opportunity to get rid of him.”* The function of the DH should be to create a platform for the school to establish ways to restore and correct the learner’s poor behaviour. DHs should ensure that the disciplining of learners is fair and justifiable and not cruel, inhuman or degrading. The IDH could be seen as an alternative mechanism to help manage learner discipline (participant A, line 36), and not to avoid the DH as discovered during the interview with participant C (line 233). The SMT and EL should manage the IDH to be subject to due process and not to be used to circumvent the DH. The IDH is a proactive initiative of the school to manage learner discipline, but if PAJA (Republic of South Africa, 2000) is applied, the management of learner discipline should be accountable and transparent, giving effect to just administrative action.

The opinion of participant J (line 97-99) regarding the DH was the following: *“I suspect that there might be schools that treat it like a criminal case in a court of law.”* The challenges experienced by the participants of the DH to be lawful are due to the way in which the DC interprets the law and manages the DH. The DH is similar to a court case and can be seen as a quasi-judicial hearing to resolve learner transgressions (Beckmann & Prinsloo, 2013; Joubert, 2008). There were very contradicting perspectives on how a DH should be managed; more detail is provided in paragraph 4.4.4. It is the aim of the DH to prove to the learners that they have broken a rule, which can result in suspension or expulsion (participant E, line 42 and participant K, line 67). The risk associated with suspending the learner during an IDH is that the principal or EL may be guilty of *ultra vires* action – acting outside one’s authority (Van Staden & Alston, 2000).

4.4.2 Poor support systems that have an impact on the management of discipline

The second pattern explains the impact of the policy guiding discipline process and the lawfulness of the code of conduct when disciplining learners. Training and knowledge are essential to implement these policies and regulations.

4.4.2.1 Policy guiding the discipline process

One critical support system in managing learner discipline is a learner discipline policy (participant E, line 29), which should comply with certain guidelines of the DBE (participant B, line 260) and should be prescribed (participant A, line 109). Squelch (2000a) points out that managing learner discipline is becoming increasingly complicated due to legislation and regulations prescribing learner discipline. The standardised document to manage learner discipline by the DBE, only known to some participants, is General Notice 2591 of 2001 (GDE, 2007) (participant B, line 264 and field note participant A, line 7). This policy document contains information regarding the expected conduct of teachers and learners, which is lawful and in accordance with SASA (Republic of South Africa, 1996a) (participant E, line 31). Participant J (line 172) said the following in terms of policy: *“It is all about order. There has to be order and uniformity in the format.”* The work by Joubert (2008) discusses the legal framework for school discipline that includes the following:

1. The Constitution (Republic of South Africa, 1996b).
2. NEPA (Republic of South Africa, 1996c).
3. SASA (Republic of South Africa, 1996a).
4. The Children’s Act, 38 of 2005 (Republic of South Africa, 2005).
5. The provincial school education acts of the respective provinces.

In light of the legal framework identified by Joubert (2008) participant B (line 263) and participant A (line 135) said that the EL must abide by the prescribed policies, which will support the EL in deciding what to do during this process (participant C, line 116, 445 & 446). According to the participants more policies are needed to guide and support the EL: *“I do not yet have enough policies,”* and *“If policies could be made available to schools ... it would help a lot”* (participant F, line 70 and 143). I concluded from the view of the participants that they did not know about the acts identified by Joubert (2008). The participants identified the following areas in which they needed more detailed guidance in terms of policy:

1. Testing learners for the use of illegal substances and which lawful procedures to follow (participant A, line 52) or when to ask the police for assistance when testing for illegal substances (participant H, line 33).
2. Searching procedures that are practical and lawful: *"Another person has to be there"* (participant C, line 48) and *"keep them in different rooms, take them one by one to urinate in the cup"* (participant A, line 62).
3. Detaining a learner identified by participant C: *"This is very strict"* (line 42) and *"due to the chain of events and not being a teacher, he didn't follow the correct procedure"* (line 37).

According to Cameron (2014) *"schools today are left with the legacy of policies, facing severe infrastructural and resource constraints"*. The interpretation and adoption of policy in terms of managing learner discipline presents a consistent challenge to the participants. Participant C (line 94 & 95) stressed this concern about policy to manage the disciplinary process: *"There were no guidelines of what I should or should not do."* Participant I (line 147) agreed with participant C (line 94) that the policy documents do not clearly stipulate what the EL should do during the disciplinary process. Beckmann and Prinsloo (2013) indicate that there is a lack of policy, or poorly-formulated and badly implemented policy in schools. More importantly to participant E (line 30) policies need to be in place, explained and communicated by all stakeholders, for example the DBE and SGB implement policy to manage discipline in school whereas principals, ELs, parents and learners interpret these policies. The parent remains an important stakeholder in the process and needs to be informed regarding policy changes (participant A, line 85).

The disciplinary process is a detailed and analytical process that breaks down every aspect of the case, as well as draws certain conclusions (participant H, line 95 and 96). The experience of participant H (line 84) is that the discipline process is guarded by policy and that the process just has to run its course (participant C, line 318). According to participant H (line 92) the disciplinary process implemented at school should not differ from the prescribed policies (field note participant E, line 17 & participant H, line 88), and importantly, there has to be clear guidelines (participant L, line 160). It was the perspective of participant E (line 69) that the DH policy is straightforward, although the EL cannot always follow it to the letter. The EL has to keep the broader human approach in mind when applying policy during a transgression case because a child is involved (participant K, line 129). Ultimately everyone will benefit if the case is managed according to the prescribed policy (participant B, line 267).

Law prescribes fair control of learner discipline in schools today (participant J, line 253). According to participant B (line 16) schools cannot act as they did in the past; in terms of managing learner discipline there are laws to abide by and DCs are part of the process. There are a number of laws protecting the child in terms of the child's identity, particularly when the outcome of the DH is communicated (field note participant C, line 38). Beckmann and Prinsloo (2013) indicate that some role players in the discipline process are ignorant of the law. I discovered that the participants' had poor knowledge of the Children's Act, 38 of 2005 (Republic of South Africa, 2005), which is a key factor when disciplining a learner. It was important to participant H (line 148) that the EL understand the responsibilities associated with each right that the learner abuses at times. SASA (Republic of South Africa, 1996a) is the most common document used to manage learner discipline fairly (participant I, line 94). All related school law and policies are presented in SASA (participant I, line 95). It is SASA (Republic of South Africa, 1996a) that guides the EL how to act in transgression cases (participant B, line 34).

It is disconcerting to the participants that the policy documents do not support them in the detail of a fair discipline process or DH (participant L, line 101). It is only through trial and error that they as ELs discover the complexity of a fair process and DH. In some cases it was only through trial and error that the participant discovered that the school may not charge and sanction the learner on the same day (field note participant C, line 6), or suspend a learner for longer than six months (participant L, line 101). The decision to suspend a learner for a period longer than six months is an unfair action in terms of Section 9 (1) of SASA (Republic of South Africa, 1996a). The interpretation of participant C (line 225) in terms of suspension was that *"the school law says the principal can decide to suspend a learner for seven days"*, is in line with Section 9 (1) of SASA (Republic of South Africa, 1996a). There was also a difference of opinion among the participants whether a lawyer may represent the learner during the DH. According to the Independent Schools Association of South Africa (ISASA), regulating best practice in independent schools does not allow a lawyer to represent a learner during a DH (participant K, line 165 & 168). Some public schools allow lawyer representation, but the interpretation of participant E (line 92) of SASA (Republic of South Africa, 1996a) is that an outside party may not represent the learner. Participant J (line 23) rightfully indicated that the learner is a minor and may have a representative to assist the learner and to clarify what is going on in the DH.

According to Section 3 of PAJA (Republic of South Africa, 2000) as well as Section 9 of SASA (Republic of South Africa, 1996a) the learner is entitled to legal representation where such assistance is required to ensure a fair DH. Section 9 of SASA (Republic of South Africa,

1996a) simply requires representation, which implies that a learner may be assisted by a parent, guardian or a responsible adult. The learner does not have the right to legal representation. The case of *Hamata v Peninsula Technikon 2002* addressed the discretionary authority of a tribunal or in this case a DH, to allow a legal practitioner to represent a learner in the disciplinary proceedings. The DC has the discretion to allow legal representation in a disciplinary hearing if it is deemed fair under the circumstances. The feeling of hopelessness the EL might experience while presenting a case in the presence of a lawyer representing a learner was echoed during an education law conference in 2013 (AMCI, 2013). Schimmel *et al.* (2009) discussed the resentment of principals towards learners' right to make use of a lawyer, due to the principal's lack of understanding the law and its application. This right of learners to have legal representation is in some cases overlooked or opposed and my own assumption resonates with Schimmel *et al.* (2009) that the participants have a lack of law knowledge and the application thereof.

Policies support the EL in managing learner discipline: "*The policies guide us, we may not necessary follow them to the letter, but they sort of give us some direction*" (participant E, line 62). The policies are similar to court documents, where each type of transgression has a fair process to be followed and associated sanction (participant I, line 136 and participant L, line 208). According to participant C (line 408) the steps in the process are logical and the expectancy of policy is quite simple. The legal characteristic of a policy is needed according to participant H (line 98), because it gives structure to the process and guides the EL (participant J, line 171). "*It is not as nerve-wracking as in the beginning, because I know my documents*" (participant C, line 119), and it becomes clearer to the EL as time goes by (participant C, line 32). The work of Schimmel *et al.* (2009) highlights that the educator or EL has to demonstrate an acceptable understanding of policy, regulations and laws. According to participant A (line 288) policy gives good guidance, but cannot prepare the EL for how people will react during the DH (participant A, line 291) because each case is unique. The DC consists of three parent members and two staff members according to participant G (line 117 and 119) and the parent members have the most power in decision-making. It is therefore very likely that the DC members may at times take the policy out of context, due to differences in opinion (participant C, line 409 and 410). Participant D (line, 224) pointed out that another challenge is the way in which the EL and DC interpret DBE policies differently. To have a clear explanation or interpretation of the policy the participants made contact with FEDSAS for legal support (participant I, line 98). FEDSAS was the most common response I received from both public and independent schools when I asked them about their source of legal support.

Participant D (line 222) and participant B (line 262) were satisfied with the prescribed process and policies of the DBE, but in contradiction to this experience participant C (line 462) felt that some of the DBE policies and procedures are silly and pointless. The participants questioned the relevance of some of the policies prescribed by the DBE: “*There has to be detail and it also has to be analytical ... give detailed information.*” Some of the participants were of the opinion that certain of the laws and policies on paper do not work in practice and are not easily implemented (participant J, line 109). There is no policy that can predict or explain how people will react, for example during a DH (participant A, line 297). Policy is not able to determine and anticipate every step in the process, due to various different reasons for a DH or what happens during the DH (participant A, line 292). The way schools are managing learner discipline has changed over the years (field note participant B, line 15), where the old system did not acknowledge the opinion of the parent (field note participant K, line 27). Policy makers writing these policies have to adjust to these changing circumstances (participant B, line 321) and should not suppress the views of the learner during the process (field note participant J, line 15). It is possibly the reason why participant J (line 111 and 112) suggested that policy makers should experience the school environment first hand and interact with the learners, which may improve the implementation of policy.

Keeping in mind that the aim of policy is to manage learner discipline fairly, I noted that some participants deviated from the prescribed policy to help the learner in changing his or her behaviour (field note participant E, line 18). According to participant K (line 130) “*we are educators, we have much more of a human approach to the learner.*” Participant C (line 466) pointed out that it makes sense to appoint a teacher as EL when managing learner discipline. The teacher EL will have a milder approach to handle the situation, implementing a learner-centred approach (participant K, line 131). The DBE decided that no DH will be scheduled during end of term or year examinations to act in the best interest of the learner (participant C, line 483 and 490), as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b). In a substance abuse case, for example marijuana (dagga), the DC decided that the learner had to be tested a second time before setting a DH and they also requested the parents for a follow-up test in the months that followed (participant J, line 195 and 196). It seems as if the EL is caught between following the prescribed policy and acting in the best interest of the learner as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b), measured against the EL’s professional opinion and experience.

4.4.2.2 The code of conduct supporting discipline management

The CoC is the document through which policy is communicated to the parents (participant K, line 151). This document explains any amendments or new policy implemented by the school, for example an immediate suspension for smoking on the school premises, as well as the disciplinary process leading to a DH (participant C, line 527 and participant A, line 86). Some schools categorise their transgressions as schedule A or B offences (participant J, line 19), and other schools as schedule 1 or 2 offences (participant B, line 259 & participant C, line 74), which corresponds with the transgressions as listed in General Notice 2591 of 2001 (GDE, 2007).

It is imperative that the SGB adopt a learner CoC according to Section 8 (1) of SASA (Republic of South Africa, 1996a) to lay down standards for behaviour (De Waal, 2013). The CoC is one of the first documents that will be used by the EL to manage learner discipline in the school. I noted in my field notes of participant H (line 14) that the CoC is the primary document to manage learner discipline. The CoC has to be in line with education law according to participant C (line 75), as well as to classify the transgressions in different schedules (participant J, line 74). Participant C (line 203) explained “*our CoC says if you commit a schedule 2 transgression you automatically go to a DH*”. It is the function of the CoC to inform the learner or parents that the learner will be punished when breaking the school rules. Below are some of the more serious transgressions mentioned by the participants with associated corrective measures:

1. Cheating during a test or examination leads to a 0 (null) for the paper (participant C, line 238).
2. Caught smoking on school premises resulting in an immediate three-day suspension (participant D, line 88).
3. Caught with liquor on school premises leading to immediate expulsion in an independent school (participant L, line 106).
4. Fighting on school premises resulting in an immediate suspension for three days (participant D, line 86).

Rossouw (2003) and Squelch (2000a) explain punishment as a facet of discipline that involves a reaction towards inappropriate behaviour by learners to correct and restore harmonious relations. Section 12 (1) of the Constitution of the Republic of South Africa, 1996 (Republic of South Africa, 1996b) is aimed at ensuring among others that the disciplining of learners is fair and justifiable and the punishment is not cruel and inhuman. “*I can’t have anything in the CoC that is not in line with what is prescribed by educational law and the Constitution*” (participant

K, line 150). Participant L (line 53) and participant J (line 61) also indicated that the CoC should be checked by legal experts and abide by the regulations of DBE and SASA (Republic of South Africa, 1996a). I got the impression that the schools knew that the CoC should be subject to SASA (Republic of South Africa, 1996a) and ultimately to the Constitution (Republic of South Africa, 1996b).

In the field note of participant K (line 22) I noted that, for this participant, the intent of the CoC is to guide the learner disciplinary process and to correct the learner's poor behaviour. The CoC of every school will be unique and is a confidential document of the school. The participants were keen to share the content of their CoC in support of the research, but they wanted the detail of their CoC to remain confidential. This was emphasised by the independent schools. Only one school gave me a copy of its CoC, with the agreement that it would be used for research purposes only. This raised questions about why these schools wanted the content of the CoC to be kept confidential. If their CoC was adopted in accordance with SASA (Republic of South Africa, 1996a) and the Constitution (Republic of South Africa, 1996b) they should have no reason to keep this document confidential.

The CoC informs learner and parents regarding the disciplinary process and of why and when a DH will take place (participant D, line 62). The communication between all stakeholders of the school in terms of the CoC is essential in managing learner discipline. The CoC is commonly communicated to the parents via the learner's diary (participant J, line 79; participant A, line 113). Some of the participants indicated that they communicated their CoC via the school's website or emailed it to the parents (participant L, line 52; participant K, line 88). The CoC is regarded as an agreement between the school, parent and learner and must be signed by the parents and the learner (participant E, line 22; participant K, line 225). In signing the CoC the parents and learners agree that *"if you don't honour the agreement we will in all fairness and responsibility ask you to leave the school"* (participant K, line 225). These actions as described by participant K (line 225) are unlawful according to Section 9 (2) of SASA (Republic of South Africa, 1996a) and General Notice 2591 of 2001 (GDE, 2007) because no learner may be asked to leave school unless the learner is found guilty in a fair DH. According to participant C (line 221) the CoC should be revised and amended regularly when managing learner discipline, for example the addition of IDH. Participant K (line 86) indicated that their CoC is revised once every two years. It was important to participant K (line 87) that the EL should be consulted in the adoption of the CoC. *"We talk to the learners about it and we inform the parents via letters"* (participant D, line 89). Beckmann and Prinsloo (2013) explained that the CoC should be adopted after consultation with the learners, parents and educators of the school. According to participant L (line 145) the consultation with various

stakeholders of the school will help adopt a CoC that suits the needs of the school. The consultation and cooperation of all stakeholders appear to be the first step in managing learner discipline fairly.

4.4.2.3 Training and knowledge of EL

Knowledge of education law and the implementation thereof remains a big concern for all the participants. According to participant B (line 142) the current education law applied in school is not 100% the same as in 1993, since much has changed since then. It was not expected from the educator to act like a lawyer during the era before 1996, whereas now the EL has to know education law (participant B, line 144). As an ordinary teacher it is difficult to understand some of the legal terms used during a DH (participant J, line 163; participant K, line 40 and participant B, line 135), especially when they use Latin terminology (participant A, line 161). *“I don’t know how it works in court”* (participant A, line 150), *“it makes me feel incapable, because you think I don’t know anything about this”* (participant A, line 166). Participant C (line 460) admitted that she does not do what is expected from her in terms of the technical aspect of the process. She elaborated that the EL is a layman in law and needs support in this role (field note participant C, line 42).

Participant B (line 18 and 134) and participant C (line 455) pointed out that the role of EL is very challenging, because ELs are qualified teachers and not law practitioners. Participant B (line 17) studied teaching rights and policies as under-graduate at university, which gave him as educator an advantage in his role as EL (participant B, line 141). Participant A (line 281) was a retired policeman and principal, who studied school management and had knowledge of school discipline (participant A, line 5 & 160). One of the EL participants had a background in law but school law was not part of her modules (participant J, line 159 & 168). Her advantage as EL was that she could understand the law terminology used in a DH (participant J, line 162). Post-graduate courses, for example an honours degree and master’s degree in education management were key factors in supporting participant K regarding the legal aspect associated with the EL role (participant K, line 123). The advantage of being qualified in education law *“provides you with sensitivity of the fairness of the case at hand”* (participant K, line 124). Bull and McCarthy (1995) as well as Eberwein (2008) underscore the strong positive correlation between law training and law knowledge.

Education law is not general knowledge and has to be studied by the EL (participant J, line 165); participant L (line 80) said: *“I am not a legal expert.”* The EL needs to have detailed knowledge of the law, in particular education law (field note participant J, line 23). *“The lack of law knowledge is not an excuse”* (participant D, line 152), but the EL struggles to justify his or

her conduct in terms of the law (participant D, line 148 and field note participant G, line 23). Participant G (line 151) said that *“it can only be beneficial to you ... most of the cases we are dealing with are misbehaviour”*. The relevance of training of the EL is explained in Section 9A of PAJA, 2000 (Republic of South Africa, 2000). Schimmel and Militello (2007) as well as Mirabile (2013) reiterate the lack of consistent training in education law among teachers. According to participant F, line 65 neither the EL nor the parents are literate in law, which is unfair towards the EL (field note participant K, line 25). Schimmel *et al.* (2009) rightfully claim that educators are not prepared for their delegated role or for increasing their legal competence.

The message was clear from the participants that they had not been trained for the role of EL: *“In all my years, I have never been trained or prepared for it. I studied to become a teacher”* (participant D, line 179). It was disconcerting to me that the participant believed that there was no training available for them: *“I don’t think there is really training available”* (participant 182), and *“There is a huge gap, because there isn’t a lot of training out there”* (participant A, line 279). I struggled to find training courses for the ELs during my literature review where I discovered one seminar organised by AMCI (2013) discussing the various role players in the DH. The one disadvantage of this seminar is that it is very expensive, because it is presented by a private company (participant B, line 227). Only three of the participants indicated that they knew of this seminar presented by AMCI (2013), whereas the other participants relied on circulars from the DBE only (participant H, line 82). One public school participant said that she knew of educational law courses presented by FEDSAS and SAOU (participant I, line 123). In the interview with participant K (line 128) I noted that the independent schools receive regular training from ISASA that makes use of a company named Conflict Dynamics.

The participants’ solution to a lack of formal training as EL was to learn through trial and error over a long period of time (field note participant I, line 6). According to participant K (line 213) *“your greatest experience is the practical experience you have gained while working with this”*. I felt sorry for participant C (line 561) experiencing isolation in her role as EL: *“I suffered in silence until I started figuring out the things for myself.”* Developing the role as EL through trial and error might be a big risk in view of what participant D (line 23) said: *“I have learnt when it’s a risk and when it’s going to be okay when we didn’t do it correctly. There are moments when I realise that what we are busy doing is going to make the DC and the principal angry.”* There were some participants, for example participant A (line 337) who relied on intuition: *“I can’t explain it, but you have to follow your gut feeling”*. In the light of these experiences shared by the participants I wondered what impact their *“gut feeling”* has on a fair and objective disciplinary process.

The participants indicated that they read case studies and law documents in an attempt to train themselves as ELs in terms of what to do during the process (field note participant I, line 23). Participant H (line 81) said: *"I also do some reading on my own on the internet on procedures and policies"*. The internet is an open source to support the EL (participant I, line 96), for downloading circulars from DBE, FEDSAS and SAOU in attempt to understand what to do as EL (participant C, line 562). The second method of self-development indicated was to talk to ELs in other schools (participant B, line 29; participant G, line 126). Watson and Harmel-Law (2009) emphasise the value of informal training by means of learning from others with the same relevant experience. These informal training sessions could be a conversation with the principal (participant D, line 209) or visiting the DBE District Official for guidance (field note participant A, line 18).

A very unique collaboration exists between one independent school and its nearby public school where the principals regularly meet to share ideas in terms of managing learner discipline (participant L, line 86). This affirmed my decision to include the views of the independent schools in my study. The collaborative agreement between the ELs of neighbouring schools is beneficial to the EL to get clarity on challenges that may arise during the process; for example, the writing of the charge sheet and the notice period (participant J, line 260; participant K, line 113). The participants indicated that they keep in contact with the DC chairman to ask for advice or what to do next (participant C, line 370). The relationship between the EL and the DC chairman was important in the role of EL: *"He taught me a lot of things"* (participant C, line 109).

I had identified a large number of codes in this theme cluster on workshops to describe this pattern of support systems to manage learner discipline. Participant F (line 58) said: *"We were given quite a number of scenarios and then we had to discuss or find out how to resolve such cases"*. The experience of participant K (line 104) was that *"you go through the entire process; for example, they will present you with sample cases based on actual events"*. Some of the participants complained that the DBE organised workshops that focused on learner discipline or bullying only, but not on training in the role of the EL (participant C, line 548; field note participant F, line 13). Participant B (line 244) said that the DBE has to support the EL more: *"They have to sub-contract people to do it."* The participants were very uncertain about the following range of challenges that they needed training in:



1. Understanding the policies (participant F, line 71).
2. Reason for the five-day notice (participant A, line 78).
3. Dealing with drugs (participant H, line 29).
4. Legal aspects regarding the child (participant K, line 210).
5. Writing of the charge sheet (participant J, line 259).
6. A criminal charge against a learner referred to a DH and reported to the police (field note participant C, line 29).
7. Step-by-step guide to act as EL (field note participant D, line 19; participant G, line 233).

The training of the EL should not focus on the competency of law and policy implementation only, but also on what to do when the DH goes wrong as discussed by Beckmann and Prinsloo (2013). Beckmann and Prinsloo (2013) identified a wide range of negative effects when a DH goes wrong:

1. Teachers may lose faith in the process.
2. Parents may lose confidence in the school.
3. The learner may discard school rules and the CoC.

A number of the participants identified the importance of the principal and DC who also need to be trained in managing learner discipline (participant A, line 285; participant G, line 113). *“There always has to be someone available to fill the EL’s position should anything happen”* (participant A, line 286). Participant C (line 560) said: *“If I had to be replaced, I feel sorry for the next guy.”* The training of the EL as well as the DC remains a key factor to manage learner discipline fairly. It is disconcerting that very little attention is given to training the EL or the DC: *“It was not there when I started”* (participant C, line 387). Participant B (line 334) was extremely interested to view the results of this study: *“I think it would be able to help me.”*

Summary

In reviewing this pattern the main support systems to support the EL are discipline policies and the CoC of the school. Some participants used policy documents to create a *pro forma* on what to do during the process and DHs (participant C, line 114). There were some participants who acknowledged that there are some policy documents available, but they could not recall the titles of these documents (participant A, line 355 and participant B, line 140 and 150). There were some participants, for example participant A (line 337), who relied on

intuition and I wondered what impact their “*gut feeling*” had on a fair and objective disciplinary process. There is a big need among the participants for more policies to manage learner discipline, as well as training sessions to understand and implement them (field not participant F, line 19). Beckmann and Prinsloo (2013) elaborate on procedurally due process and a substantively fair process when there is an alleged breach of the CoC. I question the fairness of some of the corrective measures implemented by a number of the schools. It is my perspective that certain schools may enforce corrective measures in their CoC that are unlawful in view of the legal framework as set out by Joubert (2008). Signing for the acceptance of the school rules by parents is not binding if these rules are unconstitutional or unlawful (Van Staden & Alston, 2000). Some schools indicated that they will detain the learner for long periods of time or make the learner clean the school garden as correctional measure which is infringing the regulations as illustrated in Section 35 of ELRC (2009). Other unlawful actions were described in paragraph 4.4.2.2, where parents are requested to remove their child from school if the learner don’t honour the CoC (participant K, line 225).

My main assumption resonates with Schimmel *et al.* (2009), namely that the participants have a lack of knowledge of the law and the application thereof. I am convinced that the acting ELs desperately need training in the various policies and acts to manage learner discipline fairly. It is also my assumption that the participants confused policy as law and that they interpret policy as a guiding document or “manual” on acting the role of EL. The role of the EL is very broad and there is no policy document stipulating what an EL has to do (participant C, line 453). There is a greater responsibility on the SGB and principals to support the development and training of the EL and DC to demonstrate an acceptable understanding of policy, regulations and laws in the management of learner discipline (Schimmel *et al.*, 2009). The training of the EL should be a balance between knowledge of the law and what to do as EL before a person is entrusted with this role.

4.4.3 Disciplinary hearings changing learner behaviour

Pattern 3 discusses the management of learner discipline and discovering what impact the DH has on the learner to change. This pattern also clarifies whether the DH is succeeding in being corrective and restorative when resolving learner transgressions.

4.4.3.1 Managing learner discipline

The Guidelines for the Consideration of Governing Bodies (Republic of South Africa, 1998a) explain in item 7 that school discipline starts with the teacher’s accountability. Participant B (line 154) said: “*Responsibility as teacher on ground level is to manage discipline*”. It was also

the view of participant F (line 137) that the teachers are the ones who help the school to run smoothly. According to Cameron (2014) “*discipline can be said to stem from the authority of the educator. This power comes from inherent stature, rooted in experience, knowledge and teacher’s own power and dignity.*” Discipline starts in the classroom with the teacher (participant B, line 163). Participant G (line 246) also reiterated item 7 of the consideration of governing bodies (Republic of South Africa, 1998a): “*I will always tell the staff that they have to control their own classes and that the EL is only there for serious transgressions.*” Moller (2000) and Section 8 and 9 of SASA (Republic of South Africa, 1996a) place a greater emphasis on the SGB to become more accountable for learner discipline. This is discussed in paragraph 4.4.4 of this chapter.

Participant F (line 121) felt strongly that “*without discipline there is no way that education can take place*”. Disciplining learners should seek to educate the learners as to how they have transgressed and why they should not do so again (Cameron, 2014). According to Cameron (2014) “*the court, in the Pillay judgment, acknowledged that rules promote an important sense of discipline in children and prepare them for the real world*”. One frustration that materialised was that teachers manage discipline in their own way (participant C, line 388) and the EL thinks differently about learner discipline (participant D, line 272). If the behaviour of the learner is overlooked, the opportunity to help the learner will be missed (participant J, line 125). According to participant G (line 177) the school needs to be more creative with learner discipline, as an addition to the recommended DHs (participant J, 252). One common mechanism used by the majority of the schools is the merit system as participant J (line 52) indicated: “*We have a merit system for positive and negative merits.*” Managing learner discipline through a merit system necessitates the cooperation of all stakeholders to be effective (participant G, line 193). IDHs are discussed in paragraph 4.4.1 of this chapter as another initiative to manage learner discipline. In the case of *Western Cape Residents Association obo Williams and another v Parow High School*, 2006 (3) SA 542 (C) the learner was prohibited to attend the year 12 farewell function to teach the learner discipline and respect for authority. The court found that, although the punitive nature of punishment also serves an educational purpose.

According to participant C (line 503) “*a learner will be a learner, they do stupid things*”. Teachers have to “manage learners from vastly different backgrounds, some who have been exposed to violence in their homes and their neighbourhoods” (Cameron, 2014). Participant H (line 168) said about misbehaving children that “*they are trying to get attention at home and when they get into this environment (school) they want to be seen*”. According to participant I (lines 293 & 297) “*parents are powerless to discipline their teens, the parent can’t do anything.*”

Creedy (2013) blames the parents for the dysfunctional behaviour of learners and ill-discipline at school.

According to participant J (line 257) there are rules for the learner at school as there are rules at home, and there are consequences for poor behaviour. Discipline is very important to manage learners at school (field note participant E, line 22). Participant E (line 124) said “*the abolishment of corporal punishment has somehow created a situation ... where discipline seems to be less*”. Punitive discipline, for example corporal punishment, is a power exercise based on fear and produces mistrust and resentment (Cameron, 2014). Participant D (line 250) rightfully said “*we shouldn’t raise our learners with fear*”. Participant B (line 11) said: “*In the old dispensation ... using for example corporal punishment ... most of the time.*” Participant H (line 139) felt that there is a big difference between managing discipline in the current education era as compared to the time before 1994. The court concluded in *S v. Williams* (1995), that the administering of corporal punishment to juvenile prisoners was unconstitutional. The same conclusion was also reached in the United States of America case *Ingraham v. Wright* (1997).

4.4.3.2 Impact of DH on learner behaviour

Disciplinary hearings created a platform for the school to manage learner discipline fairly and were held in the “old dispensation” according to participant B (line 11). According to Participant A (line 342) the DH is the building block of good discipline, but more importantly to build the learner (participant H, line 43). Participant B (line 79) said: “*The learners know that there is a process where the school will react correctively towards poor discipline by means of the DH*”. Participant H (line 128) said: “*It’s different for different learners, but there are learners that would really improve after attending their DH*”. The management of learner discipline through DHs creates a safe environment for the learner, giving effect to Section 28 (2) of the Constitution (Republic of South Africa, 1996b), which provides that a child’s best interests are of paramount importance in all matters concerning the child (Cameron, 2014). I agree that the intent of the DH is not only to manage learner discipline, but also to change the learner’s behaviour. A big advantage for participant C (line 506) is that the DH gives the teacher more control and improves general discipline.

Discipline, according to Cameron (2014) as well as according to participant B (line 309), has a key role to play in the education of a learner. According to participant I (line 141) and participant A (line 179) the DH acts in the best interest of the school. The learners need to realise that they will be held accountable for their actions and transgressions (field note participant A, line 27; Rossouw, 2003). Participant H (line 136) said: “*In a way it sends out a*

message to the learner ... there will be certain consequences." Some learners are afraid to attend the DH, but the outcome is educational; *"it teaches him what is right and wrong and it can guide him"* (participant D, line 259). In Chapter 2 paragraph 2.5 I discussed the idea that the aim of disciplining the learner through a DH is to develop self-discipline and self-control in learners. Participant C (line 522) disagreed with the degree of self-control shown by the learners; according to her the learners arranged a fight outside the school ground and in informal clothes, because they did not want to go to a DH. Participant J (line 241) said: *"A lot of learners will think twice about being naughty ... because they are scared of going to a DH,"* or as participant K (line 199) said: *"The fear of being expelled."* *"Most of them start singing like canaries in cases like this"*, according to participant L (line 28).

I noted that the aim of democracy as set out in the Constitution (Republic of South Africa, 1996b) is not fully propagated in schools (field note participant A, line 30). Learner discipline should aim to establish democratic values and rights as stipulated in the Bill of Rights and the Constitution of the Republic of South Africa, 1996 (Republic of South Africa, 1996b), which include equity and quality as cornerstones (Heystek, 2011). Cameron (2014) points out that *"Discipline is also necessary to respect the rights of other learners"*. It was shocking to hear from participant D (line 254) in terms of the DH that it is *"similar to corporal punishment; ... they (learners) don't want to get punished."* Participant D (line 252) added *"the DH is nothing less than a replacement for corporal punishment, because learners come to a DH in fear"*. It is not the intent of the DH to create fear among learners in disciplining them or in managing discipline at school.

The DH should support the parents to find out what the truth is and to hear both sides of the story (participant J, line 222). The value of the DH according to participant D (line 72) is to inform the parent about the facts of the case: *"His (the learner's) father wanted to explode, because it was the first time he heard what really happened."* DHs as discussed by participant D (line 72) are both substantively and procedurally fair as explained by Beckmann and Prinsloo (2013), applying the common law principle of *audi alteram partem* (Van Staden & Alston, 2000). A DH that is fair and honest is welcomed and accepted by the parents and at times there are more underlying issues that are discovered; for example *"the learner started crying with his dad and the father said he felt like he failed his late wife"*. The EL is very sympathetic in these cases as shared by participant G (line 207): *"We feel sorry for the parents,"* and participant B (line 81), *"I do think about it ... when I get in my car ... when I am at home in front of my TV or in my study"*. According to participant B (line 322) the parents will normally thank the school for creating a safe environment for their children, when a DH is fairly managed.

The communication of the DH outcome to the school and staff the next day should emphasise a reasonable and fair DH (participant K, line 196). Participant B (line 315) said “*inform them (learners of school) that this perception (the DH has no effect) is wrong and show them that we (SMT) do act against bad behaviour*”. Giving feedback to the rest of the learners is similar to giving a warning or can happen as disciplinary action against poor behaviour (participant B, line 314). Burns (1998) states that the administrative process should be accountable, open and transparent. The majority of schools give feedback via the school principal as authoritative figure of the school (participant I, line 282); the principal keeps the identity of the learner confidential (participant G, line 97). In doing so “*it is almost as if the general discipline of the school is better for this period of time*” (participant B, line 94).

The negative impact of the DH in managing learner discipline is that some of the learners are afraid of the EL (participant A, line 240) because the perspective is that the EL has the mandate to expel the learner (participant K, line 200). Participant D (line 195) said that the learners appear tense during the DH. This is extremely unpleasant for the learners, because they know that they are in the wrong and because of the fact that their parents as well as the DC are present (participant J, line 42). One drastic decision made by the parents is to remove the child from the school before the DH takes place, to prevent any bad record to reflect on their child (participant K, line 235). In such a case the parent will enrol the learner in another school (participant B, line 112), even if it means to transfer the learner from an independent school to a public school (participant K, line 230). There was logic in a parents’ reaction to remove their child when he said “*this learner can’t be returned to these circumstances if he keeps on misbehaving, because it’s distracting and unfair to the other learners*”.

The last negative impact on the DH in the process is the reaction by “*overprotective parents*” according to participant A (line 116), and that they “*do weird things*” (participant A, line 111). The overprotective reaction was explained by participant D (90): “*Parents are very unhappy when you send the learner home*”, and “*parents realise if we end up having a DH, there will be a thorough record of the case*” according to participant L (line 29). According to participant G (line 172) the suspension of the learner is punishment for the parent and not for the learner. It was the belief of participant G (line 197 and 199) that few suspension cases are taken seriously by the learners (Republic of South Africa, 1996a). In the light of the above-mentioned negatives associated with DHs I agree with participant H (line 144) that “*the DBE needs to [also] look at other ways in which they can improve the discipline in schools*”.

4.4.3.3 Application and implication of sanctions

Suspension and recommendations for expulsion are the most common results of DHs. Section 9 of SASA (Republic of South Africa, 1996a) provides the framework for the SGB to manage learner discipline by means of suspending or expelling the learner. It was my observation that in some cases the DH recommended the expulsion of a learner rather than to support him or her to change his/her behaviour. Participant C (line 211) said: *“Our goal is to go for permanent expulsion”*, and *“I have to ask for permanent expulsion when we get to the DH”* (line 142). In the opinion of participant G (line 127) it appeared to be an accomplishment to expel the learner: *“We have expelled six learners ... we have to do something right to be able to do that.”* In terms of suspending a learner participant L (line 57) said: *“Immediately suspend the student temporarily until the DH”* and participant C (line 486) added that *“with the Khat incident we initially suspended the learners temporarily and then it was the DH”*. Squelch (2000b) mentions that an immediate suspension may be enforced to remove the danger and to protect the safety of others attending the school.

According to participant F (line 119) the sanction given during a DH has serious consequences for the learner's education. Participant G (line 171) said that suspension was experienced as punishment by the academically oriented learners. The outcome of the DH has a serious impact on the educational rights of learners; it is for this reason that Beckmann and Prinsloo (2013) elaborate on the importance of the CoC, which is also a key provision according to SASA (Republic of South Africa, 1996a) (See paragraph 4.4.2) to safeguard the interest of the learner. There have been cases where suspension had no effect on the learner to change behaviour. Participant G (line 183-185) said: *“For these learners to sit at home is fun ... suspension doesn't scare our learners ... it is a punishment for the parent, but not for the learner”*. This made me question the educational value of suspending the learner to change behaviour. It appears to be a situation of removing the problem from the school and passing it on to the parent.

The most common sanction recommended by the public schools was a five-day suspension depending on the seriousness of the transgression (participant A, line 187). Participant A (line 76) believed that a three-day suspension was satisfactory. His perspective on the five-day suspension was that it *“is a cooling off period”* (participant A, line 69). Participant L (line 102) from an independent school indicated that they would suspend a learner for from six months to a year depending on the seriousness of the transgression. To participant L (line 102) it appeared to be an unfair action to suspend a learner for so long in terms of Section 9 (1) of SASA (Republic of South Africa, 1996a), because suspension is a temporary removal from

school. Any form of suspension without a fair hearing is *ultra vires* as per the case *Phillips v Manser* (1999) 1 All SA 198 (SE). In this case it was also pointed out that the school in question did not have a code of conduct but that the process was nevertheless fair. There is value in suspending the learner, according to participant C (line 529): “*This solved our smoking problem, they (the learners) don’t smoke at school anymore.*”

An important step in the disciplinary process for participant A (line 66) is the five-day notice period before the DH. The EL needs to keep in mind that the DH may not be set in a period shorter than five days after the incident (participant A, line 65 and participant G, line 110). Day one of the notice period starts the first day after the incident (participant C, line 89). The reason for this period of time is unknown (participant A, line 67 and 70); it is probably used to prepare for the DH, or a cooling down period for the learner (field note participant A, line 5 and participant A, line 68). During these five days the EL has time to gather evidence, accumulate statements from witnesses and acquire and prepare all the documentation necessary for the DH (participant C, line 475). Participant A (line 77) was of the opinion that three days should be enough to arrange the DH, whereas participant C (line 477) and participant J (line 191) felt that the DH should be immediate in a serious transgression case, for example substance abuse.

In public schools the DH sanction has to be recommended to the DBE before implementation is accepted. This is to increase the fairness of the decision made by the DC. Participant B (line 198) said: “*The department was not satisfied with the outcome of the case and it had to be redone*”. In the case of *De Kock v HOD of the Department of Education in the Western Cape, the Governing Body of the High School Overberg and the Minister of Education* (case 12533/98) the principal acted as EL and DC during the same case, which is unlawful and unfair. Participant K (line 17) with years’ experience in public schools said the following about the challenge of recommending the DH to DBE: “*You can’t be certain that the learner will be expelled, it is highly unlikely that the chairperson ... and the DBE will allow it*”. According to participant K (line 12-14) the process of expelling a learner in a public school is an impossible task, but it is much easier in an independent school. According to participant K (line 25) the independent disciplinary system does not tolerate what the public schools does. Participant K (line 191) believed that “*the teeth of a DC in a public school are a lot less sharp than those at a private (independent) school*”. He also said in line 11 “*in the public school I didn’t get the same backing*.” There is no monitoring body that the DC of the independent school has to answer to; “*there will be a chairperson and he is the only one who needs to sign and confirm the expulsion and then that learner will be removed*” (participant K, line 26). This

places a greater responsibility on the DC in independent schools to act lawfully and follow the correct procedures (participant K, line 33).

4.4.3.4 Corrective and restorative actions

The aim of the DH is to change the behaviour of the learner in the process of managing learner discipline at school. In my field note of participant B (line 20) I noted that to manage learner discipline is to relate knowledge of the law to an educational value to act in the best interest of the learner as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b). Participant C (line 402) said in terms of the DH *“we are not a law system,”* and that *“emotions still play a role, because we look at things from a pedagogical perspective”* (line 311). An example of the balancing of the legal prescripts regarding DHs and the rights of the child was given by participant E (line 67): *“If a learner is drinking at school, which is a serious offence, we must give him a chance by making him aware of the seriousness of his offence”*. According to participant E (line 48) the learner should be given a second chance, thereby making him or her aware of the transgression. Participant G (line 50) said: *Every learner deserves a second opportunity and can't be judged on past behaviour*. According to participant B (field note line 11) the educational opinion may be overruled by the letter of the law, resulting in that the learner has no second chance.

The participants discussed alternative discipline techniques in an attempt to give learners a second chance and to manage discipline from a pedagogical perspective. It is important that in the process of managing learner discipline, the learner should know what is wrong and what is right (participant J, line 255). Participant G (line 227) had a very unique alternative to supporting learners who used illegal substances: *“Somebody smoking weed (marijuana) for the first time ... must do research on Google (Internet search engine)... and has to do a presentation to the learners, a whole essay about ... drug abuse”*. According to participant G (line 224) the EL can help and assist the learner with the problem, but the learner has to be truthful from the beginning. Participant G (line 205) tried his level best to support the learners in serious transgression cases: *“We take our learners to Leeukop Prison once a year to show them what a prison looks like on the inside; so if you continue with your unacceptable conduct that is where you will end up eventually”*. In one of the serious cases discussed by participant C (line 297) she said: *“In this criminal case they (the learners) got 200 hours of community service where they had to work at the police station”*.

The aim of the DH is to manage learner discipline fairly, as well as to correct and restore the behaviour of the learner. It is clear that the DH should exert an influence on future educational change (Archer, 1994). According to participant B (line 308) the DH has replaced corporal

punishment and the EL has to “*learn new methods to handle things*” (participant D, line 299). The perspective of participant B (line 84) on the role of the DH was that “*it is an opportunity we have ... to guide the learner and to help*”. The learner should take responsibility for his/her actions (field note participant G, line 8) and should decide to change (participant G, line 213). The comment of participant H (line 47) has so much meaning: “*Correction without direction is not going to help.*” According to participant G (line 4) the learner needs to realise that the DH is not about punishment. “*The whole idea is to educate ... the learner*” (participant E, line 5) to become a responsible adult in the future (participant E, line 6; participant L, line 114, participant J, line 101).

The last option the DC has as sanction is to suspend or expel the learner after all possibilities to help have been exhausted. A decision to expel the learner implies “*the end of the road*” at the school (participant C, line 303). It was important for participant C (line 303) as well as for participant I (line 42) to keep the learner in the school and to help the learner: “*My goal is to keep the learner in ... school.*” According to participant J (line 123) the problem will continue in the next school, because no attempt is made to rectify the behaviour of the learner. In some cases it was beneficial for learners to be enrolled in a new school, because they got a chance to start fresh (participant K, line 229). The EL has the responsibility to make contact with the previous school in assisting the learner “*to cross that bridge*” (participant B, line 117-118).

A corrective and restorative action to discipline learners implies changing the direction of the learner. According to participant I (line 53) the DH was fair and educationally correct when her decision regarding the sanction was changed from what she had in mind before the DH. Participant J (line 176) said it is important to look at the circumstances of the learner and apply the needed compassion. According to participant K (line 233) it is to go the extra mile for the benefit of the learner. The goal of the disciplinary process should be to prevent the learner from ending up in a DH (field note participant C, line 17). Participant K (line 185) said: “*When you get to a DH, you have already come a long way on a downward path of disciplinary actions.*” It seems that some schools implement the disciplinary process and DH only in reaction to a transgression and not as a process to build the learner as identified by participant K (line 185) or participant J (line 176).

In terms of Circular 74 and General Notice of 2001 (GDE, 2007) the DBE must be informed regarding the suspension and expulsion of learners for serious transgressions. This is not only to regulate the fairness and objectivity of the DH, but also to support the DBE during the appeal process. The internal support service of the DBE should use the knowledge of the DH to give additional support to the learner. One such program to support the learner is the National

Institute for Crime Prevention and Reintegration of Offenders (NICRO) program for learners with substance abuse or with anger management challenges (participant J, line 215; participant I, line 84). NICRO provides services for adults and children in conflict with the law (NICRO, 2015). The involvement of NICRO supports schools to get a new perspective of the learner and the reason why the learner transgressed (participant B, line 233). Participant A (line 84) said that they changed their policy at school to support parents in rehabilitating the learner struggling with substance abuse; parents are advised to contact the South African National Council on Alcoholism and Drug Dependence (SANCA) (participant J, line 198) immediately. Participant L (line 150-153) found that referring the learner early enough for professional support decreased their number of DHs.

The EL as pedagogue has a central role to play in the restorative process of the learner (participant C, line 461). It requires of the EL to support the learner to change his/her attitude and to show remorse for his/her actions (participant J, line 148; participant B, line 357). The IDH is a very helpful mechanism to build a partnership with the parent to help the learner in this process (participant K, line 202; participant D, line 77) (See paragraph 4.4.1 of this chapter). During the IDH the EL tries to establish the circumstances that the school is unaware of (participant C, line 287), and in some case the EL changed the recommended sanction with this knowledge of the IDH (participant I, line 46). Unfortunately not all cases are successful in correcting the learner's behaviour according to participant I (line 185); some learners are past the point of rehabilitation and nothing can be done for them.

Summary

There were mixed responses from the participants in the way they use DHs to manage learner discipline. Some schools use the DH to create fear among learners, threatening them with expulsion. However, there were schools that succeeded in using the DH to discover the root of the learner's problem and to correct the behaviour from a pedagogical perspective.

The effectiveness of suspending and expelling the learner needs to be critically reviewed. It was disconcerting to discover that in some cases the learner transgresses just to stay at home: *"For these learners to sit at home is fun ... suspension doesn't scare our learners ... it is a punishment for the parent, but not for the learner"* (participant G, line 183-185). This made me question the educational value of this sanction to discipline the learner. It appears that suspending and expelling the learner is removing the problem from the school rather than solving it.

4.4.4 The role of stakeholders in ensuring due process

This pattern discusses the role of the SGB, DC, lawyers and EL to ensure due process when managing learner discipline.

4.4.4.1 Role and function of SGB

In terms of Section 8 of SASA (Republic of South Africa, 1996a) the SGB has to adopt a CoC to manage learner discipline in school. Paragraph 4.4.2 of this chapter recommends that the SGB should consult as many stakeholders as possible before adopting the CoC and it should be revised on a regular basis. The consultation should include the parents in the management of the school in collaboration with the SMT (Rossouw, 2001). According to participant A (line 296) the school community is a very unique entity, which is driven on its own. The SGB as a body in which parents participate has certain managerial tasks to execute; one of these tasks is to maintain learner discipline, but also to make decisions regarding the dress code of the school, language policy and religious values (participant L, line 193-194). Participant H (line 93) identified that the documentation drawn up by the SGB should be in consultation with the DBE to improve the lawfulness of the document (See paragraph 4.4.5 of this chapter). An identified group of SGB members should be tasked to establish democratic principles and maintain due process when managing learner discipline. According to Section 30 of SASA (Republic of South Africa, 1996a) these members act as the DC conducting DHs to resolve learner transgression cases.

4.4.4.2 Role of DC in DH

A DH must be conducted by a DC to achieve fair decision-making; it requires an impartial body, according to Valente (1994). The DH has many stakeholders, for example SGB, teachers and parents, increasing the objective perspective (field note participant A, line 28). The DC consists of at least three people that include the chairman and two parent members of the SGB (participant A, line 33; participant I, line 30). Participant E (line 53) said the DC must *“have a balanced view looking at the policy and all issues around the person”*. The DC should, according to participant B (line 255) *“do everything within the limitations of the policy, because if this goes further we don’t want it to be judged on technical mistakes”*. It is important that the DC should be objective during decision-making, because certain transgressions must be handled by a DC (participant I, line 259). It was important for participant I (line 120) that the DC members should be very careful not to get distracted during the DH.

Participant C (line 107) suggested that a new DC should be appointed for each transgression case to remain neutral and objective. It is the role of the DC chairperson to explain the proceedings of the DH to inform the parents, accused learner and attending persons

appropriately. I identified common law principles applied by the DC, for example *audi alteram partem* during the DH (Van Staden and Alston, 2000). Participant A (line 224) said “*listen to everyone’s story to find the sequence of events*”. The DC should constantly be asking questions to the learner about what happened (participant B, line 133). Participant J (line 188) said that one needs to know as much as possible before a decision is made, so that the DC can make a well-informed decision (participant H, line 38). According to participant B (line 274) the DC has to look at the case from all angles and thoroughly discuss it before making the decision and giving sanction. Participant B (line 89) said that the DC needs to think like parents, and most importantly, act in accordance with correctional and educational principles regarding the learner (participant A, line 178).

The participants identified some challenges that they experienced in their time as EL with regard to the DC. The chairperson signs off the DH documentation in consultation with the other DC members to recommend suspension or expulsion (participant L, line 161; participant K, line 26). A big concern in public schools is that the DC decision is not final, because the sanction should be confirmed by the DBE (participant C, line 319). The DBE is the executive body making the final decision, for example if an expulsion is recommended by the DC (participant C, line 320). Participant B (line 205) said “*the department phoned the school and indicated that the school had to take the learner back.*” According to Cameron (2014) “*teachers should be able to rely on their school, school governing body and, most important of all, their department for support*”. This is helpful in cases that are very technical when decision-making is difficult (participant B, line 120), for example a suspension longer than five days (participant A, line 71). Participant B (line 107) highlighted that according to policy the process, DH and DBE evaluation has to be done within a certain time frame. According to participant A (line 104) and participant B (line 224) 90% of the process is prescribed by the DBE via General Notice 2591 of 2001 (GDE, 2007) (participant B, line 149) or circulars (participant I, line 145). Independent schools have councils as their highest authority and one council member acts as chairman of the DC, and therefore the decision of the DH is binding (participant K, line 55).

In the decision-making process the chairperson of the DC has to guide the DH to what the best interest of both parties is (the school and the learner) (participant J, line 144; AMCI, 2013) because it will influence every learner of the school (participant J, line 128). The participants focused intensely on the chairperson of the DC and that this person should be familiar with the law and DBE policies to make fair judgement (participant E, line 98). The DC with knowledge of the law has the advantage of “*seeing right through*” those trying to mislead the DH or lying about the facts of the case (participant B, line 189), or to anticipate what to do next (participant C, line 436). Participant A (line 196) warned that neither the chairperson nor the

DC should be constantly acting like a “hanging judge”. The DC performs a quasi-judicial function when investigating a learner transgression case and deciding on a suitable sanction. According to participant B (line 194) it is important to have a lawyer as a DC member, because this person has knowledge of the law and it contributes to the clinical aspect of the DH. Participant C (line 414) said the advantage of a lawyer DC member is that “*they know how hearings work.*” Not having a law background as DC is not always a disadvantage. Participant C (line 413) acknowledged that the DC consisting of ordinary people simply needs to follow the DH steps to make a decision. In line (line 420) she said that the DH would be educational for the learner if the DC is constituted by ordinary parents with no legal background. It was a concern for participant B (line 96) that the DC does not consist of educators, which takes away some of the educational value of the DH.

There is a change of chairperson every three years, according to participant D (line 187). Participant C (line 98) said “*we have been through this disciplinary cycle three times. I have had three different DC chairmen during the seven years that I have been here.*” In terms of Section 31 of SASA (Republic of South Africa, 1996a) the term of office for the SGB may not exceed three (3) years. This provision of Section 31 of SASA (Republic of South Africa, 1996a) has an impact on the continuity of the DC from one office term to the other; for example, participant C (line 565) said “*there is a new chairman with new ideas and new plans.*” The independent schools share their chairman between schools (participant K, line 93) to maintain a level of continuity in decision-making, but also to transfer knowledge when a new DC term starts.

4.4.4.3 Impact of lawyers in DH

According to Beckmann (2010) and Joubert (2008) the learner is allowed to be represented during the DH. In most cases the learner is represented by the parent, but there are cases where the parent decides that the learner may be represented by a lawyer. In complex misconduct cases learners may have legal representation, according to Squelch (2000b). The learner is entitled to legal representation according to Section 3 of PAJA (Republic of South Africa, 2000) and Section 9 of SASA (Republic of South Africa, 1996a) to ensure a fair hearing. This right of the learner is not appreciated by a large number of the participants; for example, participant A (line 131) said “*the cases with lawyers just cause trouble.*” He later added that the lawyers try to make a court hearing of the DH (line 154). The frustration for participant L (line 72) was that the lawyer would refer to all sorts of laws and regulations or to certain acts and regulations (participant C, line 534). This challenge of the EL’s ability to understand and show knowledge of the law is discussed in paragraph 4.4.2.

A bigger concern for participant C (line 442) was that the lawyer may victimise the learner during the hearing and require DH documentation (bundle) with index and page numbers (participant C, line 56). Participant D (line 219) referred to a case with a lawyer in which “*the chairman and a lawyer disagreed on the definition of what the school law says*”. The complication of cases by lawyers with their law jargon and analytical manner going through the DH prolongs the hearings (participant C, line 156). Participant C (line 53) said that she has experienced DHs of four-hour sessions running for eight evenings. The lawyer may delay the DH for the simplest of reasons, for example to find new evidence before proceeding with the hearing (participant C, line 54). The participants experienced that the lawyers were showing off and that they regarded the EL as inferior to the lawyers (field note participant A, line 11). The lawyers may intimidate the EL with all the legal terminology (participant L, line 81). Participant L (line 88) said “*I can’t operate on the same level as an attorney,*” and the perspective of participant D (line 127) was “*I sit there without any knowledge of the law and I am being hammered by an advocate*”. It was very disappointing to hear this, because the DH is not meant to be a forum to humiliate the EL.

The perspective of participant F (line 95) is that all cases are dealt with at school and no outsider is allowed to represent the learner. This action not to allow the learner to be represented by an outsider is subject to Section 3 of PAJA (Republic of South Africa, 2000) and Section 8 (6) of SASA (Republic of South Africa, 1996a). Schools sometimes restrict the learner unlawfully to be represented by a lawyer, due to the DC and EL having a lack of legal knowledge: “*We feel it is a different level*” (participant E, line 90). The EL does not understand what the lawyer is saying, which leaves them feeling emotional and upset (participant D, line 221). Participant D (line 49) expressed his frustration: “*I can’t think of the questions and answers quickly enough.*” Some of the challenges experienced by the EL include not to ask leading questions during the DH (participant D, line 456 and participant B, line 415), or to address only the lawyer and not the learner where the lawyer acts in the best interest of the learner (participant D, line 123). Participant D (line 48) utilised the support and advice of a colleague with law qualifications as initiative to manage the process fairly.

According to participant B (line 271) and participant A (line 118) the parents use a lawyer during the DH because they the process is unfair and they do not know what is going to happen. In some cases the parent is preventing the school to act in the best interest of the learner (participant I, line 163; participant H, line 112), which is prolonging the restorative process of the learner. The parents want to protect their child by all means possible (participant

D, line 37), “*then it’s legal wise² time*” and they call the lawyer (participant A, line 129). The concern for participant B (line 201) was that the lawyer is able to move the DH in a totally different direction, coming to the conclusion that the learner is not guilty. Participant L (line 125) said that when the learner is represented by a lawyer they postpone the DH until the school has a legal advisor to attend the DH to represent the school; this again confirms the necessity to train and educate the EL in the law as discussed in paragraph 4.4.2.

4.4.4.4 EL delegated authority

The principal has the authority to appoint the EL according to Section 4.1 in Chapter A of PAM (Republic of South Africa, 1998b) because the principal must assist in overseeing learner discipline. Participant C (line 464) and participant J (line 155) made it clear that the principal delegated this role as EL to them. Participant D (line 139) added “*I didn’t sign up for it, it was assigned to me*”. Item 2 (1) of schedule 7 of the LRA (Republic of South Africa, 1995) describes an unfair labour practice as any unfair act or omission that arises between an employer and employee. It is a crucial factor for the success of the EL role that the person has to agree to accept the role. The EL role is complex as it is, but to be forced to shoulder this responsibility may have an adverse effect on how the EL experiences the role. Participant I (line 134) said that she wanted to become an EL and she wanted to make a difference in the school via this role.

The principal remains a key responsible person in all functions of the school, and it is understandable that the principal has to delegate these responsibilities in terms of regulation 4 (3) (a) of PAM (Republic of South Africa, 2006). The principal has to use the following credentials before appointing the EL: firstly a person with knowledge (field note participant D, line 15), secondly one with managerial skills (participant C, line 465) and lastly one that is learner-centred (participant L, line 107). Participant C (line 448) recommended that the principal appoint more than one EL to alternate between cases and share the workload. The requirement to manage discipline fairly is emphasised in this section and is elaborated on in paragraph 4.4.6.

² Legal wise is the name of a legal insurance policy

Summary

This part of the chapter focuses on the SGB, DC, lawyers and EL as important role players to ensure due process. The participants focused on the role of the DC and in particular on the chairperson. It was highlighted that the chairperson should be familiar with the law and DBE policies to make a fair decision during the DH (participant E, line 98). Overall the training of the DC in terms of law and policy regarding managing learner discipline was underscored, because the DC exercises quasi-judicial powers according to Beckmann and Prinsloo (2013). Improving the legal knowledge of these role players will, according to participant B (line 194), improve the fairness of the process and ensure due process. The biggest challenge to overcome is the change of DC members every three years because so much of the knowledge and experience has to be rebuilt every three years.

The general experience of the participants regarding the lawyers representing the learner was one of frustration and negativity. I am of the opinion that the ELs may experience this as less unpleasant if they are trained in the law and use the presence of the lawyer to increase the fairness of the process.

4.4.5 Managing a fair disciplinary process and disciplinary hearing

In this pattern of the findings the management of a fair disciplinary process is explained through the principles of fairness and due process. This pattern looks at the role of the witness, evidence and documentation, as well as an appeal process influencing a fair process and DH.

4.4.5.1 Principle of fairness in process

The first principle of a fair process is to follow the law and policies of the school (participant I, line 92); it has to be followed “*come hell or high water*” (participant A, line 135). Beckmann and Prinsloo (2013) point out that procedural due process means that fair procedures must be followed when a misconduct case is investigated. Procedural fairness is protected by the Constitution (Republic of South Africa, 1996b) and explained in Section 3 of PAJA (Republic of South Africa, 2000). The importance and use of policy are discussed in paragraph 4.4.2 of this dissertation.

It was established that the DC should not force or rush the DH proceedings (participant 5, line 288). The DH should create a platform where all parties are allowed to state their side of the story (participant J, line 15; participant E, line 26). This principle to listen to both sides of the story, reiterated by almost all participants, is a common law principle, namely *audi alteram*

partem (Van Staden and Alston, 2000). Participant A (line 223) said *“with any story there’s my side, your side and the truth”*. As EL it is important to give the learners a chance to explain themselves according to participant L (line 96). The communication between EL, learner and parent is an important principal for a fair process, according to participant A (line 221): *“I have to talk to each learner individually to get the story,”* or *“This is what is going to happen with you”* (participant A, line 61). The school has to guide the parents through the process and allow them to have the last say (participant A, line 347). Participant G (line 52) said that the learner and parent need to walk out of the DH feeling that they were treated fairly.

The role of the DC during the DH is to improve the fairness of the process. According to participant E (line 45) the DC, parents and EL must reach agreement on what should be done to discipline the learner. The more the people that are part of the process, the more ideas and approaches there are to decide what to do (participant F, line 74). There is also opportunity to cross-examine the learner and everyone should have a fair chance to ask questions (participant B, line 170). The various perspectives of the role players attending the DH create an objective view for the chairperson to make a fair decision (participant D, line 115). This action to rely on more role players to make a fair decision could, under certain circumstances, support the principle of substantive fairness and procedural fairness as described by Beckmann and Prinsloo (2013).

An important principle for managing a fair process is that the EL has to distance him- or herself from the DH because the process is lengthy and the EL is too involved in the investigation (participant L, line 34; participant I, line 9). Participant I (line 10) said: *“I wouldn’t want colliding interests”* in the case and added that the EL *“can’t play a double role as investigating officer and accuser to promote objectivity and fairness”* (line 15). Independent schools appoint an independent institution that handles the DH on behalf of the EL (participant L, line 36), where the EL only observes during the DH (participant L, line 131). The DBE assessing the recommendations made by the DC helps ensure a fair hearing process for the public schools (participant I, line 12). The DBE will intervene in the best interest of the learner as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b); for example, they could allow a DH to be postponed for the learner to write an examination (participant C, line 488; participant G, line 60).

It was clear according to the participants, that managing learner discipline takes time, as well as a sense of accountability on the part of the EL (field note participant C, line 35). Participant I (line 34) and participant F (line 42) acknowledged that the ELs’ role during the disciplinary process is to ensure that fairness prevails. The principles the EL has to respect and maintain

are to be consistent in all cases and that fairness is the highest priority (participant L, 159). Participant A (line 229) said to be fair you need to *“find out what happened, because you have to stay as close as possible to the truth”* and to *“forget my opinion ... otherwise he won’t have a fair DH”* (participant G, line 85). According to participant B (line 212) there are certain schools that decide that the learner is guilty before having had a fair DH: *“I don’t know if that is really the goal of a DH”*. Participant G (line 48) said *“it doesn’t mean that I can judge a student before his DH, even though I don’t like him”*.

One common factor resonating from the different patterns is the legal knowledge of the EL. Participant D (line 147) said that a *“lack of law knowledge makes me feel that it’s not always fair,”* as well as *“I get restricted through procedures and systems as a result of a lack of knowledge”* (line 151). It is clear that the EL’s knowledge of the law has a direct impact on the fairness of the process.

4.4.5.2 Ensuring due process

Procedural protection for learners is an important component of fairness (Cameron, 2014). Participant A (line 248) said due process *“is like a list of things that should and should not be done”*. Participant A (line 247) said that his understanding of due process was *“the fairness of steps regarding what needs to be achieved”*. It is not only to follow the correct actions, but also that everyone should understand what is going on (field note participant J, line 17). Beckmann *et al.* (2010) and Joubert (2008) refer, among others, to the requirement that the learner must be well-informed. The EL should focus on an effective administrative process to ensure a fair process (participant K, line 36). A just administrative process requires that the parents and learner have seen the charge sheet before the DH (participant J, line 24), as well as that the DC has been informed (participant B, line 121). Participant J (line 24) said that the parents have to read through the charge sheet and complete the acknowledgement and send the tear-off strip back to school. This tear-off strip is used as evidence that the parents have been informed in due time.

In each case the parent has the primary responsibility and the EL is secondary in the process (participant J, line 202). It is extremely important to notify the parent in the case of temporarily suspending the learner (participant L, line 65). It is best to communicate with a letter to describe the case (participant L, line 95). Not keeping the parents informed about their child, especially in a misconduct case, can cause them to over-react (participant I, line 164). According to participant A (line 265) due process is to give the learner a fair chance to speak, *“no matter what the learner did.”* In terms of due process, according to participant L (line 188), the EL has to survey the whole process with the parent and no decision in the DH can be

made without the presence of the parent (participant E, line 74). In General Notice 2591 (GDE, 2007) paragraph 5 (7) informs the DC that the DH may continue if the accused learner (or the parent) fails to appear under fair and reasonable circumstance and due notice was given. This contradiction (as participant E (line 74) experiences it and the DH process and what is stated in General Notice 2591 (GDE, 2007)) is a classic example that the EL is ill-informed about disciplinary procedures.

The DC has a very important role as does the EL to ensure due process and hearing (See paragraph 4.4.4). Participant J (line 88) said that the case should be presented clearly to the DC to show them the sequence of events (participant A, line 244). Due process for participant J (field note line 26) is that the DC should have as much as possible information before making a decision, but not until the DH. Participant B (line 122) said *“when the DC gather they still don’t know ... what transgression the learner is guilty of”* for the DC to make an objective and fair decision. In very complex cases, participant I (line 72) said, the DC does not give sanction the night of the DH; they withhold the sanction for two days. According to participant D (line 53) they also give sanction the next day to have more clarity on what they should do, which *“makes it easier for me as a person.”*

Participant K (line 126) pointed out that language during the DH is a concern at times for the learner; *“we are an Afrikaans and English school and ... an Afrikaans witness doesn’t feel comfortable to testify in English.”* Participant K (line 126) recommended to overcome this challenge of a language barrier *“using an interpreter to ensure that everybody understands everything that is said.”* During one of the interviews participant I (field note, line 29) said that talking to the parents in their mother tongue increases the fairness of the process. Participant J (field note, line 25) said that the DH should adjust to the different cultures present in the school to understand how to explain the process to them. In terms of the Bill of Rights and the founding values enshrined in the Constitution (Republic of South Africa, 1996b) any person in the school has the right to understand the allegations against him or her, and be given a fair opportunity to respond. In paragraph 4.4.3 of this chapter the impact of the DH on changing learner behaviour is discussed. It was important to participant K (line 192) that the identity of the learner is protected and never to mention the learner’s name. According to participant F (line 129) and participant E (line 121) to communicate the outcome of the DH is to show the teachers and learners that the school is managing discipline fairly. In line with Section 8 (2) of the Constitution (Republic of South Africa, 1996b) this action to report the outcome of the DH must respect and protect the rights of the learner.

Procedurally due process implies that fair procedures must be followed when a breach of a school rule is investigated and corrective measures are imposed (Beckmann & Prinsloo, 2013). Disciplinary procedures must keep within legal boundaries (participant J, line 130). According to participant H (line 177) the sanction decided on to correct the transgression made by the learner must be lawful. Participant C (line 68) explained that they collaborate with lawyers to improve the effectiveness and manageability of the process, and use their knowledge to ensure due process. This action taken by participant C (line 68) to utilise the knowledge and experience of lawyers is a step in the right direction, in view of the ELs having limited knowledge of the law. Participant A (line 276) was frustrated with the DBE, because the disciplinary process prescribed was difficult to understand, “*but I think we are on the right path*” Participant B (line 326) wanted to see more active involvement of DBE in the DH, which may reduce the number of DH decisions overturned, and to assist the EL and DC. The school of participant I (line 101) is on the border of two provinces and she discovered that there are double standards between these two provinces in the way they interpret due process.

Ultimately due process should be of educational value (participant A, line 269). The EL and DC have to be able to give the learner a reason for his or her poor behaviour, which makes it substantially and procedurally fair (Beckmann & Prinsloo, 2013). Participant J (line 85) said that they want to keep the EL as an independent for the duration of the process to increase a fair investigation. Some schools indicated that they have a disciplinary head supporting the EL in his or her role. According to participant J (line 86) the EL cannot be the investigator and prosecutor in the same case. This double role of the EL is discussed in paragraph 4.4.3; it may surely have a negative impact on due process.

4.4.5.3 Role of witness in process

The DC needs as much as possible information regarding the incident or transgression to make a fair decision and manage learner discipline fairly. According to Squelch (2000b) the witness in a case will provide clarification of the incident and increase the objective view of the case. The witness definitely plays an important role in the outcome of the DH as in the case of *De Kock v The Head of Department of the Department of Education, Province of the Western Cape*, because the witness will expose the alleged lying of the accused learner (participant H, line 63). According to participant B (line 279) the DC will only request the contribution of the witness when the accused learner pleads not guilty to the charges laid against him or her. According to Joubert (2008) it is the right of the DC and EL to cross-question the accused learner or witness produced by the accused learner for defence. The practice to call a witness only after the accused learner has pleaded not guilty or to cross-question witness affirms the quasi-judicial functions of the DH (See paragraph 4.4.1).

According to participant C (line 169) there is a chance that the school can lose the DH when there is no witness available willing to testify. It is for this reason that the EL has to “gather evidence from the beginning of the case” (participant C, line 171). It was further underscored that the witness must be truthful and reliable: “I request them to talk the truth ... because they will testify in a DH” (participant C, line 171). In the case of *De Kock v The Head of Department of Education, Province of the Western Cape* the opinion of the DC was that De Kock was not a reliable witness. Participant C (line 316) said in attempt to get a truthful testimony “they (learners) will have to swear under oath that they are going to tell the truth”. Some schools rather use a teacher witness to rely on for a truthful testimony and professional opinion. Squelch (2000b) said that the witness should also not be coached or prompted by the EL on what to say to achieve a certain outcome. There were participants who indicated that some witnesses are afraid to testify, due to being intimidated before the DH (participant J, line 231; participant D, line 130). Another concern of participant J (line 235) was that the witness may give a false statement to protect friends or because of peer pressure.

4.4.5.4 Evidence in DH case

The role of the EL is to present evidence regarding the alleged misconduct of the learner in the DH. Joubert (2008) states that it is good practice to collect evidence and facts to determine whether or not there are sufficient grounds to proceed with a DH. According to participant A (line 310) the best way to “expose the truth” is to be prepared and have “correct and complete evidence”. Participant H (line 35) and participant E (line 135) said that if there is no evidence there is no case to present in the DH. According to the GDE (2007) disciplinary action may only be instituted against a learner when there is substantive evidence of misconduct.

The EL has to keep record from the moment the incident occurs (participant C, line 275). This supports the EL to access the learner record at any time (participant B, line 52), as well as to use it as aggravating evidence in a DH where it is appropriate (participant C, line 250 and 253). According to participant D (line 301) the record keeping system to manage learner discipline has been implemented only recently. Everything that is discussed and decided during the DH has to be recorded (participant C, line 208 and 246), which includes the name of the learner, DC, EL, date, time, place and sanction (participant A, line 102). Some schools make use of voice recorders during the DH and transcribe all audio clips afterwards, due to the volume of information (participant C, line 192).

The GDE (2007) guides the DC to evaluate and consider the evidence fairly before a decision is made. “*It is very important to show all evidence to the DC to make an informed decision*” (participant A, line 311). The DH documents have to be sent to the DBE for evaluation after a suspension or expulsion (participant C, line 192); this is done by the DBE to ensure a fair process has been followed, as well as that the learner has had a fair DH (participant J, line 254). Participant H (line 42) said that to charge the learner wrongfully and present the incorrect evidence will “work against the child.” Some challenges have been identified when gathering and presenting evidence, for example participant D (line 40) said it “*takes too much time*” to present evidence during the DH. Another challenge was to prove the learner was guilty beyond reasonable doubt³ (field note participant H, line 9). Participant K (line 38) said the EL has to prove that the evidence was tried and tested before the accused learner was found guilty. The participants were challenged by cases that required the assistance of the police, for example cases involving the abuse of Khat or marijuana (participant C, line 357). Participant C (line 357) said that she was uncertain if they should have a DH if the case was reported to the police, but she knew that they needed to do something (line 537). The challenges participants experienced are discussed in paragraph 4.4.6 of this chapter.

4.4.5.5 Documentation used in DH process

In the process of managing learner discipline the EL has to take note of the regulations for a fair disciplinary process as contemplated in Section 33 of the Constitution (Republic of South Africa, 1996b), which deals with administrative justice. Participant H (line 24) emphasised that there has to be documentation to support the charges laid against the learner. According to Beckmann *et al.* (2010) and Joubert (2008) due administrative process includes that the learner be informed of the charges against him or her before the DH takes place. The participants indicated that they implement the following to facilitate due disciplinary process:

1. A behavioural sheet to the parents to show exactly what the learner did (participant A, line 186).
2. A teacher’s report showing actions taken by the teacher during lesson time (participant L, line 5 - 6).
3. A detailed written warning that is kept on the learner’s file for a year (participant K, line 48).
4. The DC has to write down every complaint and transgression against the learner, where after the learner has to plead on every charge laid against him or her (participant B, line 129).

³ The participant should have referred to the burden to prove the misconduct on a balance of probabilities.

5. A logbook of all documents communicated between the school and DBE (participant G, line 66).

Managing learner discipline requires a well-structured process, which includes the investigation process, gathering evidence and witness, as well as writing the charge sheet (participant C, line 60 and 71). The charge sheet has to stipulate a detailed reason for the DH (participant A, line 175), which explains the rule transgressed by the learner (participant A, line 323). The standardisation of the documents (participant C, line 345), for example the charge sheet, is one of the initiatives to support the EL during the process (participant C, line 110). According to participant C (line 170) the charge sheet can determine the willingness of the learner to testify before the DH, as well as increase the fairness of the process. According to Schimmel *et al.* (2009) most of the threats and lawsuits against a school are due to unfair administrative decisions taken by the school and one of the critical areas is the charge sheet. It is for this reason that participant C (line 68) suggested to ask the support of lawyers when writing the charge sheet before it goes out the parents. Participant I (line 193) said that they have a standardised charge sheet that they use to reduce errors. It is understandable that participant D (line 214) said that the administrative process is very complex: *“There is a lot of paper work that has to be done.”*

4.4.5.6 Appeal process

The learner has the right to appeal against the decision made by the DC during the DH (Beckmann *et al.*, 2010; Joubert, 2008). Participant F (line 39) said that they had had cases in the past where the learners reported that they were treated unfairly, and the school gave them the right to appeal. In terms of Section 9 (4) of SASA (Republic of South Africa, 1996a) the parents may challenge the decision of the DC by means of an appeal. Participant F (line 40) felt that the learner has the right to approach the DBE if the school failed the learner during the DH. According to participant K (line 32) the appeal process of independent schools is managed by ISASA that will confirm whether the correct procedures have been followed. Participant K (line 56) said that an appeal process will always be available for a person involved in a DH, in an attempt to ensure a fair DH. The learner should be given the opportunity to appeal against the decision made by the DC, which increases the fairness of the DH outcome and proceedings (field note participant F, line 11).

Parents start asking questions when they are unhappy about the process (participant D, line 104) and then the appeal process starts. According to participant D (line 104) a complex situation arises when the parents think that the school is covering up their actions during the process or during certain transgression cases. Participant K (line 205) said *“parents ... blow*

everything out of proportion". According to participant D (line 106) "*most people expect what they see on television*". The expectations of the parents regarding the school and EL are unrealistic. Participant L (line 176) said that the parents regard the EL as the enemy rather than the person who wants to help the learner. According to participant G (line 138) one major concern is that the parent finds nothing wrong with the actions of their child, and then run to higher authority for support (participant D, line 104). It appears that the parents use the appeal process and not the fairness of the process of DH to achieve their subjective outcome.

In terms of Circular 74 and General Notice 2591 of 2001 (GDE, 2007) the DBE may change the outcome of the DH, but they must impose another sanction deemed appropriate in the best interest of the learner as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b). According to participant F (line 96) he had a bad experience with support from the DBE to resolve the appeal against a DH outcome: "*They (DBE) say they (learners) should go back to the DC to finalise the issue*". Participant B (line 218) recalled a case where the DC chairperson wrote a letter to the DBE to challenge the ruling of the DBE to decline the recommended expulsion of a learner. There was intense frustration among these participants due to the poor support they received from the DBE.

Summary

The EL needs to know what to do during the disciplinary process and how to do it to improve the due process of managing learner discipline (field note participant J, line 17). An important principle to manage a fair process is that the EL has to distance himself from the DH and remain as objective as possible throughout the process (participant L, line 34; participant I, line 9). The double role of the EL, to investigate and prosecute during the DH contributes to the complexity of the EL role.

Möller (2000) states that more knowledge and skills to act within due process are necessary to deal with learner discipline, and according to Beckmann and Prinsloo (2013) legal principles inherent in due process have been part of the management of learner discipline for a long time. The participants gave ample evidence that the implementation of due process accompanied with the EL's skill and knowledge leaves much to be desired. In this research it became clear that there is a need for an EL guide or manual, explaining the disciplinary process step by step. This may not have a meaningful impact, not only on the fair actions taken by future ELs, but also to ensure due process to discipline learners.

There is a greater need for more active involvement by the DBE earlier in the process according to participant B (line 326); this may reduce the number of DH decisions overturned and assist the EL and DC.

I was left with the question why the DBE changed an expulsion recommendation DH and sent the learner back to school? What is the trust relation between the DBE and DC or EL in making fair decisions and giving sanction that is restorative to the learner? I came to the conclusion that this might be a power struggle between the DC and DBE when managing learner discipline according to legal principles. I could then understand why the EL relies on the support of SAOU and FEDSAS during the process (See paragraph 4.4.2). The perspective of certain participants was that the DH is a case of winning and losing the battle to manage learner discipline when a case is overturned (participant C, line 169). The learner DH is not a case of winning or losing, but rather what is in the best interest of the learner and changing his or her the behaviour as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b).

4.4.6 The invidious position of ELs

This pattern focuses on the role and expectations of the EL, as well as on the participants' experiences of the process and challenges that they face. It concludes with the areas of caution identified regarding the EL role.

4.4.6.1 Role and expectations of the EL

The disciplinary system as managed in schools today by the SGB was developed shortly after 1994 and prescribed by the government (participant B, line 136); this corresponds with the preamble of SASA (Republic of South Africa, 1996a). Participant C (line 464) pointed out that there is policy available to instruct the principal to appoint anyone who works for the DBE as EL. It was important to participant D (line 57) that the EL has to follow the instructions of the principal and to "*get his (principal's) opinion on what he wants to do*" (See paragraph 4.4.4). According to participant C (line 557) the EL's role to manage learner discipline "is a new thing". Participant D (line 3) said that the role systematically developed over the years: "*I got more and more involved*". From the beginning the expectation was that the EL should handle each case objectively and fairly (participant K, line 71; field note participant A, line 13). It was important to participant F (line 3) to be fair and build good relations, because the disciplinary process involves parents and learners. Participant F (line 33) described the EL role as "*a mediator between the teachers, the learners and the school*" to manage the process. The role of the EL according to participant I (line 3) is best described as the accuser in DHs.

The CoC supports the EL to follow the procedures and not to “*get the technical things wrong*”, preventing the case being thrown out of the DH (participant C, line 39). According to participant C (line 289) the CoC is a very important document that the EL uses to manage learner discipline at school. The disciplinary process is described in the CoC to inform all stakeholders and to ensure a fair process (See paragraph 4.4.2 of this chapter). The first step in the process is to investigate the incident (participant A, line 231), and ask questions to those involved in the case (participant B, line 54). During the process of investigating the case, the EL has to listen to everyone’s account to find the sequence of events (participant A, line 224). This confirms that the EL manages the process according to common law principles, such as *audi alteram partem* (Squelch, 2000b). The strategy of participant H (line 66) was to call all the witnesses to his office, one by one and not all at the same time to get a true version of the incident, because “*they will cover each other’s backs*”. According to participant B (line 132) the EL has to guide the learner all the time and “*constantly needs to drag the answers out of the learner*”.

The incident is originally reported to the EL, who then needs to gather statements of what happened during the incident (participant A, line 217; participant K, line 77). Participant J (line 6) said “*I am the first and primary person that gets confronted with the problem*”. It is through the learner statements that the EL starts building the case (participant A, line 144; participant G, 249). When the EL takes a closer look at the case via the witnesses “*you will probably find more*” (participant C, 545). It is imperative that the EL gathers background knowledge on the case (participant A, line 349) before presenting the evidence in the DH (participant C, line 285). Paragraph 4.4.4 of this chapter discusses the importance of the DC being presented with trustworthy evidence to make a fair decision before sanctioning. According to participant A (line 183) a good EL must be able to do “*fancy footwork*”; this entails collecting the signed forms and formulating the charge sheet before the DH (participant B, line 300; participant G, line 42), or “*providing the DC with suggestions of which sanction would be suitable*” (participant A, line 184). I think that the EL exposes himself or herself when acting outside his/her jurisdiction (*ultra vires*) in his or her attempt to do “*fancy footwork*” (participant A, line 183).

The EL should immediately get the learner statements in writing: “*It is the first thing to do*” (participant C, line 8), because she recalled a case where certain facts “*popped into my mind*” during the DH (line 450), which she forgot to write down during the investigation. These written statements as well as the minutes of the DH are crucial documentation necessary during the DH (participant B, line 105). The written statements and minutes of the DH contribute to

administrative justice, increasing the fairness of the process (Squelch, 2000b), as discussed in paragraph 4.4.5 of this chapter.

The role of the EL is to inform the DC members and set the date and time for the DH (participant E, line 4; participant H, line 23). Some participants indicated that the chairperson of the DC will call the DC members, but the EL will make sure that all members are available for the DH (participant I, line 28). The EL has to read the charges against the learner during the DH (participant G, line 25) and then start to present evidence and call witnesses when the learner pleads innocent (participant A, line 143). At the end of the DH the EL is requested by the DC to recommend a sanction, according to participant L (line 25): *"I will apply the strictest sanction possible."* The message from the DC was that the DH is for serious transgressions and therefore the EL has to ask for the strictest possible sanction (participant D, line 16). It is advisable that the EL should have a sanction in mind from the start of the process (participant I, line 47; participant I, line 59). Participant D (line 19) said *"a DH is useless if you don't have the sanction in mind and you don't go for it"*.

The EL has to describe to the DC exactly what happened during the incident (participant G, line 47), because the EL has only a broad understanding of the case (field note participant H, line 13). According to participant K (line 96) and participant H (line 38) the EL states only the facts for the DC to make an informed and fair decision. The EL has to *"be able to paint a picture of what the witnesses saw, heard and did"* (participant A, line 226), to clarify to the DC what is true and correct (field note participant A, line 26). During the DH proceeding the EL has the opportunity to present mitigating or aggravating circumstances before the DC (field note participant C, line 19), which include behavioural records of past transgressions of the learner. Participant C (line 227) said *"I have to support the reason when I give aggravating or mitigating circumstances, because I know these learners ... and work with them"*.

The EL should not be narrow-minded when acting this role: *"You have to look at the bigger picture ... to understand what happened"* (participant A, line 348). Participant D (line 153) described it as a *"gut feeling"* when to do what, but it comes with experience. According to participant A (line 338) a good EL will develop this *"feeling"* when something is not right, which will help the EL to *"anticipate what to do"* during the process (participant C, line 266). The *"feeling"* that the participants talked about may have developed over the years working with learners (participant A, line 350). According to participant I (line 43) there may be an underlying reason for the learner's poor behaviour, *"then you get to the root of the ... problem for the first time."* The educational part of the EL's role is making the difference for the learner to change his or her behaviour (participant D, line 173).

Communicating with the parents and staff regarding the actions taken to support the learner remains an important part of the EL's role (field note participant D, line 8). The communication between parent and EL must begin from the moment of the incident, because the EL acts *in loco parentis*. According to participant A (line 185) the EL has to explain to the parents that the learner disobeyed the school rules, so that they understand the actions taken by the EL. Often the parents will respond saying that they did not know about their child's transgression or "*they have never thought of it*" (participant I, line 295). It remains important that the EL acts in the best interest of the learner and the school as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b), and solves conflict between parties (participant G, line 13; field note participant D, line 26).

In paragraph 4.4.2 of this chapter the EL's need for knowledge of the law is discussed, but according to participant C (field note line 21) the EL has to protect the learners, although the EL is not a person trained in law. Participant D (line 125) suggested that the school needs to make use of a lawyer during the DH to represent the school, because the lawyer understands the law terms and procedures. Some of the participants indicated that they will work closely with the principal and the disciplinary officer to manage this invidious role of EL. Participant I (line 13 and 19) as well as participant G (line 40) indicated that they had the luxury of a disciplinary officer, who offers support to the EL during the process of gathering evidence or giving the notice letter. It was important for participant K (line 80) that the EL should regularly discuss the various disciplinary cases with the principal, to decide collaboratively what action is most appropriate to take during the process (See paragraph 4.4.5). According to participant D (line 46) the disciplinary officer absorbs an incredible amount of pressure from the EL, helping the EL to do his or her work. Participant D (line 47) said that a second EL at a school helps to divide the workload and "*it becomes a bit easier, because you don't have to attend every DH*".

The view of participant C (line 393) in terms of the EL role was that the school needed a person to work hands-on with learner discipline. According to participant B (line 362) as soon as the EL stops giving attention to discipline "*a school and the teachers tend to lose control*". The role of the EL is to make a difference in terms of learner discipline at school (field note participant H, line 7). The EL has to distinguish between what is right and what is wrong, but should not allow emotional factors to influence his or her role (participant C, line 290 & 310). It was imperative for participant L (line 157) that the EL should be learner-friendly and apply positive discipline techniques when managing learner discipline. The EL role is important for

the learners and the EL should not fail the learners: *“They (learners) rely on us (ELs) to ensure that all learners are protected at school”* (participant F, line 34 and 44).

The EL should accept full responsibility for the role (participant D, line 150), although the role is relatively new to the management of learner discipline (participant C, line 386). It was the perspective of participant L (field note 21) and participant F (line 148) that future education will be more challenging and that the EL will play a more prominent role in managing learner discipline. One key attribute of the EL is to be well prepared and to manage a quick and fair process (participant K, line 41). According to participant K (line 42) the EL will be able to predict the outcome of the DH with well-planned evidence and thorough preparation.

Some participants seemed to be confused regarding what was expected of them as ELs (field note participant G, line 6). Participant C (line 211) said that the EL should do everything possible to support the learner and to prevent the learner from going to a DH. According to participant K (line 111) the EL is firstly an educator, but it may have *“repercussions for the school and the learner.”* Participant D (line 15) said that the EL cannot show too much compassion for the learner lest the DC think that the EL is not doing his or her work. Participant J (line 264) said that the EL role is *“a bit of a mystery”* because each school has its own way of doing things. At the end of the day each EL develops the role through own experience and is very isolated from others in the same role (field note participant G, line 16; participant H, line 77). Participant F (line 48) said that the role is not *“really a matter of training per se, but ... a matter of liking and loving what I do”*. The EL should be passionate about what he or she does (line 145). According to participant B (line 325) the EL plays a small role in the whole process, but this role is extremely important (participant J, line 121).

In the light of the discourse it is clear that the EL role is hard work and extremely complex (participant L, line 137). There are extremely difficult cases to manage, for example cases about illegal substances, where the EL has to report the case to the police department (participant H, line 26). The police want to know where the learner got the substance from, *“to enable them to stop the middleman”* (participant H, line 30). The EL has to be fully prepared in all cases, especially the cases involving the police department. Participant C (line 258) said the EL role entails more than what she initially thought it would be: *“I thought I was just going to sit there (DH).”* Participant D (line 44) described the EL’s role as *“emotionally draining”*. According to participant B (line 4) and participant D (line 42) the role of the EL has become more complex over time.

4.4.6.2 Experience as EL in process

The interviewed participants had work experience ranging from two to 15 years managing learner discipline; on average the participants had six years of experience as ELs (participant A, line 1; participant L, line 1). This corresponds with participant C (line 557) and participant D (line 150) who said that the EL role is still new to the school environment. Participant B (line 8 and 9) said that he had been involved in education for 27 years and that there had been an increase of disciplinary cases over the years. According to participant B (line 9) many of the transgression cases were not exposed in the old dispensation; in the era before 1994 the teachers managed learner discipline and there was not yet a DH process (field note participant B, line 7).

Participant I (line 198) said that she as EL became “*streetwise*” after a few years of going through the disciplinary process and attending a number of DHs. The EL will become more observant as time goes by and will “*easily identify*” what to do during the process (participant F, line 115). According to participant A (line 95) with years’ experience as EL “*now it’s like second nature, you know the drill.*” Participant H (line 3) discussed how his role grew over the years: “*I took the position of the disciplinary officer in 2012 ... and now I am the prosecutor within the DH*”. According to participant B (line 443) the EL does more than what is expected, because “*I do the whole process*” (participant C, line 447). Participant A (line 190) indicated that there were occasions where he had to guide the DC in what to do “*because the DC doesn’t always know what to do and what punishment to give the learner*”. Participant C (line 493) said “*I am not a law practitioner, I am a pedagogue*”; she added “*the process has to be followed without the two colliding*” (line 495). According to participant B (line 40) the EL as educator should help the learner, but also prosecute the learner during the DH. Participant I (line 142) said: “*We are caught in duality, you have the learner on the one hand and on the other hand the interest of the school in mind*”. The ELs appear to be confused about their role in terms of when they should discipline the learner and when to instruct them as expected from an educator.

4.4.6.3 Challenges experienced by the EL

In nearly each of the interviews the participants immediately started to talk extensively about the frustrations and challenges of the EL’s role (field note participant B, line 2). The interpretation and implementation of policy constitute the main challenge for the EL to manage learner discipline (participant D, line 223), as participant I (line 149) said: “*I struggled a lot ... following the policies*”. Participant F (line 77) said that he based his actions on what he had learned through experience, “*because I don’t have a policy*”. Understanding the policy was the

next challenge, because some of the participants were not fluent in English: *“I really struggled and I am quite good at reading English ... but I really struggled”* (participant I, line 150). According to participant C (line 444) *“the role of the EL isn’t very clear in those documents”*. Participant D (line 22) said that *“it’s difficult to know what is really expected of you”* and according to participant A (line 168) not knowing makes him feel incapable and angry.

In terms of the incident and the DH the participants were challenged with gathering sufficient evidence to support the case during the DH (participant K, line 160). Participant A (line 321) concurred and referred to a case where the principal instructed him to continue the process and charge the learner, although there was no evidence to support the case. This is in contradiction to due process as discussed in paragraph 4.4.5 of this chapter. The EL role is to gather DC members to adjudicate the case and the presented evidence in the DH, as discussed in the sub-sections above about the role of the EL. There are times when the DC members are not available for a DH set for a certain date (participant C, line 84) or *“there are just a handful of parents”* available or willing to take this responsibility of DC (participant A, line 122). According to participant F (line 76) very few of the parents are interested in serving as DC. The fairness of the process and the DH depends on a DC supporting making fair decisions and supporting the EL to manage learner discipline (See paragraph 4.4.4).

Participant D (line 18) said that he struggled to understand his DC chairperson: *“I have to try and figure him out”* because he is an advocate. Participant D (line 185 and 213) added that in every DH the DC’s approach is different, because the *“approach is different from one chairman to the next”*. The different DC members for each case result in the cases being dealt with differently (participant F, line 75 and 217). What confused participant D (line 8) was that *“the one (chairperson) wants facts, the other wants to have a conversation”*. Another challenge in terms of the DC is when they are distracted during the DH (participant I, line 121), because they do not agree about the case (participant E, line 83) or when they disagree with the EL regarding the appropriate sanction (participant F, line 101). The change of DC members for each DH and the difference in opinion among them contribute to the fairness of the process, which is in contradiction to paragraph 4.4.5 of this chapter discussing it as a challenge for the EL. The concern for participant G (line 238) was the following: *“I am not always sure that we make the right decisions and judgements and that our DH needs some guidance.”*

A major frustration expressed by the participants is how time-consuming the DHs can be; participant C (line 64 and 153) said that some DHs will conclude at *“01h10 in the morning”* and that one DH lasted nearly 40 hours in total. According to participant I (line 79) the duration of the DH is dependent on the seriousness of the transgression; *“some of the cases continue*

longer,” for example the increase in drug use among learners (participant J, line 142). When the DH continues for too long the DC becomes distracted from the real reason for the DH; “*it becomes a show off contest*” according to participant A (line 170). Participant C (line 157) said that these long DHs place the EL, learner and parents under severe stress. According to Cameron (2014) “*the important thing is that the process should be speedy and efficient*”. Other factors adding to lengthy DHs are the following:

1. Parents trying to justify the wrongdoing of the child (participant H, line 113).
2. Learners who do not want to co-operate and tell the truth (participant G, line 223).
3. Parents arriving an hour late for the DH (participant I, line 309).
4. Following the set guidelines for the DH proceedings (participant D, line 21).

These long DHs affect the personal life of the EL; according to participant C (line 154) her husband is worried about her coming home late in the evenings after the DHs, and the DC members as professional people are not paid to attend the DHs (participant B, line 319).

The language barrier in double medium schools was challenging to ELs, especially during the DH when neither the learner nor the parents understood what was going on (participant J, line 219). According to participant I (line 302) the parents struggle to understand the DC and EL because they are not literate. The ELs find it difficult to cross-examine the learner due to the learner struggling to understand because of the language barrier (participant G, line 221). Participant C (field note line 37) said that the EL should ask the questions differently until the learner understands. Apart from the fact that the learners do not understand or respond during the DH, witnesses fail to attend the DH (participant F, line 110) or change their statements during the DH (participant E, line 78). The reason for the witnesses not attending the DH vary between the DHs continuing late into the night (participant C, line 173), living far from school (participant G, line 29) or trying to take the side of their friends (participant H, line 69). The witness remains an important part of the EL’s presentation during the DH to give a full objective version of the incident (See paragraph 4.4.5). Participant A (line 316) said that the challenge is to let the DC and parents understand what really happened during the incident, and to achieve this the EL needs witnesses.

A large frustration for the participants was some parents not being involved in the learner’s life at school, especially during a disciplinary case (participant I, line 195). These uninvolved parents do not even show up at the DH in support of their child (participant G, line 135); some parents do not know what his or her role is and “*actually act unnaturally*” during the DH (participant I, line 168). According to participant L (line 177) the “*modern parent*” has the

tendency to challenge the disciplinary process of the school and has a “*safeguarding mania*” regarding the learner. The whole community wants the DH and the sanction to have “*wow value*” like cases in a court of law (field note participant A, line 23). The parents do not understand the complexity of the process (participant D, line 92 and 107), and when they start to panic they run to lawyers for assistance (participant A, line 82). The presence of lawyers in the DH is discussed in paragraph 4.4.4, where the EL is challenged with the “*legal technicality*” of the DH (participant K, line 220). One weakness of the parents according to participant A (line 307) is that they “*always try to twist the truth*” to protect their child and it remains challenging for the EL to point this out during the DH.

It was the perspective of participant A (line 262) that the DBE writes policies and procedures to manage learner discipline, but it “*doesn’t work with children every day*.” The EL needs more support from DBE during the process of managing learner discipline; according to participant B (line 339) the district offices do not have enough knowledge of the law to support the EL. Participant B (line 340) said that there is a “*huge gap*” between what DBE wants done and how the EL experiences the process and he was concerned about their level of legal knowledge competency. It is understandable why participant K (line 34) said that “*there is no guarantee that the DBE would back you (DC) when you have made a decision*”.

There are some learners who show no respect for the disciplinary process or the DH (participant H, line 163; participant G, line 165). Participant H (line 143) said that some learners are so arrogant that they apologise for their actions, but you will “*find them (learners) before a DC again for a similar transgression*.” Some of these learners make a mockery of a suspension (field note participant H, line 31). Participant G (183) said that “*suspension doesn’t scare our learners*”. The five-day suspension “*looks like a holiday to them*” (participant H, line 183). This was extremely upsetting to hear, because the role of the EL and the DH is to support the learners to correct their behaviour. Participant H (line 145) said that “*a lot of the learners would tell you about their rights,*” but at the same time they will be intruding on the rights of others. It was a great concern to participant H (line 149) that learners “*seemingly*” have more rights than the EL or teachers. According to Cameron (2014) “*ensuring fair process in disciplinary action against students does not mean that students are granted more rights than teachers or other students. The challenge is to develop a disciplinary procedure that ensures fairness to all parties.*”

Another major frustration identified by the participants was that teachers do not take responsibility for disciplining the learners in the classroom (participant B, line 158). Participant A (line 18) said: *“I always tell the teachers not to use me as their disciplinarian tool in their class”*. The role of the EL is becoming all the more difficult.

The EL role is emotionally draining (field note participant D, line 9) and it is a challenge to keep one’s emotions out of the case (field note participant C, line 23). Participant C (line 133 and 141) said that some DHs are “nerve-wracking and bad” and that he felt sorry to recommend sanction against a learner. Participant C (line 147) added that it was “*horrible*” to face the learners to inform them that they were going to be permanently expelled from the school. In the light of the above-mentioned cases where the learners show little respect for the EL and the process, participant A (line 169) said *“I have to be very careful ... not to burst out in rage.”* Participant A (line 158) concluded by saying that the EL has to control himself, because it gets very difficult sometimes.

4.4.6.4 Risk avoidance for the EL role

The participants shared areas of caution that the EL should be on the lookout for and prevent during his or her time serving as EL. Participant G (field note line 13) said that the EL should not become emotionally involved in the case, it was clear from participant D (field note line 9) that the EL role is emotionally draining. The EL should be careful not to accuse a learner wrongfully, according to participant A (line 233) as well as participant D (line 230), but above all not to fabricate evidence and facts (field note participant A, line 25) as it is unethical and unfair towards the learner. According to participant A (line 343) the EL cannot threaten the learner with something the EL may not do; this will only jeopardise the disciplinary process and the role of the EL. Participant A (line 233) said that the EL should realise that the DH is not a court of law, and warned that *“you can’t ... act like a hanging judge”* (line 196).

Summary

It is sometimes required from the EL to do *“fancy footwork”* (participant A, line 183). I think that the ELs expose themselves when acting outside their jurisdiction (*ultra vires*) in their attempt to do *“fancy footwork”*. The fact that the ELs gain experience and knowledge each year and the fact that the DC changes every three years may put the EL in the position to give the DC advice. The management of learner discipline will be easier and less stressful if there are two ELs at each school as participant D (line 47) said. The role of the EL is sometimes a *“mystery”* as participant J (line 264) said and it was clear after the interviews that the schools have their own ideas about what the role of the EL should be. There is a great need for ELs to connect

or network with other ELs in their area for support, because EL's develop their role through their own experiences and I noted that the ELs are very isolated in their role (field note participant G, line 16; participant H, line 77).

A significant challenge for the participants is the double role they have to play; participant C (line 493) said "*I am not a law practitioner, I am a pedagogue*". The ELs appear to be confused about their role in terms of when they should discipline the learner and when to guide them as expected from an educator. Another challenge is the change in DC members for each DH, as well as every three-year cycle when a new SGB is elected. The difference in opinion among DC members contributes to the fairness of the process and ensures a fair DH and should not be a challenge for the EL. The concern about the changing DC relates to what the new DC expects from the EL as participant G (line 238) said: "*I am not always sure that we make the right decisions and judgements and that our DH needs some guidance*".

Urgent attention has to be given to the support the DBE gives to the EL during the process. It appears that DBE officials, according to participant B (line 339), do not have sufficient knowledge of the law to support the EL. There is a "*huge gap*" between what DBE wants done and how the EL experiences the process, according to participant B (line 340). This implies that the competency level of the DBE to manage and adjudicate learner discipline cases fairly is an area for further research.

4.5 CONCLUSION

The experiences of educator evidence leaders in their role of managing learner discipline and disciplinary hearings are very complex and invidious. The role of the EL is foremost to investigate the incident, gather evidence and call witnesses to present the case before the DC in such a manner that a fair decision can be made to instruct the learner in changing his or her behaviour. This role requires that the EL should act as mediator between teachers, parents and the learners (participant I, line 3) to manage the process fairly. The support systems to manage the process at the disposal of the EL include the CoC of the school, and policy documents prescribed by the SGB and DBE. There is a dire need for the ELs to better understand these policies and to implement them in such a way that due process and fair practice are guaranteed.

The DH definitely has an impact on the management of learner discipline in general and it seems to change learner behaviour. The application of the DH in certain schools is to create fair among learners to prevent them to transgress, which is not the intended educational goal

of the DH. The DH discovers the root of the learner's problem that led to the transgression. Refined pedagogical skills are required from the EL to manage learner discipline. The stakeholders involved in the process of managing learner discipline are the SGB, DC and EL.

The DC has a pivotal role to play in making fair judgement during the DH, but there are concerns about the DC's competency exercising quasi-judicial powers. The role of the EL contributes to ensuring a fair disciplinary process, but the EL's knowledge of the law and the implementation of policy leave much to be desired. The main challenges the EL faces during the process and DH is the lack of legal knowledge and experience to manage due process. The experience of isolation in the role and the reality of acting a double role during the process constitute a real challenge for the members.

This chapter confirmed my working assumptions that schools apply the role of the EL and DH to manage learner discipline. It is clear that the EL role is extremely challenging and that very little is known about the practice of EL; ELs are challenged with implementing policy. My assumption that the DH has very limited effect on changing the behaviour of the transgressing learner was proved incorrect; the DH can restore and correct the learner's behaviour. Learner discipline is not solely managed by the EL, but other role players, for example the SGB, DC and lawyers add value to a fair process. I was correct in my assumption that ELs properly prepare for their role but that they lack knowledge of the law. I made the assumption that ELs discover what due process is through years of experience. I can confidently report that the role of the EL is central to managing learner discipline fairly and I believe that this role will grow in importance in years to come.

The next chapter will give an overview of this dissertation and highlights the findings and conclusion on this research topic.

CHAPTER 5: OVERVIEW, FINDINGS AND CONCLUSION

5.1 INTRODUCTION

In this final chapter I present an overview of my methods of conducting a literature review and collecting data from participants acting the role of EL to manage learner discipline on their experiences in this regard, as well as the conclusions drawn. My findings are presented to underscore the role of the EL in managing learner discipline and DHs fairly as well as the invidious position of the EL. I discuss the limitations of the research and how I endeavoured to overcome them. The research has contributed to the body of knowledge on the EL and a DH and should have a bearing on educational practices and policy debates. This research has revealed many opportunities for future research on this unique phenomenon.

5.2 OVERVIEW

The Evidence Leader's (EL's) role in managing learner discipline and DH is described in each of the chapters of this thesis. The chapters include a holistic view of the literature, the methodology followed and the findings regarding the educational phenomenon studied.

The first chapter introduces the study and outlines the role the EL plays in managing learner discipline and DHs and includes the objectives of each chapter. This chapter speculates that the EL's role is still new to the practice of managing learner discipline and that there are uncertainties about what is expected of the role players. Early on in the research it was clear that the EL must have a degree of legal knowledge to manage the process fairly. The change in the education climate in South Africa since the first democratic elections in 1994 has resulted in new policy and regulations on managing learner discipline in the light among others of SASA (Republic of South Africa, 1996a) implemented by various bodies, for example the SGB. The management of learner discipline remains a challenge in schools, but there is sufficient evidence that there is improvement in the EL's role and DHs.

I firstly had to understand where ELs fit in in the discipline process and what they experience in this process of managing a fair discipline process. I wanted to describe the phenomenon of the EL's role in managing learner discipline through the literature review of Chapter 2, clarifying the impact this role has to ensure due process. The fair management of learner discipline is guided by legal provisions among others in Section 33 of the Constitution (Republic of South Africa, 1996b) and the Bill of Rights (Republic of South Africa, 1996b) dealing with an unprejudiced process. Chapter 2 shows that the DH is considered a quasi-

judicial hearing to resolve learner transgressions and that the EL and DC perform quasi-judicial functions to investigate an alleged transgression (Beckmann & Prinsloo, 2013). The only document that I could discover that clearly describes the role of the EL is General Notice 2591 of 2001 (GDE, 2007) in terms of the EL's function during the DH.

The background in the literature review helped me to design the conceptual framework to better understand the complexity of the EL's position in the process of managing learner discipline (See Figure 3.1 in paragraph 3.4 in Chapter 3). The available literature on the EL's role enabled me to produce the theoretical framework around the legal principles and policies guiding the EL, the characteristics of the DH, due disciplinary process and lastly the training of the EL. Chapter 3 shows that a case study design was suitable methods to generate wide-ranging information regarding the role of the EL (Brundrett & Rhodes, 2014). Responses from interviewees in semi-structured interviews enabled me to generate descriptions of the EL's experiences regarding his or her role in managing learner discipline. The data was analysed by means of content analysis and discourse analysis which are explained in Chapter 3 (See Figure 3.2 in paragraph 3.6.4 regarding data crystallisation).

In Chapter 4 I analysed the data through the use of the ATLAS.ti software program. After this rigorous process it became evident that the role of the EL in managing learner discipline revolves around: 1) disciplinary hearings as mechanisms to manage learner discipline; 2) poor support systems that have an impact on the management of discipline; 3) disciplinary hearings changing learner behaviour; 4) the role of stakeholders in ensuring due process; 5) managing a fair disciplinary process and hearing, and 6) the invidious role of ELs.

In this fifth chapter it becomes evident that the role of the EL is an irreplaceable link in managing a due disciplinary process although ELs are not trained for this role. The theoretical understanding of the role of the EL is not in line with the reality experienced by the participants in this research.

5.3 FINDINGS

I based my findings on what the participants said during the interviews by implementing constructivist theory (Schwandt, 1994) and measuring it against my literature review. I tried to give a trustworthy perspective on the participants' experiences in their roles as ELs.

In the process of managing learner discipline the DH is the most prominent mechanism to achieve this goal together with the role of the EL. The DHs are obligated to follow the

requirements of the law including due process, due to the seriousness of the misconduct in which assault, theft and substance abuse have the highest incidence. It is evident that some schools manage their DH like a court of law with the intent to expel the learner. There is no educational value in expelling the learner with no corrective purpose or in transferring the “problem” to another school. Such decisions by a DH can be characterised as punitive and not restorative. The IDH is the initiative as an alternative mechanism to succeed the DH in an attempt to increase the transparency of the disciplinary process and to start the restorative process earlier. The IDH is a step in the right direction in supporting the EL to manage the process fairly and with more educational value. In some cases the IDH has become a miniature DH, where the EL and principal put themselves at risk by acting outside their legal powers (*ultra vires*). Unfortunately the IDH is also abused by certain ELs to reduce the number of DHs in an attempt not to be confronted by the complexity of a quasi-judicial DH (Beckmann & Prinsloo, 2013).

ELs primarily manage learner discipline from the knowledge they have gained through years of experience in this role. It is clear that the EL is left in the dark regarding the implications of the role in terms of the support they receive from the school and DBE. The ELs rely on their intuition or “*gut feeling*” (participant A, line 337) to act fairly during the process and this “*gut feeling*” is not measured against prescribed policy or lawful actions. I am not convinced that the participants are able to distinguish between procedurally due process and substantively fair process (Beckmann & Prinsloo, 2013), due to their lack of legal knowledge. According to Cameron (2014) “*the disciplinary process should be imbued with procedural fairness and wise, enlightened and efficient departmental support should be given*”. The DBE in collaboration with the SMT of the school urgently has to train the ELs to implement prescribed policy and regulations correctly, and to judge their actions against these policies and regulations. There is a “*huge gap*” (participant B, line 340) between what the DBE prescribes regarding the management of learner discipline and what the ELs experience at ground level. The support of the DBE should be much more visible in schools to support the ELs in managing learner discipline, in particular during the DHs.

It is clear that there is a dire need for more educational support during the disciplinary process to correct learner behaviour. I noted that some participants deviate from the prescribed process to help the learners in changing their behaviour before the DH. It appears that some ELs guide the learners through a series of corrective actions before the DH as mitigating factors during the DH. It seems to be beneficial to appoint an educator as EL when managing learner discipline (participant C, line 466), due to an educator having more pedagogical skills to manage the situation (participant K, line 131). I gained the impression that the ELs are

caught between following the prescribed policy and acting in the best interest of the learner measured against their professional opinion and experience. Unfortunately certain schools use DHs to create fear among learners to keep them in line with the school rules. According to participant D (line 252), “*the DH is nothing less than a replacement for corporal punishment, because learners come to a DH in fear*”. The intent of the DH is not to punish the learner nor to scare the learner off, which is a direct violation of Section 10 of SASA (Republic of South Africa, 1996a). It appears that suspending a learner creates more challenges for the ELs than addressing the issue to change the learner’s behaviour. Sometimes learners have a nonchalant attitude to this sanction and indirectly make a mockery of being suspended. The DC, EL and DBE have to reassess the suspension of learners critically and find functional alternatives to change the accused learner’s behaviour.

The DC is one of the most influential role players in managing learner discipline in partnership with the EL. There is a general concern about the legal knowledge of the DC and the understanding of DH proceedings. The EL provides guidance and advice to the DC in certain cases, because parents are elected as SGB for a three-year term and know nothing about DHs. The DC exercises quasi-judicial powers during the DH (Beckmann & Prinsloo, 2013), which necessitates the DC to be trained accordingly.

The second important role player is the DBE as discussed in the preceding paragraph. More proactive involvement by the DBE is urgently needed to support the role of the EL in a DH, which may result in reducing the number of DHs by the DBE (participant B, line 326). The most controversial role player is the lawyer representing the learner during the DH (in instances where a lawyer is present). The right of learners to have legal representation is in some cases overlooked or opposed, due to the ELs and DC lacking legal knowledge and its application. If the ELs and DC were trained in the law they might find that the lawyers representing the learners increase the fairness of the process, and act in the best interest of the learner (Squelch, 2000b).

A big concern is the low level of legal knowledge of the ELs (Schimmel & Militello, 2007), which should be the platform from which the EL manages a fair process. The ELs showed some knowledge of common law, for example *audi alteram partem* and *in loco parentis*, as well as of SASA (Republic of South Africa, 1996a). Their knowledge of due process has been developed through years of trial and error and is not based on prior legal knowledge. There are a number of regulations and documents available to improve the fairness of the process of which the ELs have no knowledge, for example NEPA (Republic of South Africa, 1996c), PAJA (Republic of South Africa, 2000) and case law (See paragraph 2.5 in Chapter 2). An

important principle in managing a fair process is that the EL has to remain neutral and objective from the moment of the incident until a sanction is imposed by the DH. One of the main challenges for the ELs is to distance themselves from the learner during the process. The expectation of the EL's role is to investigate the case, gather evidence and summon witnesses and finally to prosecute the learner during the DH. The ELs are challenged with the double role of acting as investigating officer, accuser and educator at the same time during the process. The training of ELs should not focus on the knowledge of the law and due process only, but also maintain a balance between the contradictory roles of the EL.

The ELs are confronted with very complex challenges in the process of managing learner discipline. The double role expected from ELs as discussed in the previous paragraph may force the ELs to act outside their jurisdiction (*ultra vires*) in an attempt to manage the process, support the learner and guide the DC. The ELs appear to be isolated in their role and have nowhere to turn to for help. The principal preferably has to appoint two ELs, due to the complexity of the role, the workload associated, but also to network and share experience with each other and to make succession possible.

A major challenge for the EL is the role of the DC, in terms of how the DC views discipline management and the change of members every three years. The change of DC for each DH and their seemingly different views in managing learner discipline could be a challenge for the EL, because it contributes to due process. The DC clearly is important in the process of learner discipline as the EL in terms of making fair decisions that are in the best interest of the learner and the rest of the school (AMCI, 2013). The collaborative roles of the EL and DC contribute to due process in the light of investigating the case and making a fair decision in the interest of the learner (AMCI, 2013). The training of the DC is a high priority in managing due process. The challenge is to transfer the invested knowledge and skill from the one DC to the next as they hand over their responsibilities.

5.4 CONCLUSION ABOUT WORKING ASSUMPTION

In the beginning of the research I assumed that the ELs managing learner discipline and DH experience challenges in their roles. This research was based on the assumption that secondary schools manage learner discipline via the role of the EL, concluding with the DH. This study confirmed my working assumptions that schools apply the role of the EL and DH to manage learner discipline. It has become clear that the EL's role is extremely challenging and complex. The analysis of the data proved that the practice of the EL is much more demanding

than it appears to be, as well as that the EL is challenged with implementing policy and knowledge of the law.

My assumption that the DH has very limited impact on changing the behaviour of the learner was incorrect. DHs have a meaningful impact on the restoration and correction of the learner's behaviour, but this function is not fulfilled.

Learner discipline is not solely managed by the EL, but other role players, for example the DC and lawyers, add value to a fair process. I was correct in assuming that ELs are poorly prepared for their role and that they lack knowledge of the law.

The assumption I made that ELs discover the elements of due process through years of experience was confirmed after the analysis of the interviewed data. This study has revealed that the EL restores and improves the management of learner discipline. Significant knowledge has been gained from the practice and role of ELs, due process and fair DHs. I can confidently report that the role of the EL is central in managing learner discipline fairly and justly. I can foresee that the EL's role will grow in stature and as profession in years to come.

5.5 LIMITATIONS

At the beginning of this study I realised that there would be limitations that could potentially affect the findings. The number of participants could have limited the richness of the generated data, but after the interviews there were 275 pages of data, 3 532 codes and 33 theme clusters. After analysing the data I concluded that the 12 participants produced sufficient information to understand this educational phenomenon because the codes and themes had reached a point of saturation.

My personal experience as EL had the potential of limiting my objectivity during the process of the study or of influencing my understanding of the conceptual framework of this research field. I overcame this limiting factor by ensuring member checking by each participant and by coding only what was said during the interview according to grounded theory (Barney & Straus, 2012).

Leading questions were sometime posed, which might have limited the validity of the data slightly, due to some participants struggling to interpret the meaning of certain research questions. I was not concerned about whether the interview questions or gestures were "too

leading” (Seale, 2004); I simply continued interacting with the participant about the question at hand.

There were times that I was concerned about the participants getting side-tracked during the interview when they spontaneously started to discuss the importance of financial management training, DHs of teachers or managing the school as a business. I constantly reminded the participants to remain objective and to keep focusing on the research topic and research questions.

I was constrained by the unavailability of documents produced by the participants, for example their CoC, minutes of DHs and appeal letters. The tendency of the participants not to make these documents available might be to protect the reputation of school and learners.

5.6 SIGNIFICANCE OF THE STUDY

In this research I wanted to discover the role and expectations of the EL in the process of managing learner discipline and DHs. I found the gap in the literature regarding the role and expectations of the EL stimulating because of the unique position of the EL as well as his or her role in managing learner discipline as a relatively new concept. There is ample research on the management of learner discipline, the promotion of due process and what the best interests of the learner as in Section 28 (2) of the Constitution (Republic of South Africa, 1996b), but very little on how ELs experience and manage learner discipline. I aimed to achieve three objectives with this research: 1) to add to the related body of knowledge; 2) to suggest measures for improving practice, and 3) to inform policy debates (Creswell, 2008).

Some ELs showed great uncertainty regarding their role and what is expected of them, due to the instructions from the principal, regulations from the DBE, protocols from the DC and legal actions according to lawyers. Some of the ELs decided to apply discipline techniques that seemed fair that had been gained through years of trial and error. This does not imply that ELs are ignorant of the law or prescribed policies; they do have a degree of knowledge of the Constitution (Republic of South Africa, 1996b), SASA (Republic of South Africa, 1996a) and General Notice 2591 of 2001 (GDE, 2007). It was pleasing to note that ELs at least referred to the Constitution (Republic of South Africa, 1996b), because I agree with Cameron (2014) who says, *“We should consider that the character of indiscipline and violence in schools is complex and difficult to pin down. In moving forward, we must seek out solutions that are rooted in the values espoused in the Constitution”*.

The lawful and fair management of learner discipline embodied by due process is non-negotiable for the EL. Although ELs have very little knowledge of the law and little guidance by DBE or the principal, they have found a way to manage learner discipline that is fair, just and brings forth change in the learner's behaviour. The findings of this thesis may empower other ELs to improve their practices. The discoveries made in this research have significant value in informing policy debates. Training in disciplinary practices that include legal training should be a priority, not only for principals or DBE officials but also for ELs and DCs. The specific training of ELs as well as of DCs in managing learner discipline and DHs is of paramount importance in current and future education.

5.7 RECOMMENDATIONS FOR FUTURE RESEARCH

The nature of research is to seek new ways of improving our lives; therefore I propose the following further research prospects:

1. Professional development of ELs to better understand their role during the management of learner discipline ensuring due process.
2. Professional development of DCs to comprehend their quasi-judicial role during the DH in applying law and policy to make fair decisions in terms of rectifying the learner's poor behaviour.
3. Exploring the possibility of developing formal training programmes by the SGB specifically for ELs, DCs and principals, as well as by the Department of Basic Education to train district officials, focusing on fair management of learner discipline and DHs.
4. Expanding this study to a wider range of the Gauteng Province to explore the competency levels of DBE official's to support and guide SGBs and ELs in managing learner discipline and DHs.
5. Exploring the influence of DHs on changing learner behaviour and the psychological impact it has on the individual.

5.8 RECOMMENDATIONS FOR IMPROVEMENT OF PRACTICE

In reflecting on the knowledge gained during the study the following recommendations are made to improve practice:

1. The use of the IDHs has enormous potential to enhance an early restorative process for the learner prior to the DH, but it needs to be critically assessed in terms of supporting the DH and not to become a DH.
2. It was clear that uncooperative parents made it extremely difficult to act in the best interest of the learner during the disciplinary process. The SGB should support the EL to inform the parents about the disciplinary process and DHs as means to correct learner transgressions.
3. The training of the EL in terms of the law will surely have a major impact on managing learner discipline, but also validate the knowledge the ELs have already gained. The SGB has to take greater responsibility for the training and development of ELs to perform their professional functions (Republic of South Africa, 1996a: Sec. 20).
4. Principals should know and understand more about the role of the EL, which will surely be supportive in the initial stages of a newly appointed EL, as well as in appointing a person with strong pedagogical skills.
5. SGBs should put forth an action plan to transfer the invested knowledge and developed skills of the current DC to the next DC. The current DC chairperson may be co-opted for the first year of the newly appointed DC to train and guide new members in the process.
6. The principal should appoint two ELs to share the workload, reflect on practice and actions during the process and alternate between investigating and presenting the case. This will improve the quality of work done by the EL and ensure due process for each case.

5.9 CONCLUDING REMARKS

Meaningful discovery for a researcher is to view and understand how different people experience the world. There were a great many significant moments for me during this research on the experiences of ELs in their role during learner disciplinary hearings. I discovered how significant and unique the EL's role is in managing learner discipline and presenting the case in a DH to make a fair decision to change the learner's behaviour. According to Circular 74 (GDE, 2007) the Department of Basic Education plays no role in the internal process of the school to manage learner discipline except in regard to

recommendations for expulsion and suspension. This places a greater emphasis on the SGB to support the principal and EL to manage learner discipline fairly. The lack of information on the role of ELs in the management of learner discipline suggested a platform for my research. Observing the determination of the ELs to bring about change in learners by means of managing learner discipline that is both corrective and restorative made me realise that this role contributes greatly to discipline management practices of schools in South Africa.

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ADDENDA

APPENDIX 1: Invitation and informed consent to participate in a research project



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Faculty of Education

Dear participant,

INVITATION AND INFORMED CONSENT TO PARTICIPATE IN A RESEARCH PROJECT

You are cordially invited to participate in a research project for my PhD entitled “***Experiences of educator evidence leaders in learner disciplinary hearings***”. The research aims to investigate the experiences and opinions of educator evidence leaders on their role in learner disciplinary hearings in public schools.

“Semi-structured” interviews will be conducted after school hours so that there will be no disruption of teaching time or the daily management of the school. The interview will be conducted in English. Your participation in this study is voluntary and confidential. You will not be asked to reveal any information that will allow your identity to be established, unless you are willing to be contacted for individual follow up interviews if they are necessary. Should you declare yourself willing to participate in an individual interview, confidentiality will be guaranteed and you may decide to withdraw at any stage should you wish not to continue with an interview. To participate in this research you should have the experience as a prosecutor in learner disciplinary hearings.

In addition to interviews, I will have to study and analyse documents such as charge sheets, minutes of disciplinary cases, transcriptions of voice recordings, recommendation letters and appeal letters, in order to get a clear picture of the role of the evidence leader in the disciplinary

process. I therefore request access to these documents and undertake to use them for purposes of this research project only. All information that may result in tracing or identifying individuals or schools will be removed and pseudonyms (false names) will be used where specific reference may be made to a school or individual.

If you are willing to participate in this study, please sign this letter as a declaration of your consent, i.e. that you participate in this project willingly and that you understand that you may withdraw from this research project at any time. Participation in this phase of the study does not obligate you to participate in follow-up interviews; however, should you decide to participate in follow-up interviews your participation is still voluntary and you may withdraw at any time. You have the right to view the transcription of the interview. It is my request that you should verify the content of the transcription to ensure confidentiality. Furthermore, confidentiality will still be guaranteed.

If you have any questions about this research project, please contact Anthony Smith at (Cell) 072 7788 145 & (Email) antoonsmith@yahoo.com or the supervisor, Prof. JL. Beckmann at (Work) 012- 420 2571 or (Email) johan.beckmann@up.ac.za .

Thank you for your time and consideration in this matter.

Yours sincerely,

Anthony Smith

Student number: 99332699



Signature:



Supervisor's Signature:

LANGUAGE: I want to make use of a translator **YES / NO** (underline your option)

If yes, indicate the language use:

CONSENT: I have read the information on this page and I understand that I am not waiving any of my legal rights by signing this form.

Name



APPENDIX 2: Interview schedule



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Faculty of Education

INTERVIEW SCHEDULE

Dear Sir / Madam,

This letter includes the interview schedule of my proposed research. The research I wish to conduct for my PhD is titled ***“Experiences of educator evidence leaders in learner disciplinary hearings”***. The research aims to investigate the experiences and opinions of educator evidence leaders on their role in learner disciplinary hearings in public schools.

DATE (2014)	TIME (50 min/person)	SCHOOL	PARTICIPANTS (Any two acting as EL)
4 June	14H00 – 16H00	Participant A	Principal, Deputy Principal, HOD or Disciplinary Officer
9 June	14H00 – 16H00	Participant B	Principal, Deputy Principal, HOD or Disciplinary Officer
11 June	14H00 – 16H00	Participant C & D	Principal, Deputy Principal, HOD or Disciplinary Officer
12 June	14H00 – 16H00	Participant E & F	Principal, Deputy Principal, HOD or Disciplinary Officer
23 June	14H00 – 16H00	Participant G & H	Principal, Deputy Principal, HOD or Disciplinary Officer
24 June	14H00 – 16H00	Participant I & J	Principal, Deputy Principal, HOD or Disciplinary Officer
25 August	14H00 – 16H00	Participant K	Principal, Deputy Principal, HOD or Disciplinary Officer
18 September	14H00 – 16H00	Participant L	Principal, Deputy Principal, HOD or Disciplinary Officer

INTERVIEW SCHEDULE

Primary Question:

Please tell me about your experiences and involvement as EL in learner disciplinary hearings?

Secondary Questions:

1. How many years have you been actively involved in the disciplinary process and hearings of your school?
2. What is expected from you in the disciplinary process and hearings of your school?
3. What is your understanding of your role as EL?
4. How do you view your role regarding the principle of fairness and ensuring due process in the disciplinary process and hearings?
5. What type of training or preparation is available for your role as EL?
6. What training have you undergone (if any?)
7. How do your experiences of DHs differ from what is expected in the policies concerning DHs?
8. What are the biggest challenges that you face regarding (a) and (b) in the disciplinary process and hearings?
9. What is your view of the influence of DHs on discipline in particular and education in your school in general?
10. Is there anything that you would want to add to this research interview?

Yours sincerely,
Anthony Smith
Student number: 99332699



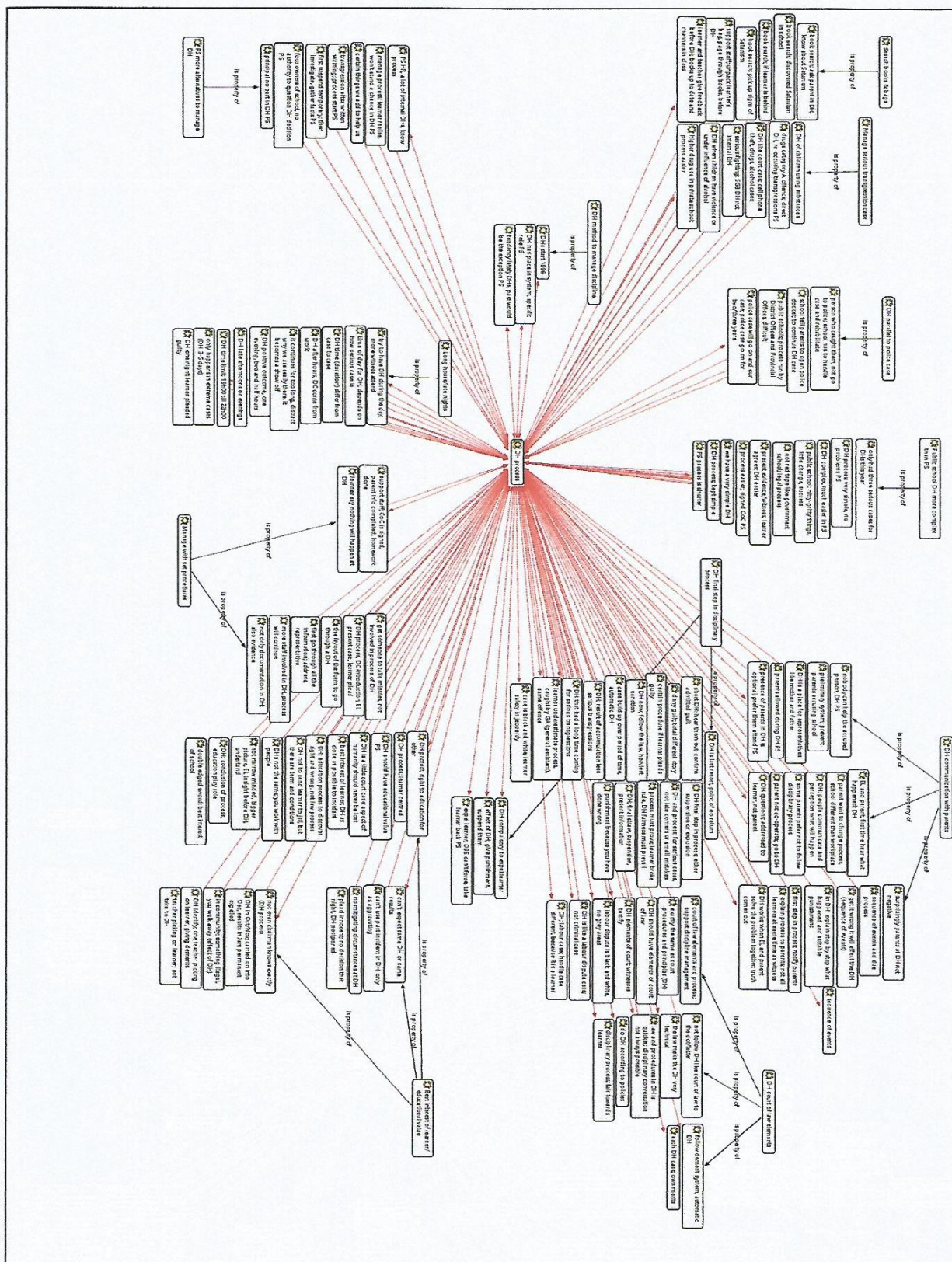
Signature:



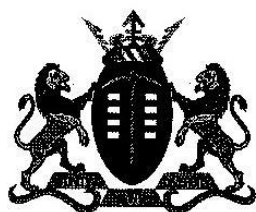
Supervisor's Signature:

APPENDIX 3: Example of code network and mind map

Characteristic of DH process



APPENDIX 4: GDE Research approval letter



GAUTENG PROVINCE

Department: Education
REPUBLIC OF SOUTH AFRICA

For administrative use:
Reference no: D2014 / 377

GDE RESEARCH APPROVAL LETTER

Date:	6 March 2014
Validity of Research Approval:	6 March to 3 October 2014
Name of Researcher:	Smith A.
Address of Researcher:	P.O. Box 12896
	Onderstepoort
	Pretoria
	0110
Telephone Number:	072 778 8145
Fax number:	012 546 9463
Email address:	antoonsmith@yahoo.com
Research Topic:	The experiences of educator evidence leaders of their role in learner disciplinary hearings
Number and type of schools:	SIX Secondary Schools
District/s/HO	Tshwane North and Tshwane West

Re: Approval in Respect of Request to Conduct Research

This letter serves to indicate that approval is hereby granted to the above-mentioned researcher to proceed with research in respect of the study indicated above. The onus rests with the researcher to negotiate appropriate and relevant time schedules with the school/s and/or offices involved to conduct the research. A separate copy of this letter must be presented to both the School (both Principal and SGB) and the District/Head Office Senior Manager confirming that permission has been granted for the research to be conducted.

The following conditions apply to GDE research. The researcher may proceed with the above study subject to the conditions listed below being met. Approval may be withdrawn should any of the conditions listed below be flouted:

1

Making education a societal priority

Office of the Director: Knowledge Management and Research

9th Floor, 111 Commissioner Street, Johannesburg, 2001
P.O. Box 7710, Johannesburg, 2000 Tel: (011) 355 0506
Email: David.Makhado@gauteng.gov.za
Website: www.education.gpg.gov.za

1. The District/Head Office Senior Manager/s concerned must be presented with a copy of this letter that would indicate that the said researcher/s has/have been granted permission from the Gauteng Department of Education to conduct the research study.
2. The District/Head Office Senior Manager/s must be approached separately, and in writing, for permission to involve District/Head Office Officials in the project.
3. A copy of this letter must be forwarded to the school principal and the chairperson of the School Governing Body (SGB) that would indicate that the researcher/s have been granted permission from the Gauteng Department of Education to conduct the research study.
4. A letter / document that outlines the purpose of the research and the anticipated outcomes of such research must be made available to the principals, SGBs and District/Head Office Senior Managers of the schools and districts/offices concerned, respectively.
5. The Researcher will make every effort obtain the goodwill and co-operation of all the GDE officials, principals, and chairpersons of the SGBs, teachers and learners involved. Persons who offer their co-operation will not receive additional remuneration from the Department while those that opt not to participate will not be penalised in any way.
6. Research may only be conducted after school hours so that the normal school programme is not interrupted. The Principal (if at a school) and/or Director (if at a district/head office) must be consulted about an appropriate time when the researcher/s may carry out their research at the sites that they manage.
7. Research may only commence from the second week of February and must be concluded before the beginning of the last quarter of the academic year. If incomplete, an amended Research Approval letter may be requested to conduct research in the following year.
8. Items 6 and 7 will not apply to any research effort being undertaken on behalf of the GDE. Such research will have been commissioned and be paid for by the Gauteng Department of Education.
9. It is the researcher's responsibility to obtain written parental consent of all learners that are expected to participate in the study.
10. The researcher is responsible for supplying and utilising his/her own research resources, such as stationery, photocopies, transport, faxes and telephones and should not depend on the goodwill of the institutions and/or the offices visited for supplying such resources.
11. The names of the GDE officials, schools, principals, parents, teachers and learners that participate in the study may not appear in the research report without the written consent of each of these individuals and/or organisations.
12. On completion of the study the researcher/s must supply the Director: Knowledge Management & Research with one Hard Cover bound and an electronic copy of the research.
13. The researcher may be expected to provide short presentations on the purpose, findings and recommendations of his/her research to both GDE officials and the schools concerned.
14. Should the researcher have been involved with research at a school and/or a district/head office level, the Director concerned must also be supplied with a brief summary of the purpose, findings and recommendations of the research study.

The Gauteng Department of Education wishes you well in this important undertaking and looks forward to examining the findings of your research study.

Kind regards



Dr David Makhado
Director: Education Research and Knowledge Management

DATE: 2014/03/07

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APPENDIX 5: Letter to the SGB/Principal



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Faculty of Education

LETTER TO THE SGB/PRINCIPAL

Dear Sir/ Madam,

REQUEST FOR PERMISSION TO CONDUCT RESEARCH IN YOUR SCHOOL

My name is Anthony Smith, a student at the University of Pretoria, Faculty of Education, in the Department of Education Management and Policy Studies. The research I wish to conduct for my PhD is titled ***“Experiences of educator evidence leaders in learner disciplinary hearings”***. The research aims to investigate the experiences and opinions of educator evidence leaders on their role in learner disciplinary hearings in public schools.

“Semi-structured” interviews will be conducted after school hours so that there will be no disruption of teaching time or the daily management of the school. The interview will be conducted in English. The participant may indicate via the consent letter whether they will rely on a translator and the particular language. It will be the responsibility of the researcher to arrange a translator for the particular interview. In addition to interviews, I will have to study and analyse documents such as charge sheets, minutes of disciplinary cases, transcriptions of voice recordings, recommendation letters and appeal letters, in order to get a clear picture of the role of the evidence leader in the disciplinary process. I therefore request access to these documents and undertake to use them for purposes of this research project only. All information that may result in tracing or identifying individuals or schools will be removed and pseudonyms (false names) will be used where specific reference may be made to a school or individual.

Participation in this study is voluntary and the participants have the right to withdraw at any stage of the study with no negative consequences to them. All the participants will be given

letters of informed consent which will explain the nature, purpose and objectives of the study. The letter will also include the title of the study as well the details of the researcher. Confidentiality of all participant responses will be guaranteed as no identifiable information will be disclosed in the research report or transcripts. There are no known risks to participants resulting from their participation in this study. To minimize any risk that may arise, one on one interviews will be conducted. In the case where the participant does not understand the consent letter, the principal of the school will be responsible to explain what the consent letter entails.

This PhD will be conducted under the supervision of Prof. JL. Beckmann and the co-supervision of Dr. ST. Mampane (University of Pretoria). I hereby seek your permission to approach the educators in your school to ask for participant consent.


Upon completion of the study, I undertake to provide the school with information about the availability of the research report. If you require any further information, please do not hesitate to contact me on the following number (Cell) 072 7788 145 or (Email) antoonsmith@yahoo.com or the supervisor, Prof. JL. Beckmann at (Work) 012- 420 2571 or (Email) johan.beckmann@up.ac.za.

Thank you for your time and consideration in this matter.

Yours sincerely,

Anthony Smith

Student number: 99332699



Signature:



Supervisor's Signature:

APPENDIX 6: Example of coding of raw data

Date: 10/18/2015
P 5: Participant B.docx
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233 9. What is your view of the influence of DHs on discipline in particular and education in your school in general?

234

235 **Participant B:** I think each and every DH we have at our school, each and every DC, the conversation committee, attitude committee, School DC and the DC which attends the DH makes it possible for the school to benefit when it comes to discipline. They make sure that the school has good discipline. What I have also seen is that the learners who have already attended DH, speak about it with respect by saying "I've been there and that it was a very unpleasant experience. It wasn't fun when that guy addressed me." The learners don't know the DC, therefore they see the DH as older people addressing them and then he is also introduced as an Advocate and it is unfamiliar to the learner. I think these processes are helping us keep the discipline in the school positive. That is the way I've experienced it with the learners.

236 **Researcher:** Because of the DH? What's wonderful about your experience is that you have pre and post 1994 experience; especially how cases were handled correctly pre '94 and post '94 with the DH.

-  DH impact good discipline at school
-  DC, conversation committee and attitude co
-  learners attended DH; respect for DH; very i
-  learner don't know DC; see them as older p
-  DH and process; helping to keep discipline