

UNDERSTANDING EDUCATOR SEXUAL MISCONDUCT COMMITTED AGAINST LEARNERS IN SOUTH AFRICAN SCHOOLS



LRC

Legal Resources Centre

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A GUIDE FOR LEARNERS

WHAT IS THE PURPOSE OF THIS BOOKLET?



This guide was written for two reasons:



To help learners understand more about sexual violence, sexual harassment in schools as well as educator sexual misconduct.

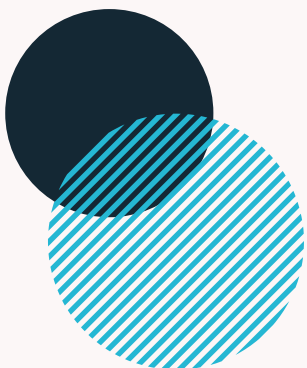


To explain to learners what to do if a learner, has been a victim/survivor of any type of sexual misconduct committed by an educator within and outside school premises.

WHO IS THIS BOOKLET FOR?



This guide is for learners in primary school up to high school. If you are reading this booklet but you don't understand everything it says or are younger than 12 years of age, we would encourage you to read it with a trusted adult. If there isn't anyone who you trust and can talk to, there are helpful contacts on the back of this booklet who can assist.



WHAT IS SEXUAL HARASSMENT?



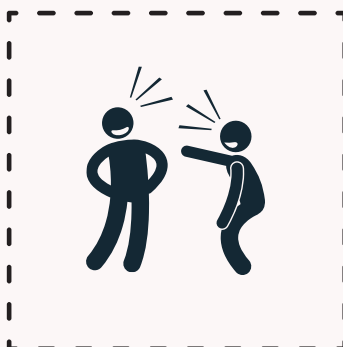
Harassment is when someone treats you in a way that makes you feel uncomfortable and scared that they would harm you. Examples of harassment include being called names, someone damaging your belongings, threatening you, or hitting and pushing you around.

Harassment becomes sexual harassment when behaviour has a sexual element to it that is also unwanted or unwelcomed. We all think of sexual harassment as when someone touches our body in a way that makes us feel uncomfortable or scared.

Some other examples of behaviour that amounts to sexual harassment are when a teacher, school staff or other learner:



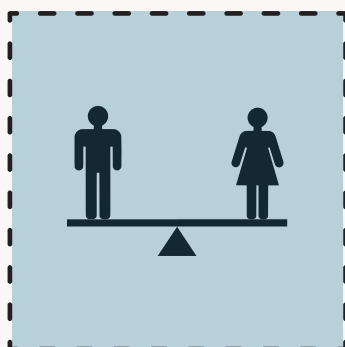
Hugs you repeatedly and in a manner that makes you feel uncomfortable.



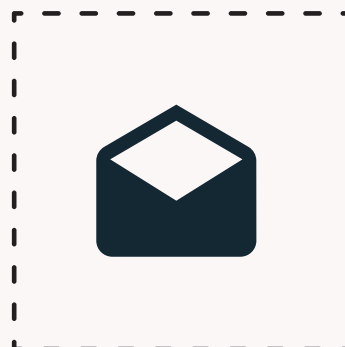
Makes comments or jokes about your body.



Asks you to touch parts of their body.



Asks you repeatedly whether you have had sex before and makes sexual comments.



Written notes/letters with sexual undertones/hints.

WHAT IS SEXUAL VIOLENCE?

Sexual harassment becomes sexual violence when a teacher, school staff member (support staff, physical education and sport coaches) or other learner uses coercion, threats, or intimidation to force you to engage in sexual acts with them. It may also include discriminatory and offensive treatment on the basis of gender and sexual orientation.

NOTE: School support staff includes individuals who work indirectly with the learners and are employed by the school i.e., maintenance staff, securities, administrative staff, catering staff and learning support assistants.

Some examples of things that could be sexual violence include where a teacher, school staff member or other learner:

Forces you to touch their bodies or touches yours.

Shows you photographs of their bodies without clothes on.

Makes you take off your clothes or takes off their clothes in front of you.

Asks you to have sex with them and threatens to hurt you if you do not cooperate.

Sends comments and texts of sexual nature to you via cell phone and social media platforms both during and outside school hours.

An implied or expressed promise of reward for complying with a sexually oriented request. For example, when an educator asks you for a sexual favour in exchange for marks or passing a subject.



WHAT IS RAPE?

Rape is a type of sexual assault that is unlawful and intentional involving sex or any form of sexual penetration being carried out without the consent of the complainant.

When someone forces you to have sex against your will, that is rape. Having sex with a minor (under 18 years) is called **Statutory Rape** and is a criminal offence.



WHAT IS SEXUAL ABUSE?

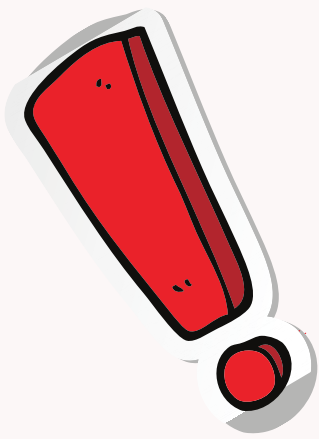
Sexual abuse is involving a learner/child in sexual action that he/she does not fully understand and is unable to give informed consent because of their age and violates the law.

The law in **Section 1 of the Children's Act 38 of 2005**, defines sexual abuse in relation to a child as:

- "(a) sexually assaulting a child or allowing a child to be sexually assaulted;
- (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
- (c) using a child in or deliberately exposing a child to sexual activities or pornography; or
- (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child."

When a teacher enters a sexual relationship with a learner regardless of the learner consenting, the teacher is committing an offence of sexual abuse as he/she is in a position of power and thus a learner cannot give an informed consent.

TEACHERS ARE PROHIBITED FROM HAVING RELATIONSHIPS WITH LEARNERS REGARDLESS OF THE AGE DIFFERENCE BETWEEN THE TEACHER AND THE LEARNER.



WHO DO I REPORT TO IF I WAS A VICTIM OF SEXUAL HARASSMENT OR SEXUAL VIOLENCE AT SCHOOL?

Learners who experienced sexual harassment and sexual abuse at school or outside school premises committed by an educator can report the matter to any of the listed persons below:

| | | | |
|---|--|--|--|
|  <p>A parent/ guardian/caregiver</p> |  <p>Another teacher</p> |  <p>A social worker</p> |  <p>The school principal</p> |
|  <p>Police officer/member of the South African Police Service (SAPS)</p> |  <p>Any trusted adult</p> |  <p>Child Protection Organisations</p> |  <p>Grade Head/Head of Department (HODs),</p> |
|  <p>Member of the School Management Team (‘SMT’)</p> | <p>A case of sexual violence can also be reported by a learner who witnessed it or has knowledge of it and such learner does not necessarily need to be a direct victim of the offence.</p> <p>As a fellow learner, if you witness an act of sexual violence and/or sexual harassment being committed by a teacher on a fellow learner, you may also report directly to any of the persons listed above and may also report directly to the <u>South African Council of Educators (‘SACE’)</u>.</p> | | |

Fellow educators also have a legal obligation to report if there are reasonable grounds to believe that another teacher or a colleague has abused a learner in any manner. Educators are bound by law to report such matters and failure to disclose is a criminal offence.

WHAT HAPPENS WHEN I REPORT SEXUAL HARASSMENT, SEXUAL VIOLENCE or SEXUAL ABUSE AT SCHOOL?



When you report a case of sexual harassment or sexual violence committed by any teacher at school or outside your school, your report will be handled as confidential and you may not be subject to any form of victimisation. No one must ask you complicated questions, and only necessary questions must be asked.

The teacher or principal that you report the matter to will only require certain information from you such as, the type of sexual offense, details of the incident from you and the name of the alleged perpetrator (the teacher who harassed and/or violated you or the learner). Thereafter, that information will be shared with the Circuit Manager as a written report. The Circuit Manager must contact the District Director and the District Department of Social Development ('DSD'). The allegations will then be investigated, and a disciplinary hearing may be held. The alleged perpetrator may be suspended while the investigation takes place. Based on the information and testimonies provided in the hearing and based on the type of misconduct, the teacher may be dismissed or may be given a warning and/or pay a fine.

NOTE: If you were a victim of public indecency, sexual harassment, sexual assault or rape, your parent must also report this to the SAPS



If the learner/parent is unsatisfied with the treatment received by the SAPS, a complaint can be submitted to the Station Commander where the incident was reported. If the Station Commander does not respond appropriately or to the satisfaction of the victim (or Principal), a report can be made to the SAPS Cluster Commander.

WHAT SHOULD I DO IF I AM UNHAPPY ABOUT HOW THE SCHOOL DEALT WITH MY COMPLAINT?



If a learner or a parent of the learner is unsatisfied with how the school has dealt with a complaint, he/she can file a complaint to the district office of the provincial education department as well as the SACE. You may always report the matter to SACE as a place of first instance. You should not only use SACE when you want to lay a complaint. Moreover, you may also lodge a complaint/report at SAPS in the case of sexual harassment, sexual abuse, rape and statutory rape of a learner by an educator.



The SACE is a body that regulates educators and what instance the matters of educator sexual misconduct should be reported. SACE maintains and regulates ethical and professional standard for educators.



IMPORTANT CONTACTS

Should you need any further advice and assistance, use the following organisations:

| ORGANISATION/DEPARTMENT | CONTACT NO: |
|---|---|
| National Department of Basic Education | 012 357 3365/3373/3357/3374/3000 (hotline) 0800 20 29 33 |
| Department of Social Development | 012 312 7883 |
| Thuthuzela Care Centres | THUTHUZELA CARE CENTRES (justice.gov.za) |
| South African Council of Educators | 012 663 9517 |
| SAPS (Emergency no) | 10111 |
| Child Protection Unit (CPU) | 012 393 2359 / 2362 / 2363 |
| Child Welfare South Africa | 0861 424453 |
| South African Human Rights Commission | 011 877 3600 |
| Teddy Bear Clinic | 011 484 4554 |
| Legal Resources Centre | 011 038 9709 |
| Section27 | 011 356 4100 |
| Equal Education | 021 387 0023 |
| Equal Education Law Centre | 021 461 1421 |
| Centre for Applied Legal Studies (CALs) | 011 717 8600 |