

# **UNDERSTANDING EDUCATOR SEXUAL MISCONDUCT COMMITTED AGAINST LEARNERS IN SOUTH AFRICAN SCHOOLS**



**A GUIDE FOR PARENTS & SCHOOL  
GOVERNING BODIES**

**LRC**

**Legal Resources Centre**

# WHAT IS THE PURPOSE OF THIS BOOKLET?



This guide was written for two reasons:

To help parents, School Governing Bodies ('SGBs') and teachers understand more about sexual violence, sexual harassment in schools as well as sexual misconduct committed by educators.

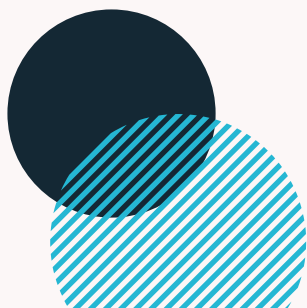


To explain to parents, SGBs, teachers and school principal what to do if a learner, has been a victim/survivor of any type of sexual misconduct committed by an educator within and outside school premises.



## WHO IS THIS BOOKLET FOR?

This guide is for parents, SGBs and teachers.



# WHAT IS EDUCATOR SEXUAL MISCONDUCT?

Educator sexual misconduct refers to where a teacher sexually harasses or commits an act of sexual violence against a learner. This includes, for example, making comments or jokes about a learner's body, hugging a learner repeatedly, showing learners' photographs of their body without clothes on, asking a learner to have sex with them, having sex and/or sexual relationships with a learner whether you, an educator or school staff member thinks the learner consents to it, sends learners comments and texts of sexual nature via cell phone and social media platforms both during and outside school hours. Educator sexual misconduct is illegal even if it happens during school holidays or during the school term.

Teachers who have sexual relationships with learners who are minors (under 18 years) from any school must always be reported to the South African Police Service ('**SAPS**') for an offence of statutory rape and South African Council of Educators ('**SACE**'). Those who have sexual relationships with learners who are considered as majors (over 18 years) must be reported to the SACE for breaching the code of professional ethics. A learner may never consent to sex with an educator. This includes sex between a learner in any grade who is 18 years of age or older and an educator.

Together with the responsibility to educate learners, teachers have a responsibility to not put learners at risk in any way.



minors  
(under 18 years)



Reported to SAPS



Reported to  
SACE

# WHAT IS MY RESPONSIBILITY AS A TEACHER WHEN WORKING WITH LEARNERS?



While learners are at school, teachers have a duty of care over them. A teacher must respect the constitutional rights of learners and in particular minor children, this includes learners right to privacy and bodily integrity.



A teacher must refrain from improper physical contact with learners; from any form of sexual harassment (physical or otherwise) of learners; and refrain from any form of sexual relationships with a learner regardless of whether the learner is no longer a minor (over 18 years old).



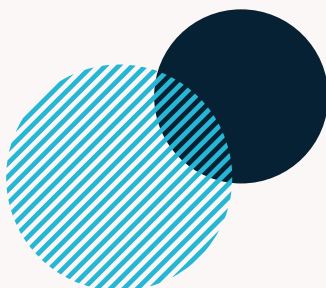
It is also a teacher's responsibility to refrain from exposing/showing learners pornographic and inappropriate materials to learners and keeping these materials on him/her during school hours and within school premises.



A teacher must never use his/her authority and power over learners for personal and/or sexual favours.

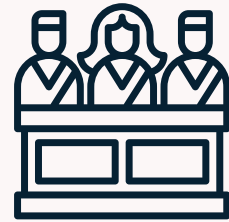


A teacher must always provide a safe and private space for the learner to disclose the details of the incident and keep information shared with them confidentially. Teachers have a responsibility to report any incident or suspected incident of sexual abuse and harassment to the principal or a member of the School Management Team (**'SMT'**) if the principal is the alleged offender.



# AS A TEACHER OR MEMBER OF THE SGB, DO I HAVE A RESPONSIBILITY TO REPORT A REASONABLE SUSPICION OF/OR KNOWN MISCONDUCT AGAINST LEARNERS?

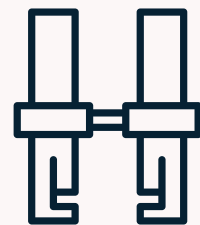
Any person who has a reasonable suspicion or knows that a learner has been sexually violated must report it. Teachers and members of the SGB, therefore, have the same duty.



When you receive information or witness any form of sexual misconduct being committed by a teacher or school staff, as a teacher or a member of the SGB, you have a legal obligation to report the matter to either the school principal or the provincial education department.



Failure to report sexual misconduct committed against a learner when you have relevant information to report and/or reasonable suspicion is a criminal offence.



In the case of persistent harassment despite previous corrective measures, public indecency, sexual assault and rape, an immediate report must be made to the SAPS. It is the duty of the school principal to contact the SAPS if the case is deemed a criminal offence. In cases of sexual assault and rape, the principal must simultaneously report to the nearest Thuthuzela Care Centre.

## WHERE SHOULD TEACHERS OR MEMBERS OF THE SGB REPORT A SUSPICION OF/OR KNOWN MISCONDUCT?

Nearest SAPS, SGB, School Principal, Department of Social Development ('DSD'), Child Welfare, Provincial Education Departments District office, and the Provincial offices of the SACE.

It is important to submit a written report and keep a copy of it.

# WHAT DOES THE LEGISLATION SAY ABOUT EDUCATOR SEXUAL MISCONDUCT?



Educator sexual misconduct is a criminal offence according to South African criminal law and an offence as per the law regulating the teaching profession in South Africa. It is also a violation of a learner's constitutional rights. There are a number of laws and regulations that prohibit and criminalises educator sexual misconduct.

We briefly explain what the law says below:

## The Constitution of the Republic of South Africa, 1996

**The Constitution in section 29(1)(a)** provides that everyone has a right to access basic education – the right to access basic education includes being treated with equality and dignity and ensuring that nothing impedes learners from accessing this right effectively and adequately. Furthermore, **section 28 (2) and section 28(1)(d)** highlights that the rights of children are of paramount importance and that every child must be protected from any abuse, maltreatment, and degradation. It also provides that children should not be required to commit acts that are inappropriate for their age, acts that puts their physical wellbeing, education, mental and social development at risk.

Children also have the right to equality (**section 9**), right to human dignity (**section 10**) and right to bodily integrity (**section 12(2)**).

Educators have an obligation to protect, promote and fulfil the constitutional rights of learners.

## Children's Act 38 of 2005

This Act sets out principles relating to the care and protection of children. It also gives content to the rights of the child as per **section 28** of the Constitution. This Act recognises the importance of providing children with the "necessary protection and assistance so that they can fully assume their responsibilities within the community" and to ensure the "full and harmonious development of [their] personality."

It advocates for every decision made regarding children to be in their best interests and sets out comprehensive factors to be considered in this determination. It further provides that persons acting *in loco parentis* must safeguard children's health, well-being, and development.

**In loco parentis is a Latin term that means 'in place of the parent'. Educators assume the role of parents when in school and must protect and treat learners the way a parent should.**

**Section 110 (1) of the Children's Act**, highlights that there is a duty to report if there are reasonable grounds to believe that a child has been abused in a manner causing physical injury, sexual abuse, or deliberate neglect.

**Section 305 (1) (c)** states that a person is guilty of an offence if that person fails to comply with **section 110(1)**. Educators are included in the list of persons who bear the duty to report sexual abuse.

**Part 2 of the Children's Act** establishes the National Child Protection Register (NCPR). The purpose of the NCPR is to keep a record of all reports and charges of abuse of a child.

**Section 120(4)(a)** provides that persons who have been convicted of indecent assault, attempted rape or rape, amongst others, of a child, must be listed as unsuitable to work with children.

**NOTE: In terms of section 126 of the Children's Act, employers offering services which allow access to children must, before employing a person, establish whether the potential employee's name is listed in Part B of the NCPR.**

### **Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007**

The Act deals with a prohibition of certain acts and provides a procedure to be followed in their criminalisation. The Act also contains numerous provisions that seeks to protect children who have been victims of sexual offences.

**Section 54 of the Act**, highlights that **every person** has a duty to report knowledge of a sexual offence committed against a child and knowledge, reasonable belief or suspicion of a sexual offence committed against a mentally disabled person (**section 54 (2)(a)**). The report must be immediate and made to a SAPS official. Failure to report under this section is considered a criminal offence and punishable with a fine or imprisonment or both.

**Chapter 6 of this Act** sets out the implementation of the National Register for Sex Offenders (**NRSO**). The NRSO contains names of persons who have been **convicted** of charges of sexual offences committed against a child or a mentally disabled person and gives employers in the public or private sectors such as, among others, schools, and crèches the opportunity to check whether the person under consideration for employment is fit to work with children. There is a duty on behalf of a prospective employer to investigate whether a prospective employee has previously been convicted of a sexual offence against a child. There is also a reciprocal duty for the prospective employee to disclose to the prospective employer should he/she previously been convicted for a sexual offence against a child.



## Employment of Educators Act 76 of 1998

It sets out disciplinary procedures to follow when a teacher commits an offence.

**Section 17(1)** of Employment of Educators Act (**EEA**), states that if an educator is alleged to have behaved in a disgraceful, improper, or unbecoming manner, commits sexual or any other form of harassment, he or she must be charged by their employer with misconduct. The EEA states that if the misconduct is also a criminal offence, separate, additional proceedings will occur. Having a sexual relationship with a learner of the school where an educator is employed, is considered a serious offence in terms of the Act and warrants dismissal.



Furthermore, the **EEA** provides that an educator commits misconduct if he/she, while on duty, conducts himself or herself in an improper, disgraceful, or unacceptable manner.

**NOTE: In the case of conflict between provisions of the Employment of Educators Act 76 of 1998 and the SACE Act 31 of 2000, the SACE Act 31 of 2000 shall take preference.**

## SACE Act 31 of 2000

**Section 3** of SACE Act sets out a Code of Conduct of Educators. This states that an educator:

- Respects the dignity, beliefs and constitutional rights of learners and in particular children, which includes the right to privacy and confidentiality;
- Strives to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa;
- Refrains from any form of abuse, physical or psychological;
- Refrains from improper physical contact with learners;
- Refrains from courting learners from **ANY** school;
- Refrains from any form of sexual harassment (physical or otherwise) of learners;
- Refrains from any form of sexual relationship with learners from any school
- Refrains from exposing and/or displaying pornographic material to learners and or keeping same in his/her possession;
- Does not abuse the position he or she holds for personal gain; and
- Must not be negligent or indolent in the performance of his or her professional duties.



**Teachers who are found guilty of breaching the code of conduct of educators may be removed from SACE register of educators.**





# WHAT PROCESS SHOULD BE FOLLOWED WHEN A LEARNER REPORTS SEXUAL MISCONDUCT?

When a learner reports a case of sexual abuse or sexual harassment, the following steps must be taken by various key-role players. The principal must:

- 1 Inform the parents/guardian of the learner victim and if not available, a member of the SMTs must be an *in loco parentis*;
- 2 Inform School Based Supporting Teams ('SBSTs').
- 3 Report to Circuit Manager;
- 4 Report to DSD; and
- 5 Inform SGB chairperson



In case of an offence of sexual abuse/assault and rape (including statutory rape) of a learner who is a minor (under 18 years) the investigations must correspond with the investigations of the SAPS. The nearest Thuthuzela Centre must also be consulted.

When filing the report in cases of sexual abuse committed against a minor learner, the principal must do the following with his/her report:

- Must complete Form 22 in terms of the section 110 of the Children's Act and the original form must be sent to DSD, and copies must be shared with the following key role players:
  - (a) the original sent to the district DSD;
  - (b) the Circuit Manager for record keeping and coordination;
  - (c) the SAPS in case of sexual assault, rape, public indecency and persistent harassment;
  - (d) copy retained at the school.

If the Principal is the alleged perpetrator, the member of the SMT must assume the reporting responsibilities of the principal thus, the SMT member will do the following:

- Manage the alleged offender in consultation with the Circuit Manager and the district DSD.
- Regularly communicate with the parents/guardians (if a learner or learners is/are involved) and provide them with contact details of stakeholders involved in the process.
- Continue to consult with the necessary authorities including: the Provincial Education Department district office, SAPS, the district DSD and the SACE.

When reported to SAPS, there may be a concurrence in the investigation and hearing of the allegations. Thereafter, if the teacher is found guilty of a criminal offense by Court, he/she may be arrested as well as removed from the roll of register for educators by SACE. Furthermore, such an educator may never teach in South Africa again.



# 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