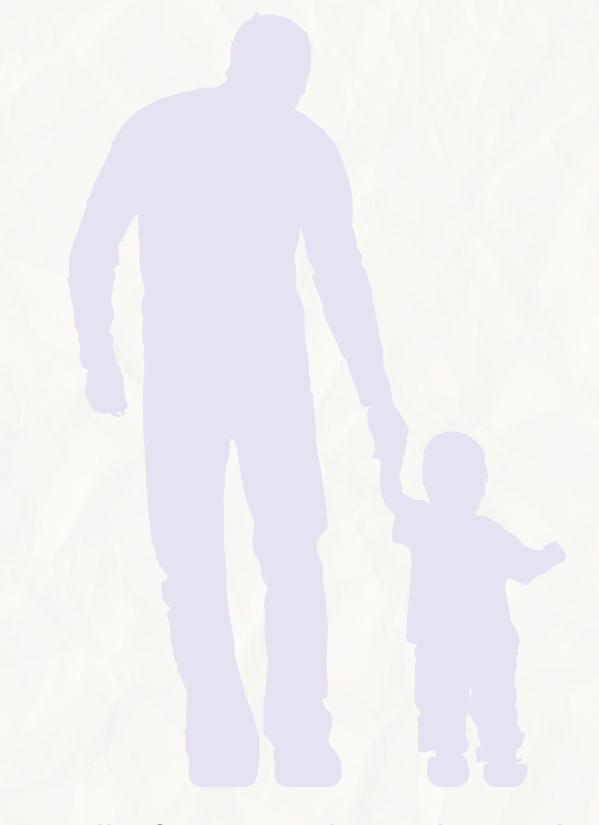


# **A Toolkit**

SEXUAL ABUSE OF CHILDREN BY
TEACHERS AND SCHOOL STAFF MEMBERS
IN PUBLIC AND INDEPENDENT SCHOOLS



A Toolkit for Principals, Teachers, School Governing Bodies, School Staff Members and Parents.





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# Introduction

## Why are we having this conversation and why now?

Children begin life as completely dependent on adults for care and guidance which is essential for their development. Early experiences play an important role in shaping children and influence their lifelong contributions to or demands on society. The effects of harm and abuse, whether verbal, physical or sexual, on the development and outcome of children are well documented.

While at home, parents or other adults are responsible for taking care of children and for protecting them from harm. On the other hand, when children are at school, teachers act in loco parentis – "in place of the parent". While schools should be places of safe learning, the prevalence of sexual misconduct and sexual abuse by teachers and other school staff members indicate that children are vulnerable to abuse at school.

### What to expect from this toolkit

There are various general and education-specific laws, regulations and policies that set out the roles and responsibilities of principals, teachers, SGBs, school staff members and parents or guardians. At the same time, several pieces of legislation regulate and prescribe the steps that should be taken to prevent sexual abuse or sexual misconduct against learners and what should be done in instances where it is alleged that sexual abuse or sexual misconduct has taken place. Identifying the relevant provisions and determining when each is relevant to which particular role-player in the process and when is a difficult task.

This toolkit draws all the relevant provisions together and provides a helpful breakdown of exactly what is required and of who throughout the various processes the law prescribes to prevent and combat sexual misconduct.

Note: when we refer to sexual misconduct, what we mean is sexual abuse. We refer to sexual misconduct because that is the language used in some of the education legislation.

# It focuses on what is required:

- 1. Prior to employment: teachers and other staff members are vetted
- 2. During employment: learners' interactions with teachers or other staff member should not place learners at risk
- 3. When a complaint of sexual misconduct is made: correct reporting, investigative and disciplinary processes should be followed
- 4. When a teacher or staff member is found guilty of sexual misconduct: sanctions and further reporting to relevant bodies



# **Sexual Misconduct Against Learners and the Law**

#### What is sexual misconduct against learners?

Sexual misconduct encompasses a range of inappropriate behaviours perpetrated by teachers and other school staff members against learners and includes sexual abuse. The most important principle is that children (including learners) cannot consent to having a sexual or romantic relationship with an adult (including a teacher or any other school staff member).

Below follows a non-exhaustive list of examples of behaviour that amounts to sexual misconduct against learners as outlined in the various laws listed under the "relevant legislative framework" heading. NB: these are examples of sexual misconduct regardless of whether the adult (including teacher or other school staff member) is under the impression that the child (including learner) consented.

- 1. Improper physical contact with learners
- 2. Exposing learners to pornographic material; sexting; language or behaviour with sexualised overtones; sharing details of sexual encounters with learners
- 3. Courting learners or having relationships with learners
- 4. Sexual relationship with learners
- 5. Sexual harassment of a learner, including enquiries about learners' sexual experiences
- 6. Sexual assault of a learner, including sexual intercourse, threats of sexual assault and promises of rewards for participation in sexual acts

# What does the law say?

Right to Education	Everyone has the right to access basic education
Right to be protected from violence	Everyone, including children, has the right to be free from all forms of violence and to not be treated in a degrading way.  Each individual should have control over and be allowed to make decisions about their bodies.



Children's Rights

Children require special care and protection because they are vulnerable members of society.

A child's best interests are of paramount importance in every matter that concerns them.

# What do these rights mean when we talk about educator sexual misconduct?

The right to access to education goes further than being allowed to attend school. Children should learn in a safe environment free from all forms of abuse, whether verbal, physical, or sexual.

It is also in the best interests of children not to be exposed to conduct that is inappropriate for their age or puts their well-being and development at risk.

These rights and the corresponding obligations they give rise to are detailed in several key pieces of legislation, including:

Collective Agreement 3 of 2018 from the Education Labour Relations Council (Collective Agreement 3)

Children's Act 38 of 2005 (Children's Act)

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

Employment of Educators Act 76 of 1998 (Educators Act)

Labour Relations Act 66 of 1995 (Labour Relations Act)

Protocol for the Management and Reporting of Sexual Abuse and Harassment in Schools (2019) (Sexual Abuse and Harassment Protocol)

South African Council for Educators Act 31 of 2000 (SACE Act)

South African Council for Educators Code of Professional Ethics (11 October 2021) (Code of Ethics)



Various provisions in these laws and protocols regulate what must be done prior to a teacher and other staff member's employment, during their employment and upon any alleged instances of sexual misconduct to ensure the protection of learners.

Note: <u>The Sexual Abuse and Harassment Protocol</u> (applicable to public schools) is NB and explains a lot of what we cover in this toolkit in more detail, also covering what should happen in instances of learner-on-learner sexual harassment and abuse.

# Roleplayers and their Responsibilities

Various individuals and institutions have roles to play at certain points in preventing educator sexual misconduct and responding when it happens.

Each stakeholders' main responsibilities across the entire process are summarised below.

Stakeholder	Role
Department of Basic Education (DBE)	<ul> <li>Exercise oversight over the education sector as a whole.</li> <li>Manage reported instances of sexual misconduct in line with relevant laws.</li> <li>Receive quarterly reports from SACE, ELRC and PEDS on disciplinary proceedings against teachers or other staff members who were found guilty of sexual misconduct against learners.</li> </ul>
Provincial Education Department (PED)	<ul> <li>Ensure that PED-appointed teachers and other school staff members are vetted against the Sex Offenders and Child Abuse Registers before appointment.</li> <li>Receive complaints of sexual misconduct against learners and ensure that proper investigation procedures are followed, including confirming that reports are made to the ELRC, SACE and SAPS and enforcing sanctions against teachers.</li> <li>Collect quarterly reports from districts on sexual abuse and harassment cases in schools, collate it and report it to the DBE.</li> <li>Capacity building of district officials responsible for operationalising relevant laws, including the Sexual Abuse and Harassment Protocol.</li> </ul>



	Collaborate with the Department of Health to implement school-based interventions such as 24-hour post-abuse treatment to learners.
District	<ul> <li>Provide an annual district circular to all schools to inform teachers, principals, SGBs and other staff members of their obligations to act against sexual misconduct.</li> <li>Facilitate campaigns to raise awareness of sexual misconduct against learners and the reporting process.</li> <li>Ensure that SGBs vet SGB-appointed teachers and staff members against the Child Protection and Sexual Offences Registers and confirm that SGB-appointed teachers are registered with SACE.</li> </ul>
Circuit manager	<ul> <li>Ensure that principals manage reported incidents of sexual misconduct.</li> <li>Where sexual misconduct is reported to the circuit manager, the circuit manager must report it to the district office.</li> <li>Keep record of reported instances of sexual misconduct.</li> <li>Support principals or school-management team members to report sexual misconduct cases to SAPS.</li> </ul>
Principal	<ul> <li>Ensure the school-management team (SMT) is aware of their duty of care.</li> <li>Report sexual misconduct allegations within 24 hours in line with the Reporting Guidelines set out in the Sexual Abuse and Harassment Protocol, including filing a report with SAPS, PED, SACE and the ELRC.</li> </ul>
School Management Team (SMT)	<ul> <li>Assist the principal in managing the school and is made up of the principal, deputy principal and heads of department.</li> <li>If the principal is the alleged perpetrator of sexual misconduct, the SMT members assume the principal's reporting responsibilities.</li> </ul>
School Governing Body (SGB)	<ul> <li>Screen all school employees prior to appointment.</li> <li>Vet SGB appointments against the Sexual Offences and Child Protection Registers prior to appointment and every second year after appointment.</li> <li>Ensure that prospective SGB teachers are registered with SACE.</li> </ul>



• Consult with the principal to revise and implement the School Code of Conduct to ensure consistency with the Sexual Abuse and Harassment Protocol. • Ensure that parents and quardians have access to the Sexual Abuse and Harassment Protocol. Responsible for investigating alleged instances of sexual misconduct by SGB-appointed teachers and staff members in terms of the Labour Relations Act, including imposing sanctions and informing the relevant bodies of outcome. Teachers have a duty of care over learners while at school and must ensure that they act in learners' best interest. A teacher must respect the constitutional rights of learners, including their rights to privacy and bodily integrity. Teachers are often the first person that a learner will report an allegation of sexual misconduct to. Teachers should: Periodically refresh learners' awareness of reporting **Teachers** procedures. Provide a safe space for learners to disclose their experience in confidence. • When a learner discloses an incident, assure the learner that what happened is not their fault. Report an incident or suspected incident to the principal. In the event that the principal does not act in line with prescribed laws, the teacher should report the incident to the SGB and other relevant bodies. Includes support staff who work with learners directly or indirectly and includes sport coaches and maintenance, security, administrative, catering and support staff. As these staff also interact with learners, they too have a Non-teaching school duty of care towards learners and must act in learners' staff best interests. In the event that a learner reports an alleged incident of sexual misconduct to a non-teaching staff member, that staff member should report the incident to the principal or the SMT immediately. Investigates allegations of sexual misconduct by teachers.



Education Labour Relations Council (ELRC)	<ul> <li>Responsible for arbitrations and sanctions in cases of alleged sexual misconduct by a PED appointed teacher.</li> <li>Reports outcome of arbitration to relevant bodies.</li> </ul>
South African Council for Educators (SACE)	<ul> <li>Responsible for maintaining and regulating the ethical and professional standard for teachers, including the registration of all teachers at public and independent schools.</li> <li>Investigates alleged breaches of the Code of Conduct, including any form of sexual harassment of learners, courting learners, or having a sexual relationship with learners, amongst others.</li> <li>Ensure that disciplinary hearings are fair and that sanctions are appropriate.</li> <li>May not register teacher who appears on the Sexual Offences of Child Abuse Registers and de-registers teachers who are entered into these registers or found guilty of sexual misconduct</li> </ul>
SAPS (South African Police Service)	Investigates whatever criminal charges stem from reported instances of educator sexual misconduct

#### **Breakdown of Relevant Timeline**

The specific actions a stakeholder will need to take to combat and prevent educator sexual misconduct happen at four stages:

- 1. Prior to employment
- 2. During employment
- 3. When there is a suspicion or allegation of sexual misconduct
- 4. After a teacher or other staff member is found guilty of sexual misconduct

Over and above the specific obligations certain stakeholders have at these stages, all stakeholders must also ensure that the health, well-being and development of children are safeguarded. In all matters involving children, their rights must be respected, protected, promoted and fulfilled and care must be taken to ensure that the best interests of those children are of paramount importance.

This essentially, at a very basic level, requires everyone interacting with children to ensure that they do not take any actions that will harm children and limit their rights. This obligation transcends all stages of the processes and procedures prescribed to combat and prevent sexual misconduct.



# 1. Prior to Employment: Vetting Employees Against the Sex Offenders and Child Protection Registers

#### Who must be vetted

Before appointing a teacher or other staff member to work with or work at a place with access to children, an employer (whether public or independent school) must vet a candidate to ensure that they are not on the National Sex Offenders Register or Part B of the National Child Protection Register.

Register for Sex Offenders: records the details of all persons convicted of sexual
offenses against children and other vulnerable groups. [for more information, see
the Sexual Offences Act and the Employment of Educators Act] Child Protection
Register: records reported incidents and charges of child abuse. Part B of the
Child Protection Register records the details of persons who are found to be
unsuitable to work with children by a children's court, court or forum empowered
to make that decision. [for more information, see the Children's Act]

Note: If a person is convicted of murder, rape, indecent assault, any sexual offence, assault with the intent to do grievous bodily harm, possession of child pornography or attempt to commit any of these offences, that person must be declared unsuitable to work with children. Whether a person is unsuitable to work with children is also not dependent on being found guilty during a criminal trial.

# Why teachers and other school staff members are vetted

Persons who are listed on the NCPR or the NRSO are prohibited from working with children. Someone who is alleged to have committed a sexual offence against a child may also not be appointed to work with children until the complaint is finalised.

The purpose is to protect children from sexual violence at school because it not only compromises the learning environment but carries a host of long term negative mental health and sexual health consequences for the victim. The vetting process also recognises that different stakeholders have duties and roles in protecting children.

# When does vetting happen

Vetting should happen prior to employment and periodically during employment, whether the teacher or staff member is appointed in a public or independent school. PEDs initiated vetting processes for staff appointed prior to the amendment of the Sexual Offences Act in 2021. As of March 2025, there is no legal requirement for ongoing or periodic vetting of PED appointed teachers. The Sexual Abuse and Harassment Protocol, however, requires SGBs to vet SGB appointed staff members



against the Sexual Offences and Child Protection Registers every two years. Independent schools are also required to vet staff against both the Sexual Offences and Child Protection Registers prior to appointment.

#### Who is responsible for the vetting

Any person applying to work with children or at a place, including a school, where they would have access to children, must disclose whether their details appear on the Sex Offenders and/or Child Protection Registers. Although applicants must disclose, the employer is still responsible for vetting employees and must do so.

To determine which stakeholder is the employer, we must look at the different employment relationships. In the public educator sector, the prospective employer will either be the relevant PED or a school's SGB.

- · PED appointments
  - Sex Offenders Register: The relevant PED must vet prospective teachers against the Sex Offenders Register. Although a PED may be the employer, the principal and SGB often facilitate the vetting process. The DBE must complete Form 8 which can be obtained from the Department of Justice and Constitutional Development. The Head of Department designates PED officials to access the Register.
  - Child Protection Register: The SGB must vet the PED appointed teacher by completing <u>Form 29</u> which can be obtained from the Department of Social Development.
  - SGB appointments
    - The SGB must check whether an applicant is listed on the Sex Offenders and Child Protection Registers, as well as ensure that a prospective SGB teacher is registered with SACE.
    - Sex Offenders Register: The SGB must complete Form 8 and submit it to the Registrar of the Sex Offenders Register.
    - Child Protection Register: The SGB must complete Form 29 which can be obtained from the Department of Social Development.
  - Independent schools:
    - Independent schools are also required to vet staff against both the Sexual Offences and Child Protection Registers prior to appointment. This responsibility usually falls on the principal or school governance structure.

Note: Organisations or individuals seeking to engage with learners at public and independent schools must also obtain certificates from both the Sex Offenders Register and the Child Protection Register. However, it is not the PED or SGB who are responsible but the individual's employer.



[For more information on the process prior to employment, see the Children's Act, the Sexual Offences Act, and the Sexual Harassment and Abuse Protocol]

#### 2. During Employment

During employment, teachers and other staff members have an obligation to combat and prevent educator sexual misconduct in three ways.

#### Obligation 1: do not engage in sexual conduct with learners

It is a crime for adults to engage in sexual activities or conduct with children. This is because a child cannot consent to engaging in sexual activities or conduct with an adult. Even if an adult or a child is under the impression that the child consented, the adult will be committing the crime of rape, statutory rape, or sexual violation by engaging in sexual activities or conduct with the child. This obligation applies to all adults and includes teaching and non-teaching staff at public and private schools.

In addition to the Sexual Offences Act, <u>SACE's Code of Professional Ethics</u> is also relevant and applies to all public and independent school teachers. The Code of Professional Ethics requires teachers to refrain from improper physical contact with learners; from courting learners from any school; from any form of sexual harassment and from having any form of sexual relationship with a learner from any school.

# Obligation 2: reporting knowledge of or reasonable suspicion of sexual misconduct

The Sexual Offences Act states that all adults have a duty to report actual or suspected sexual abuse of children to the SAPS. Failure to do so is a crime which is punishable by a fine, imprisonment or both.

The Children's Act places an additional obligation on teachers or any person who works with children to report actual or suspected sexual abuse of children. The report should be made to the SAPS, a designated child protection organisation or the relevant provincial Department of Social Development.

# Obligation 3: periodic vetting of employees

While initial vetting at the time of employment is mandatory, there is no explicit legal requirement for ongoing or periodic vetting after employment for PED appointed teachers. SGBs must vet SGB appointed staff members every two years.



Employers, whether public or independent schools, are encouraged to periodically vet employees against the two registers for three reasons.

- 1.It is in the best interests of children to not have contact with someone who appears on these registers as it places them at risk of harm.
- 2. It is an offence to knowingly retain or employ someone listed on the Sex Offenders or Child Offenders Register.
- 3. With public access to the Sex Offenders Register contemplated, it will become easier for employers to do periodic vetting.

[for more information on the process during employment, see the Children's Act, the Sexual Offences Act, and the Sexual Harassment and Abuse Protocol]

#### 3. When a Complaint of Sexual Misconduct is Made



When a child alleges that they were a victim of sexual misconduct by a teacher or other school staff member, whether at school or not, that complaint must be taken seriously. It is not for the person who the child informed of the alleged sexual misconduct to decide whether to report it to the relevant parties.

Rule: all alleged or suspected incidents of sexual misconduct must be reported

Teachers and adults appointed to work at public or independent schools are required to report an alleged or suspected sexual misconduct to the SAPS, a designated child protection organisation or the relevant provincial Department of Social Development.

In all of the instances below, reports do not have to come from the listed person but can also come from parents, learners, other teachers, SACE, SAPS or whistleblowers.



Complaint against:	Reporting obligations:
Complaint against PED appointed teacher	Principal or SGB must report the incident to the PED, SACE and SAPS.
Complaint brought against principal	Another teacher or the SGB must report to the PED, SACE and SAPS.
Complaint against SGB appointed teacher	Principal or SGB must report the incident to SACE and SAPS.
Complaint against SGB appointed staff member	Principal or SGB must report the incident to SAPS. SGB should also investigate the allegation and take disciplinary measures.
Complaint against independent school teacher or principal	Principal or school governance structure must report the incident to SACE and SAPS.

#### PED reporting process:

In public schools, the principal and the SGB should conduct an internal review to gather statements before referring the process to the PED. It is important to note that the principal and the SGB cannot decide whether the teacher is guilty — that is the role of the PED. The principal and/or SGB just does the initial investigation.

The principal and/or SGB must then report the matter to the PED. The PED or the principal and/or SGB must complete <u>ELRC Form E12</u>, provide written notice to the teacher (including that dismissal is the mandatory sanction), and refer the matter to the Educator Labour Relations Council for a disciplinary inquiry in the form of an arbitration.

When referring the matter to the Educator Labour Relations Council, proof that the teacher was informed in writing of the allegations of misconduct must be attached. NB: When reporting the incident to the PED and the Education Labour Relations Council, the principal must recommend that the teacher be suspended pending the outcome of the investigation.

For more information on the PED reporting process, see "3. Referral of disputes and appointment of arbitrators" in <u>Collective Agreement 3 of 2018</u>: Inquiries by arbitrators in cases of disciplinary action against educators charged with sexual misconduct in respect of learners.



#### **SACE reporting process:**

SACE's Code of Professional Ethics applies to public and independent schoolteachers and requires that a person who believes that a teacher breached the Code lodge a complaint with SACE for investigation.

To reiterate, the following instances are a breach of the Code of Professional Ethics: improper physical contact with a learner from any school; courting learners from any school; any form of sexual harassment of a learner from any school; any form of sexual relationship with a learner from any school.

#### **SAPS** reporting process:

The Sexual Offences Act and the Children's Act requires that adults report any suspected or alleged incidences of sexual violation of a child.

Note: failure to report sexual offences against children is a crime.



Once a report of a suspected or alleged incident is made, the different stakeholders need to weigh up how to keep learners safe and the teacher or other staff members right to be presumed innocent until the investigation is complete. In general, due to the seriousness of sexual misconduct, it is advisable that the teacher or other school staff member be suspended pending the outcome of an investigation. Part of keeping learners safe is to also inform parents and guardians of an alleged incident and to assure them that the teacher has been removed pending investigation.

## PED suspension:

The Employment of Educators Act and Collective Agreement 3 make it clear that sexual misconduct allegations are serious and warrant investigation. According to the Employment of Educators Act, in cases of serious misconduct, the employer must suspend the teacher on full pay for a maximum period of three months pending the finalisation of the investigation. If the investigation is not finalised in three months, the employer may extend the suspension without remuneration [see Schedule 2, Employment of Educators Act]. Serious misconduct includes all forms of sexual violations, including sexual assault and relationships with learners. As stated above, when reporting the incident to the PED, the principal must recommend that the teacher be suspended pending the outcome of the investigation.



#### **SACE** suspension:

SACE may also request an employer to suspend a public or independent school teacher pending the finalisation of the disciplinary enquiry if it would be in the best interest of the learners. SACE will consider all learners and not only the learner victim.

#### **SGB** suspension:

If the teacher or staff member is employed by the SGB, the SGB can suspend the teacher with pay pending a formal investigation.



### SGB-employed teachers or staff member:

Independent schools are not required to have SGBs but often have a similar governance structure. Where we refer to SGBs, we include the governance structures of independent schools. In other words, this section deals with SGB-appointed teachers or staff members in public schools and all staff appointed at independent schools.

SGBs can investigate misconduct by educators and other staff members they employ directly. SGBs follow their own disciplinary process. Importantly, the disciplinary process must follow fair labour procedures as outlined in the Labour Relations Act. When the principal or SGB becomes aware of suspected or alleged sexual misconduct against a learner, they must conduct a preliminary inquiry, collecting witness statements and documentary evidence. Given the seriousness of sexual misconduct, instances of suspected or alleged sexual misconduct must always be dealt with through a formal disciplinary process.

The teacher or other staff member should be informed of the charges in writing and be allowed to respond. The notice should include details of the charges; hearing details; the rights to representation; and possible consequences.

The principal or SGB should appoint a neutral chairperson to preside over the hearing. Both parties should be allowed to present evidence, including witness testimonies. Where possible, the learner should not be required to face the accused during the process. This is both to protect the learner from re-traumatisation and to prevent victimisation.



The Labour Relations Act does not specify strict timelines for disciplinary hearings but requires that they be conducted without undue delay. Employers should ensure that hearings occur as soon as reasonably possible after an allegation, allowing time for fair investigation and preparation. Once a hearing is concluded, a decision should be made promptly, generally within a few days to a week.

[For more information, see the <u>Labour Relations Act</u>].

#### PED-employed teachers:

Once the PED or the principal and/or SGB refers the matter to the Education Labour Relations Council, the General Secretary will convene an arbitration which takes the form of an internal disciplinary enquiry. The arbitration must happen within 60 calendar days from the date on which the Council received the referral.

The General Secretary appoints a commissioner or panellist to arbitrate. The arbitrator must be competent to deal with the specific case; have sufficient knowledge of relevant legal principles and have sufficient experience in hearings involving minor children; evaluating and assessing evidence of child witnesses experience in hearings in which intermediaries are used; and in hearings involving charges of sexual misconduct against children.

The arbitrator must notify the parties of the arbitration date and details at least 21 days before the scheduled dates unless the parties agree to a shorter period, or reasonable circumstances require a shorter time period to apply. The employee must be notified that the mandatory sanction is dismissal.

The employer may be represented by a delegated employee or a legal practitioner. The employee may be represented by a co-employee, a legal practitioner or a trade union representative.

Arbitrators are expected to deliver findings promptly, and in most arbitration settings, awards should be issued within 5–14 days of the final hearing session.

[For more information, see: Collective Agreement 3 of 2018: Inquiries by arbitrators in cases of disciplinary action against educators charged with sexual misconduct in respect of learners and <u>Education Labour Relations Council Constitution</u>: Part C – Dispute Resolution Procedures, particularly Parts 10-12].



### 4. Finding of Guilt and Consequences

#### SGB-employed teachers or staff member:

Not guilty: If the teacher or staff member is found not guilty, that is the end of the disciplinary process. The teacher or staff member will resume their duties unless an appeal is lodged. SACE and SAPS should still conduct their own investigation which may still result in a finding that the teacher or other staff member is guilty of educator sexual misconduct.

Guilty: Where it is concluded that the SGB appointed staff member committed some form of educator sexual misconduct, the staff member must be dismissed.

- The principal and/or SGB must report this finding to the PED, SACE, SAPS and the bodies who manage the Sex Offenders and Child Protection Registers. As explained before, SACE and the SAPS will still conduct separate investigations.
- Despite this, it is important for them to be made aware of the outcome. The SGB appointed staff member can refer the matter to the Commission for Conciliation, Mediation and Arbitration if they are of the view that their dismissal was unfair. They can also take the case to the Labour Court on review.

### PED-employed teachers:

Not guilty: If a teacher is found not guilty, they will resume their duties unless a review is lodged with the Labour Court. As with SGB appointed staff members, SACE and SAPS should still conduct their own investigation which may still result in a finding that the teacher or other staff member is guilty of educator sexual misconduct.

Guilty: If the teacher is found guilty of sexual misconduct, they must be dismissed

- The General Secretary of the Educator Labour Relations Council must send a copy of the arbitrator's findings to SACE within 14 days of the finding being made. [see clause 5.4. of the Collective Agreement]. They must also inform the PED, SAPS, and report the finding to the bodies responsible for managing the Sex Offenders and Child Protection Registers.
- The finding of an arbitrator is final and binding. It has the same status as an arbitration award under the Labour Relations Act. The decision cannot be appealed, but the parties may approach the Labour Court to review the finding.

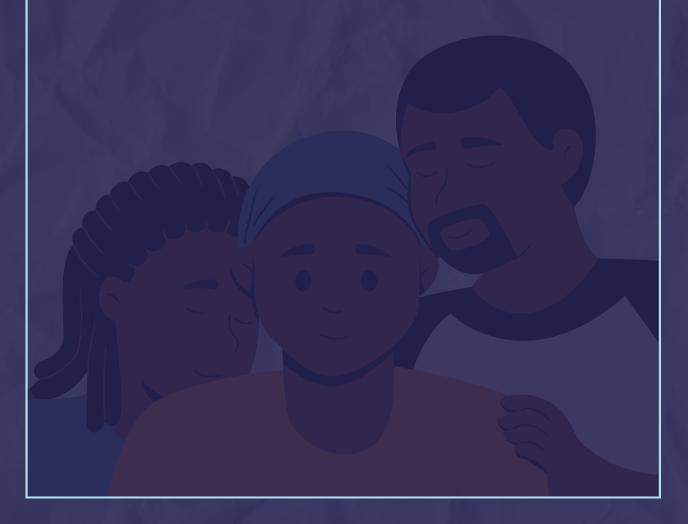


# Independent school teachers and staff members:

Not guilty: If the teacher or staff member is found not guilty, that is the end of the disciplinary process. The teacher or staff member will resume their duties unless an appeal is lodged. SACE and SAPS should still conduct their own investigation which may still result in a finding that the teacher or other staff member is guilty of educator sexual misconduct.

Guilty: Where it is concluded that the teacher or staff member committed some form of educator sexual misconduct, the staff member must be dismissed.

- The principal and/or governing structure must report this finding SACE, SAPS and the bodies who manage the Sex Offenders and Child Protection Registers. SACE and the SAPS will still conduct separate investigations. Despite this, it is important for them to be made aware of the outcome.
- The teacher or staff member can refer the matter to the Commission for Conciliation, Mediation and Arbitration if they are of the view that their dismissal was unfair. They can also take the case to the Labour Court on review.





# **Contact Details**

Department of Deci-	010 257 2275 / 2272 / 2274 / 2000
Department of Basic Education	012 357 3365 / 3373 / 3357 / 3374 / 3000 Hotline: 0800 20 29 33
Provincial Education Departments	Eastern Cape: 040 608 4200 / 4205 / 4230 Free State: 051 404 8000 / 8430 / 4911 / 8434 Gauteng: 011 355 0000 / 1510 / 1518/ 0597 KwaZulu-Natal: 033 392 1000 / 033 846 5000 / 031 392 1000 Limpopo: 015 290 7702 / 7061 / 7661 / 7600 Mpumalanga: 013 766 5462 / 5300 / 5552 North West: 018 387 3428 / 29 / 24 / 25 / 32 Northern Cape: 053 839 6500 / 6683 / 6696 / 6619 Western Cape: 021 467 2000 / 2535 / 257
Department of Social Development	National: 012 312 7883  Eastern Cape: 043 605 5000  Free State: 051 400 0302 / 0304 / 0307  Gauteng: 011 355 7687 / 7977 / 7878  KwaZulu-Natal: 033 264 5400  Limpopo: 015 293 6004 / 6054 / 6011 / 6053  Mpumalanga: 013 766 3098 / 3253 / 3031  North West: 018 387 3434 / 0255 / 3497 / 0281  Northern Cape: 053 807 5600  Western Cape: 021 483 3858/ 3765 / 3158 / 5445
South African Council of Educators	012 663 9517
SAPS: Child Protection	National: 012 393 2107 / 2359 / 2362 / 2363 Eastern Cape: 040 608 8498 / 082 442 0651
Sexual Offences Investigations	National: 012 393 2107 / 2359 / 2362 / 2363 Eastern Cape: 040 608 8498 / 082 442 0651 Free State: 051 507 6628 / 082 854 7501 Gauteng: 011 309 6016 / 082 412 5988 KwaZulu-Natal: 031 325 4941 / 082 826 8976 Limpopo: 015 290 6180 / 082 451 7170 Mpumalanga: 013 762 4770 / 082 465 2359 North West: 018 299 7159 / 071 353 9137 Northern Cape: 053 839 2824 / 079 695 1719 Western Cape: 021 467 8390 / 082 850 9674



Lifeline 24h counselling line	011 781 2337 / 0861 322 322
South African National Council for Child & Family Care [Child Welfare South Africa]	011 492 2950 / 021 483 5054 / 0800 220 250 / 0861 424 453 Note: there are many Child Welfare Organisations in South Africa. Please contact the Department of Social Development for a Child Service Directory.
Childline 24h counselling line for children	116 National: 031 201 2059 Eastern Cape: 043 722 1382 Free State: 051 430 3311 Gauteng: 011 645 2000 KwaZulu Natal: 031 312 0904 Mpumalanga: 013 752 2770 North West: 087 231 7126 Western Cape: 021 762 8198
Teddy Bear Foundation	011 484 4554
Thuthuzela Care Centres	Find a comprehensive list of all TCCs at <a href="https://www.gov.za/TCC">https://www.gov.za/TCC</a>



#### References:

Collective Agreement 3 of 2018 from the Education Labour Relations Council (Collective Agreement 3)

Children's Act 38 of 2005 (Children's Act)

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

Employment of Educators Act 76 of 1998 (Educators Act)

Labour Relations Act 66 of 1995 (Labour Relations Act)

Protocol for the Management and Reporting of Sexual Abuse and Harassment in Schools (2019) (Sexual Abuse and Harassment Protocol)

South African Council for Educators Act 31 of 2000 (SACE Act)

South African Council for Educators Code of Professional Ethics (11 October 2021) (Code of Ethics)



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# **About the Legal Resources Centre**

The Legal Resources Centre is an independent, non-profit public interest law centre with offices throughout South Africa. We empower individuals and communities through the law, promoting social justice, championing equality, and realizing the human rights enshrined in the South African Constitution.

