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TO : ALL DDGS
CHIEF FINANCIAL OFFICER
EDUCATION DEVELOPMENT
OFFICERS
DIRECTORS
PRINCIPALS OF SCHOOLS
ALL EMPLOYEES

FROM : ACTING HEAD OF DEPARTMENT

SUBJECT : RE- CIRCULAR NO 11 OF 2022: PROTOCOLS
FOR THE MANAGEMENT AND REPORTING
OF SEXUAL ABUSE AND HARRASSMENT IN
SCHOOLS

1. The above matter has reference
2. Please find herewith the Protocols for Management and Reporting of Sexual Abuse and Harassment in Schools.
3. The purpose of this protocol is to provide schools and districts with Standard Operating Procedures/Guidelines when addressing allegations of sexual abuse and harassment, and to specifically detail how schools must respond to reports of sexual abuse and harassment perpetrated against learners & school staff. It also sets out an approach that enables educators and employees of the Eastern Cape Department of Education (ECDoE) to identify, intervene, report and provide support to all learners who are sexually abused or harassed in school, whilst providing an appropriate response to perpetrators of all forms of sexual abuse and harassment.


M QWASE

ACTING HEAD OF DEPARTMENT

23 JANUARY 2023
DATE



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



PROTOCOL STATEMENT

The DBE is committed in ensuring the school environment is enabling, supportive, inclusive and offers a safe space for learners, educators and school staff. The DBE therefore takes all allegations of sexual abuse and harassment very seriously. This protocol serves as an expression of the zero-tolerance approach towards sexual abuse and harassment that the DBE and its representatives have adopted. The reporting guidelines provided by this protocol must be applied in all schools. This protocol undertakes to ensure that disclosure of incidents of sexual abuse and harassment are managed with care, sensitivity and confidentiality

PURPOSE

The purpose of the Protocol for the management and reporting of sexual abuse and harassment is to provide schools, districts and provinces with standard operating procedures for addressing allegations, and to specifically detail how schools must respond to reports of sexual abuse and harassment perpetrated against learners, educators and other school staff. Schools are mandated to assist victims of sexual abuse and harassment by following standard reporting procedures and through the provision of appropriate support to learners.

This protocol therefore serves to ensure a safe, caring and enabling environment for learning and teaching, both inside and outside of the classroom. The protocol prescribes an approach that enables educators and employees of the DBE to identify, intervene, report and provide support to all learners and school staff who are sexually abused or harassed in school, whilst offering an appropriate response to perpetrators of sexual abuse and harassment. Thus, apart from the step-by-step mechanisms for the reporting of incidents of sexual abuse and harassment, it also outlines the process for sanctioning perpetrators of sexual abuse and harassment. This protocol applies to all schools within the Republic of South Africa.

JURISDICTION

Incidents of sexual abuse and/or harassment may occur on or off the school premises, during the school term or during school holidays. The response to these incidents should be the same as it would be if the incident occurred at school and during school hours. Learners may disclose allegations of sexual abuse.



and/or harassment that have occurred in the past. Time elapsed between the incident occurring and disclosure is irrelevant. Disclosure of historical incidents whilst at school or not, should be responded to immediately. Appropriate actions and support processes, as outlined in this protocol, must still be undertaken in all such cases of reported sexual abuse and/or harassment.

GUIDING DEFINITIONS

SEXUAL ABUSE

According to section 1 of the Children's Act, 2005 (Act 38 of 2005), "sexual abuse", in relation to a child, means:

- (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.

SEXUAL OFFENCES

"Sexual offences" in terms of chapters 2, 3 and 4 and sections 55 and 71 (1,2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, include:

Rape, compelled rape, sexual assault, compelled sexual assault and self-sexual assault, compelling or causing persons to witness a sexual offences, sexual acts or self-masturbation.

Exposure or display of or causing exposure or display of genital organs, anus or female breasts ('flashing'), engaging sexual services, as well as incest, bestiality and sexual acts with corpse. Abuse shall also be inclusive of attempting, conspiring, incitement or inducing another person to commit sexual offence and trafficking in persons for sexual purposes.

HARASSMENT means directly or indirectly engaging in conduct that the respondent knows or ought to know a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably

- (i) following, watching pursuing or accosting of the complainant or a related person, or loitering



- (ii) outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be.
 - (iii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
 - (iv) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; or
- (b) amounts to sexual harassment of the complainant or a related person.

SEXUAL HARASSMENT

Sexual harassment may include unwelcome physical contact, verbal or non-verbal conduct. It may include discriminatory or offensive behaviour on the basis of the gender or sexual orientation of a person. Sexual harassment is not limited to situations where an unequal power relationship exists between parties involved and can be committed by or against any person regardless of gender, sex or sexual orientation.

With reference to The Protection from Harassment Act (no. 17 of 2011), sexual harassment means:

- (a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome.
- (b) unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated.
- (c) implied or expressed promise of reward for complying with a sexually oriented request; or
- (d) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.



CHAPTER 1: LEGISLATIVE FRAMEWORK

1.1 INTERNATIONAL LEGISLATION

1.1.1.CHARTER OF THE UNITED NATIONS OF 1945

The UN Charter of 1945 proclaims in article 3 that 'everyone has the right to life, liberty and security of person' and in article 5 that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. It also stipulates in article 26 (1) that 'everyone has the right to education' and (2) 'education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

1.1.2. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) PROTOCOL ON GENDER AND DEVELOPMENT OF 2008

In article 22, the protocol requires that state parties (including South Africa must) enact legislative provisions, and adopt and implement policies, strategies, and programmes which define and prohibit sexual harassment in all spheres and provide deterrent sanctions for perpetrators of sexual harassment.

1.1.3. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (CRC) OF 1990

The CRC of 1990 (19(1)) declares that 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.'

Compliance with the values recognized in article 29 (1) requires that schools be child-friendly and that they uphold the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.

1.1.4. AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD OF 1990

The African Charter on the Rights and Welfare of the Child of 1990 establishes that every child



has the right to an education, to develop his or her personality, talents and mental and physical abilities to their fullest potential (Article 11). According to the Charter, children should be protected from all forms of torture, inhumane or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse (Article 16). The African Charter states that, where other international instruments provide greater protection than the Charter, the stronger instrument takes precedence.

1.2. NATIONAL LEGISLATION

1.2.1. SOUTH AFRICAN CONSTITUTION 108 OF 1996

The South African Constitution stipulates that every person has the right to human dignity (section 10) as well as freedom and security, including the right to bodily and psychological integrity (section 12). A child has the right to be protected from maltreatment, neglect, abuse or degradation (Section 28(1)(d)) and should not be required to commit acts that i) are inappropriate for a person of that child's age; or ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development (Section 28(1)). The Constitution also states that the best interest of the child shall be paramount in any matters affecting the child (Section 28(2)). Children are also entitled to the right to dignity (section 10); the right to life (section 11) and freedom and security (section 12).

1.2.2. THE PUBLIC SERVICE ACT 103 OF 1994

Since the Protocol applies to other employees who are not educators employed in the schools and since these employees are employed in terms of the Public Service Act, the Code of Conduct and Disciplinary Processes in terms of this Act must be followed. In accordance with Section C.2.8 of the Public Service Act, an employee "respects and protects every person's dignity and her or his rights as contained in the Constitution". Any employee contravening this regulation is guilty of misconduct may deal with the employee in accordance with the relevant labour legislation and any directive issued by the Minister for the Public Service and Administration (Section 4.6 of the Act).

1.2.3. THE LABOUR RELATIONS ACT 66 OF 1995

In terms of the "Code of Good Practice on the Handling of Sexual Harassment Cases" (Schedule 8 of the Act), as stipulated in the Act, Employers/management are required to take appropriate action in accordance with the Code when instances of sexual harassment which occur within the workplace are brought to their attention. The Act also encourages employers to develop policies



on sexual harassment and provides further that management should implement the policy and take disciplinary action against employees not compliant with the policy. The Code of Good Practice on Dismissal, as stipulated in Schedule 8 of the Act, provides for the guidelines in cases of dismissal for misconduct. In terms of the Code, dismissals must be affected for a fair reason and in accordance with a fair procedure. School Governing Bodies must be guided by this schedule in dealing with transgressions of their appointees.

1.2.3.1. ACCESS TO THE NATIONAL CHILD PROTECTION REGISTER AND THE NATIONAL REGISTER FOR SEX OFFENDERS

In order to establish whether the person's name appears in Part B of the National Child Protection Register, the SGB has to complete **Form 29 (Annexure F)**, which can be obtained from the Department of Social Development. To establish whether the person's name appears in the National Register for Sex Offenders, the DBE has to complete **Form 8 (Annexure G)**, which can be obtained from the Department of Justice and Constitutional Development. In terms of section 125 (1)(a) and (b) of the Children's Act, only the Director-General (DG) of the national department responsible for the provision of social development services and officials in the DSD Department designated by the Director-General are granted access to the Register. However, in terms of subsection (2), the DG may, on such conditions as the DG may determine, allow officials of a Provincial Education Department (PED) designated by the Head of the Department access to Part B of the Register.

1.2.4. FILMS AND PUBLICATIONS ACT 65 OF 1996

The purpose of this Act as set out in Chapter 2(2) is to regulate the creation, production, possession and distribution of films, games and certain publications to— (a) provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care; (b) protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences; and (c) make use of children in and the exposure of children to pornography punishable. Chapters 3 and 4 of the Act classify publications, films and games and Chapter 6 sets out penalties for distributing content classified as disturbing or harmful.

1.2.5. THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

Section 8 of the South African Schools Act provides that a School Governing Body (SGB) of a public school must adopt a Code of Conduct for learners, 'after consultation with learners, parents and educators of the school'. Section 8(4) stipulates that all learners attending a school are bound by the Code of Conduct of that school. Section 8(3) further provides that the Minister may



establish guidelines for the consideration of SGB's in adopting a Code of Conduct. Pursuant to this provision, 'Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners' were published in 1998. Section 8 of the Act stipulates that the Code of Conduct referred to in 8(1) must:

- (a) inform learners of conduct that is permissible and conduct that is prohibited.
- (b) advise learners on the grievance procedures, and
- (c) follow due processes during disciplinary hearings.

1.2.6. THE EMPLOYMENT OF EDUCATORS ACT 76 OF 1998

In terms of the Employment of Educators Act (EEA), section 17(1); 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. The Act furthermore provides that an educator commits misconduct if he/she, while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner. 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.

1.2.7. THE SOUTH AFRICAN COUNCIL FOR EDUCATORS (SACE) ACT 31 OF 2000

According to the Code of Professional Ethics contained in this Act under Section 3, an educator:

- a. respects the dignity, beliefs and constitutional rights of learners and in particular children, which includes the right to privacy and confidentiality.
- b. Acknowledges the uniqueness, individuality, and specific needs of each learner, guiding and encouraging each to realise his or her potential.
- c. strives to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa
- d. exercises authority with compassion
- e. avoids any form of humiliation, and refrains from any form of abuse, physical or psychological
- f. refrains from improper physical contact with learners



- g. promotes gender equality
- h. refrains from courting learners from ANY school
- i. refrains from any form of sexual harassment (physical or otherwise) of learners
- j. refrains from any form of sexual relationship with learners from any school
- k. refrains from exposing and/or displaying pornographic material to learners and or keeping same in his/her possession
- l. uses appropriate language and behaviour in his or her interaction with learners, and acts in such a way as to elicit respect from the learners
- m. takes steps to ensure the safety of the learner
- n. does not abuse the position he or she holds for financial, political or personal gain
- o. is not negligent or indolent in the performance of his or her professional duties; and
- p. recognises, where appropriate, learners as partners in education.

If an educator has a sexual relationship with a minor (under 18 years of age) at any school, the case must also be forwarded to the SAPS for investigation and the educator must be dismissed. When a breach of this Code of Professional Ethics occurs, anyone can directly lodge a complaint with SACE.

1.2.8. CHILDREN'S ACT 38 OF 2005

In terms of section 110 (1) of the Children's Act, 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. According to the section, the report may be made to either a provincial department of social development (DSD), to a child protection organisation or to the SAPS. Failure to report under this section is considered a criminal offence. 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 (among many other professionals) in the list of persons who bear the duty to report sexual abuse.

The Department of Social Development (DSD) has, in terms of Chapter 7 (section 111) of the Children's Act, implemented the National Child Protection Register. In terms of section 126 of the Act, employers offering services which allow access to children must, before employing a person, establish whether or not the potential employee's name is listed in Part B of the National Child Protection Register. In terms of section 120 of the Act, the Register contains the names of people who have been found unsuitable to work with children for committing unwanted acts against and disabled persons by the Court or any forum established or recognised by law in disciplinary



proceedings concerning the conduct of people.

1.2.9. THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF 2007

The National Register for Sex Offenders (implemented through Chapter 6 of the Act) 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 or she have previously been convicted for a sexual offence against a child. Failure to do so by either party constitutes an offence according to sections 41, 45 and 46 of the Act.

In terms of section 54 of the Act, 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 (Section 54 1(b)) and punishable with a fine or imprisonment of 5 years or both.

1.2.10. CHILD JUSTICE ACT 75 OF 2008

Establishes a criminal justice system for child accused, separate from the criminal justice system which continues to apply for adult accused in South Africa. The Act aims to keep children out of detention and away from the formal criminal justice system, mainly through diversion of a matter away from the formal court procedures in a criminal matter. This approach seeks to bring about rehabilitation and retribution

1.2.11. EDUCATION LABOUR RELATIONS COUNCIL (ELRC) COLLECTIVE AGREEMENT 3 OF 2018

Provides for compulsory enquiries by arbitrators in case of disciplinary action against educators charged with sexual misconduct in respect of learners. In all such cases, the employer shall initiate



1.2.6. the disciplinary process by referring the matter to the ELRC in order for the General Secretary to convene the arbitration, which will take the place of the internal disciplinary enquiry as was previously held in such cases. The arbitrator will direct what action shall be taken against the educator he/she, while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner. 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.

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CHAPTER 2: ROLES AND RESPONSIBILITIES

2.1. NATIONAL DEPARTMENT OF BASIC EDUCATION

- 2.1.1. Ensure that sexual abuse and/or harassment is reported and managed according to this protocol in all schools.
- 2.1.2. Receive quarterly reports from the SACE on disciplinary proceedings against educators who have been de-registered as a result of being found guilty of sexual offences against children.
- 2.1.3. Receive quarterly reports from the PEDs on educators who have been found guilty of misconduct as prescribed by these protocols

2.2. PROVINCIAL EDUCATION DEPARTMENTS (PEDs)

- 2.2.1. Facilitate capacity building of district officials in operationalising this protocol.
- 2.2.2. Collaborate with the Provincial Department of Health (DoH) in implementing, in accordance with the National Adolescent and Youth Health Policy 2017, school-based interventions, such as 24-hour post-abuse treatment for learners and school staff, including post-exposure prophylaxis to rape victims.
- 2.2.3. Impose sanctions against educators and other school staff guilty of sexual abuse or harassment based on the severity of the violations as provided for in section 17 and 18 of the Employment of Educators Act 76 of 1998 and as per the sanctions provided in the SACE Disciplinary Code and Procedures for Educators (Paragraphs 4 and 6) and Section 16a of the Public Service Act of 1994.
- 2.2.4. Collect quarterly reports from districts on sexual abuse and harassment cases in schools and collate and report to the national DBE on a quarterly basis.
- 2.3.1.1. Provide an annual district circular to all schools to inform educators, Principals and SGBs of their obligation to act against sexual abuse and harassment, as well as clearly spell out the sanctions that may be imposed against educators and other school staff who violate the prohibition in accordance with the SACE Code of Ethics of 2002 and the Employment of Educators Act of 1998 as well as against learners in accordance with the School Code of Conduct and this Protocol.



- 2.3.1.2. Facilitate campaigns raising awareness of sexual abuse and harassment and the importance of reporting
- 2.3.1.4. Address grievances of family members who believe the school's management of an incident of sexual abuse or harassment is believed to be unjust or inappropriate.
- 2.3.1.5. The District Director to lead investigations and assist in the tribunal hearing of reported incidences of or suspicion of sexual abuse and harassment where the perpetrator is a learner (as set out in Chapter 4) by sending an investigating officer to the school in case of a level 4 offence.
- 2.3.1.6. Record all cases of sexual abuse and harassment and report on a quarterly basis to PEDs.
- 2.3.1.7. Upon receipt of a reported incident involving a SGB employee, the responsible district will check and ensure the SGB followed the protocol of checking prospective employees against the National Child Protection Register (NCPR) and National Register for Sex Offenders (NRSO), and that educators employed by the SGB are registered with SACE.

2.3.2. DISTRICT BASED SUPPORT TEAM (DBST)

- 2.3.2.1. Reviews the action plan of the educator and SBST and rates the level of support needed and determines the decision on how support is to be provided to the victim.
- 2.3.2.2. Puts a further action plan together for the victim on the information available.

2.3.3. DISTRICT PSYCHOSOCIAL SERVICES

- 2.3.3.1. Supports and provides guidance to schools with regard to the procedures, protocols and process involved in an alleged case of child abuse.
- 2.3.3.2. Facilitates the principal/school's decision making with regard to the various steps which need to be taken, ensuring that the legal requirements and consequences of each step are carefully considered. All decisions must be taken by the school/principal, taking into cognisance the best interest of the child.



- 2.3.3.3. Ensures that the matter is reported.
- 2.3.3.4. Discusses the need to support the learner, alleged perpetrator (if learner) and other affected persons.
- 2.3.3.5. Establishes whether counselling support is appropriate/ necessary. [Counselling of this nature is concerned with the trauma/ stress experienced by those concerned and is not in any way part of the investigation].
- 2.3.3.6. Counsels the principal/educator with regard to the need for confidentiality, who else to inform. (Guards against rumour mongering amongst staff and learners)
- 2.3.3.7. Supports the school/educator/parent by providing clarification and interventions with respect to process and procedures that will follow the reporting as well as the possible signs, symptoms and behaviours of victims of abuse.
- 2.3.3.8. Maintains a district Register of reported cases and must ensure that a district register of all reported cases and copies of Form 22 are available at district office. Such records must be kept in a confidential restricted file.

2.4. CIRCUIT MANAGER

- 2.4.1. Must ensure that Principals and hearing commissions manage reported incidents of sexual abuse and harassment and facilitate engagement with parents/guardians and family when necessary.
- 2.4.2. Where sexual abuse or harassment is reported to the Circuit Manager by the Principal, the Circuit Manager will contact the District Director and District DSD.
- 2.4.3. The Circuit Office will keep records of all reported cases of sexual abuse and harassment.
- 2.4.4. Liaise with District office in supporting principals or SMT members in reporting level 4 cases to the SAPS. 2.5.

2.5 SCHOOLS

2.5.1 SCHOOL BASED SUPPORT TEAMS (SBSTs)

- 2.5.1.1. Identifies the range of support interventions required eg. counselling services, court preparation, referral to removal to place of safety, legal representation, medical



assistance, admission to rehabilitative programmes and tracking follow up appointments.

2.5.1.2. Consults with district psychosocial services, and other relevant experts for guidance with regard to specific support programme.

2.5.1.3. Provides and / or facilitates the range of interventions required for the affected learners by networking with the school's network of support providers and other government departments.

2.5.1.4. Whilst some of the support services may be provided by outside organisations or other government departments, the SBST ensures the implementation of the plan, monitor and review the support plan.

2.5.2. PRINCIPALS

2.5.2.1. Ensure the SMT is aware of their duty of care to all learners in loco parentis, including the alleged victim, alleged perpetrator (if he or she is a learner) and any other learner who may have been indirectly affected by sexual abuse or harassment.

2.5.2.2. Report any incident or suspicion of sexual abuse and harassment within 24 hours following the guidelines as set out in section 3.2.1.

2.5.2.3. Refer the victim immediately to psycho-social support if deemed appropriate.

2.5.2.4. Ensure the Hearing Commission (Disciplinary or Tribunal, depending on the level of offence) attend to reported incidents or suspicion of sexual abuse and harassment where a learner is the perpetrator. This is set out in chapter 4 of this protocol and, in more detail, the Example of a School Code of Conduct⁷. Collect progress reports from the Hearing Commissions and, in the event of a learner being the victim, provide feedback to the victim and victim's parent/s or guardian.

2.5.2.5. Ensure school staff and learners are familiar with these protocols and make staff aware of their duty to report any incident or suspicion of sexual abuse or harassment affecting a learner, educator or school staff.



- 2.5.2.6. In consultation with the SGB, revise, evaluate, implement and monitor the School Code of Conduct to ensure consistency with this protocol and with Section 8(3) of the South African Schools Act 84 of 1996.

2.5.3. SCHOOL GOVERNING BODIES (SGBs)

- 2.5.3.1. Everyone employed at the school must be screened prior to appointment – including SGB appointees, volunteers and individuals who work indirectly with children, including administrative, security and maintenance employees. For SGB appointees, the SGB must check whether the applicant is listed on the National Child Protection Register (NCPR), the National Register for Sex Offenders (NRSO), and that prospective educators are registered with SACE. Post-employment, the registers have to be checked every second year.

In order to check the registers, the SGB requires applicants to furnish personal information, including a certified copy of the applicant's identity document and a police clearance certificate no older than 6 months. If an educator, the applicant must provide proof of registration with SACE.

- The SGB has to complete Form 29 (Annexure F) and send it to the DG of Social Development to determine if prospective employees or volunteers are on the NCPR.
- To check the NRSO, the SGB must complete Form 8 (Annexure G) and submit to the Registrar of the NRSO.

- 2.5.3.2. The SGB must ensure that the School Safety Committee (SSC) is familiar with this protocol and that the School Safety Policy, School Safety Plan, Emergency Plan, and a Code of Conduct for learners are aligned with this Protocol.

- 2.5.3.3. The SGB must, in consultation with the principal, revise, implement and monitor the School Code of Conduct to ensure consistency with this protocol.

- 2.5.3.4. The SGB must furthermore ensure that parents/ guardians have access to this protocol and are aware of their rights & responsibilities and of the avenues open to them should incidents of sexual abuse and/or harassment occur, ensuring the well-being of the victim. They also have to be made aware of the procedures to be followed against the alleged offender.



2.5.4. SCHOOL MANAGEMENT TEAMS (SMTs)

- 2.5.4.1. All members of the SMT must be familiar with the contents of this protocol.
- 2.5.4.2. Where a Representative Council for Learners (RCL) is in place, members have to be familiarised with the content of this protocol.
- 2.5.4.3. A member of the SMT must assist the person affected by sexual abuse and/or harassment by, if required, referring them to the appropriate institutions (see Annexure A and B) that offer support and provide ongoing monitoring and additional academic support in the case of learner victims of sexual abuse and/or harassment. Educators should be referred to the EAP, where they and their families are provided with counselling services.
- 2.5.4.4. If the Principal is the alleged offender, a member of the SMT assumes the reporting responsibilities of the principal.
- 2.5.4.5. A member of the SMT continues to support the persons involved in the following ways:
 - Manage the alleged offender in consultation with the Circuit Manager, the district DSD as appropriate.
 - 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 DBE district office, SAPS, the district DSD and the SACE as appropriate.

2.5.5. EDUCATORS

- 2.5.5.1. Must provide a safe and private space for the learner to disclose the details of the incident and keep information shared with them confidential
- 2.5.5.2. Report any incident or suspected incident of sexual abuse and harassment to the principal or a member of the SMT if the principal is the alleged offender.
- 2.5.5.3. Observe any changes in the learner's behaviour following the report and refer to the principal (or member of the SMT) if necessary.



- 2.5.5.4. Ensure that the guidelines and procedures for the reporting of sexual offences are covered within pre- determined lessons and refresh learners' awareness of these procedures periodically.

2.5.6. LEARNERS

- 2.5.6.1. Report any incidents or suspected incidents of sexual abuse and harassment to the Principal, Grade Head, member of the SMT, an educator or any other person they feel comfortable communicating to. They can also report to SACE directly.
- 2.5.6.2. Learners should only disclose the incident to any other party with the expressed permission of the victim.
- 2.5.6.3. The Representative Council for Learners (RCL) offers a forum to advocate for learner empowerment and makes fellow learners aware of the content of this protocol.

2.6. PARENTS OR GUARDIANS

- 2.6.1. Report any incident or suspected incident of sexual abuse and harassment to the Principal, the Grade Head, member of the SMT, an educator, the Circuit Manager, the DSD, SACE, the DoH and/or the SAPS.
- 2.6.2. Parents or guardians of learner victims (if they are not the alleged offenders) and of the alleged offender (if a learner) are expected to be in attendance during interviews.
- 2.6.3. Support the implementation of this protocol.
- 2.6.4. Advocate for and participate in ongoing parent training opportunities that relate to the prevention and management of sexual abuse and harassment.



CHAPTER 3: REPORTING GUIDELINES

3. 1. DISCLOSURE

- 3.1.1. Disclosure can be made by a victim to either an educator or support staff. All incidents of sexual abuse and harassment have to be disclosed to the principal or a member of the SMT directly.
- 3.1.2. Reports can be done verbally or in writing or both, but the Circuit Manager is to receive a written report of the incident.
- 3.1.3. During the disclosure process, the victim must under no circumstances be questioned to verify the truthfulness of the allegation, since the educator or school employee's role is merely to receive the report and report directly to the Principal and Grade Head. For that purpose, only information relevant for reporting to the Circuit Manager may be obtained from the victim as prescribed in Annexure D, namely the type of sexual offence, the name of the victim and of the alleged offender. No one but the SAPS is to question the victim in case of a level 4 offence (as outlined in Chapter 4).
- 3.1.4. When communicating with the victim, the person to whom the incident was reported must ensure that the interview takes place in a safe environment safeguarding the complainant's privacy, and where the complainant will not come into contact with the alleged perpetrator.
- 3.1.5. Disclosure is a process, and it must be managed with care, sensitivity and confidentiality. Effective management of the process will ensure that the learner victim, alleged learner offender and employee are protected from additional and unnecessary emotional trauma. For further information on the rights of victims, refer to the Service Charter for Victims of Crime in South Africa.
- 3.1.6. In rape cases, the person to whom the incident has been reported must advise the learner not to drink or eat anything or wash his/her mouth, or shower, or take any medication until the medical practitioner has examined him/her, especially if he/she has been raped or forced to perform oral sex.



3.2.1. REPORTING PROCESS

3.2.1.1. If a learner was the victim of sexual abuse or harassment, the following role-players are required to be notified. The principal must:

- i. Inform parents/guardians of the learner victim (if not the alleged perpetrators) and of learner perpetrator (if the case). If not available, a member of the SMT takes on the role in loco parentis.
- ii. If the alleged perpetrator is a learner, ensure Grade Head is informed.
- iii. Inform SBST.
- iv. Report to Circuit Manager.
- v. Report to DSD.
- vi. Inform SGB chairperson.

In case of a level 4 offence (as outlined in chapter 4):

- vii. Report to the SAPS.
- viii. Contact the nearest Thuthuzela Care Centre.

In cases of sexual abuse of a learner under 18, Form 22 (Annexure E) has to be used (according to the reporting procedures

outlined in section 110 of the Children's Act 38 of 2005) in reporting to a designated SAPS Official. According to the Children's Act of 2005 (110(1)) any person who on reasonable grounds believes that a child is in need of care and protection may file such a report. For the purposes of this protocol, the principal will file the report as follows:

Form 22 (Annexure E) is to be completed and:

- i. the original sent to the district DSD.
- ii. one copy sent to the Circuit Manager for record keeping and coordination.
- iii. one copy sent to the SAPS in case of a level 4 offence as listed in Chapter 4.
- iv. one copy retained at the school.



3.2.1.2. If a staff member was the victim of sexual harassment and abuse, the following role-players are required to be notified. The principal must:

- i. Inform parents/guardians (if a learner is the perpetrator). If not available, a member of the SMT takes on the role in loco parentis.
- ii. If the alleged perpetrator is a learner, ensure the Grade Head is informed.
- iii. If the alleged perpetrator is a learner, contact the SBST.
- iv. Report to Circuit Manager.
- v. Report to DSD.
- vi. Inform SGB if employer of the alleged perpetrator.

In case of a level 4 offence (as outlined in chapter 4):

- vii. Report to the SAPS.
- viii. Contact the nearest Thuthuzela Care Centre

3.2.2. REPORTING SEXUAL ABUSE CASES TO THE SAPS (in case of a level 4 offence as outlined in Chapter 4)

- 3.2.2.1. If a victim is under 18, the principal or member of the SMT must report the matter to the SAPS on his/her behalf. If a victim is over 18, he/she can report the case to the police without any adult support.
- 3.2.2.2. The victim can lay a charge if they are over 18. If unsure whether or not to press charges, he/she can still make a statement to the SAPS.
- 3.2.2.3. The victim (or Principal, if reporting the case on the victim's behalf) should make sure he/she writes down the name and phone numbers of the investigating officer and request the case number and a brief summary of the reported incident.
- 3.2.2.4. If the victim (or Principal, if reporting the case on the victim's behalf) 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.

3.3. ALLEGED SEXUAL ABUSE AND/OR HARASSMENT BY A LEARNER

In case of a level 1-4 incident, the Principal and Grade Head must be informed immediately. Where the Principal or Grade Head is the alleged offender, the incident of or suspicion of sexual abuse or harassment must be reported to a member of the SMT, who will, in turn and within 24 hours, report the matter to the Circuit Manager directly.

3.4. PROCEDURES FOLLOWING REPORTED INCIDENTS

- 3.4.1. If the victim is a learner and upon receipt of the complaint, the principal must immediately telephonically contact the victim's parents or guardian and the complainant's parents or guardian (if a learner is the alleged perpetrator). The principal must furthermore write a letter to the parents detailing the incident within 24h of receipt of the complaint. The letter must contain the nature of the reported incident and the procedures to be followed but must NOT reveal the names of victim/alleged offender.
- 3.4.2. The process following a report is to be explained to the victim by the Principal in the presence of his/her parent/s or guardian/s (if the victim is a learner and if the latter is not the alleged offender), including the involvement of a social worker (the designated social worker or school social worker where applicable) and the different roles and responsibilities of the school and external role players.
- 3.4.3. Victims of sexual abuse and harassment are to be referred to district Psychosocial Services. Learner victims can also be advised to call the Childline toll free number at 0800 055 555 to speak to one of the counsellors or an appropriate organisation offering support services to abused children. All victims can contact the DSD call centre at 0800 42 8428. See Annexure B and C for details of organisations that specialise in dealing with sexual abuse and harassment cases.
- 3.4.4. In the event of a sexual assault or rape, the SAPS will arrange for the victim to undergo a medical examination at the nearest clinic or hospital immediately or within 24 hours, where medical evidence will be collected, and the victim will be attended to as outlined under 5.6.6. of this protocol.



CHAPTER 4: DISCIPLINARY GUIDANCE

4.1. CORRECTIVE AND RESTORATIVE MEASURES IF A LEARNER IS THE ALLEGED OFFENDER

The following table provides for guidance on the type of offence and corrective measures to be applied where the offender is a learner. However, schools are required to formulate their own school Code of Conduct in line with this protocol and guided by Section 8 of the South African Schools Act 84 of 1996. If the transgression was in violation of the Learner's School Code of Conduct, then due process in relation to disciplinary hearings or tribunal hearings (depending on the level of offence) have to proceed in line with the Code of Conduct and the Misconduct of Learners at Public Schools and Disciplinary Proceedings (2000). Level 4 offences constitute a criminal offence and must be reported to the SAPS, who will run concurrent investigations. When a decision has been reached in the disciplinary hearings, it must be communicated to both the victim and alleged offender (and their parents/guardians where applicable). A letter outlining the decision shall be placed in the learner offender's personal profile.

The Disciplinary Hearing Commission will consist of the following members:

- a SGB representative.
- the School Principal or member of the SMT if the principal is the alleged offender.
- the Grade Head

The Tribunal Hearing Commission will consist of the following members:

- the SGB Chairperson.
- two parent representatives from the Governing Body.

the School Principal or member of the SMT if the principal is the alleged offender; and

- the Grade Head.

In deciding the most appropriate sanction and restorative measures, the following needs to be considered: a) the age and developmental phase of the learner; b) The learner's disciplinary record, acknowledgement of the offence and willingness to be rehabilitated; c) Recommendations from professional service providers supporting the alleged learner offender.



Annexure J provides a guide in interpreting sexual behaviour according to ages where there is uncertainty. As advocated for in the Child Justice Act 75 of 2008, restorative processes are to be applied aimed at an acceptance of responsibilities, making restitution, and taking measures to prevent a recurrence of the incident and promoting reconciliation. Restorative Justice sees crime as an act against the victim and shifts the focus to repairing the harm that has been committed against the victim and community. It believes that the offender also needs assistance and seeks to identify what needs to change to prevent future re-offending. The Restorative Justice Booklet⁸ (DOJ&CD) serves as a guide in deciding on measures to be taken against learner offenders.

Sections 8(7)-8(9) of the South African Schools Act 84 of 1996 makes provision for the use of an intermediary if a learner testifies in disciplinary proceedings and if it appears to the SGB that a learner may suffer undue mental stress during a disciplinary hearing. Section 9 of the South African Schools Act, 84 of 1996 sets out the due process provisions in instances where a learner is suspended or expelled.

Table 1: Levels of Offence and Suggested Corrective and Restorative Measures

Level of Offence	Corrective and Restorative Measures
Level 1 Making rude jokes. Graffiti of a sexual nature.	• Verbal or written warning by the educator or Grade Head. • Supervised schoolwork that will contribute to the learner internalising values of respect. • Performing tasks that would assist the offended person (Incl. a written letter of apology to the victim). • Replacement or repair of damaged property. Temporary suspension from school activities, e.g., sport, cultural activities.
Level 2 Circulating offensive material (depending on the nature of the material, this could be level 4 and thus a criminal	• A final written warning by the educator or Grade Head, followed by a disciplinary hearing. • Supervised schoolwork that will contribute to the learner internalising values of respect. • Performing tasks that would assist the offended



offence. This is outlined in the Films and Publications Act 65 of 1996).

Improper suggestions of a sexual nature.

person (Incl. a written letter of apology to the victim).
Temporary suspension from school activities, e.g., sport, cultural activities.

Level 3

Sexual harassment.

- If in the same class with the victim (learner, educator or school staff), the offending learner will be removed from class and placed elsewhere, if accommodation can be made.
- The SGB may suspend a learner from attending school for up to seven school days during which time there will be a disciplinary hearing or tribunal hearing (depending on the severity of the particular offence).
- The learner will be referred by the SBST to psychosocial services for a rehabilitative programme.
- Sanctions may include detention with an assignment on values, detention with community service, detention and work with the leadership of a peer education group for a specified period.
- A letter outlining the decision shall be placed in the learner's personal file.
- After the disciplinary hearing, the SGB may recommend to the district HoD that the learner be expelled from the school. Where approval for expulsion is not granted, learners will attend counselling or the relevant life skills programme before they may return to class. The district HoD can make an alternative arrangement for the learner's placement at another public school or for the learner to be directed to an alternative supervised location, if the learner is still in the compulsory attendance age in terms of Section 3(1) of the South African Schools Act 84 of 1996). The learner perpetrator may NOT be placed in



Level of Offence	Corrective and Restorative Measures
Level 4 Persistent harassment despite previous corrective measures. Public indecency. Sexual assault and rape.	a school adjacent to the school of the learner victim. • The principal or member of the SMT files a report with the SAPS. • The learner is immediately suspended for 7 school days during which a tribunal hearing is undertaken. • The learner will be referred by the SBST to psychosocial services for a rehabilitative programme. • A letter outlining the decision shall be placed in the learner's personal file. After the tribunal hearing undertaken in line with the school's Code of Conduct for Learners as determined through section 8 (3) of the South African Schools Act, 84 of 1996, the SGB may recommend to the HoD that the learner be expelled from the school. Where approval for expulsion is not granted, learners will attend counselling or the relevant life skills programme before they may return to class. The HoD can make an alternative arrangement for the learner's placement at another public school or for the learner to be directed to an alternative supervised location, if the learner is still in the compulsory attendance age in terms of Section 3(1) of the South African Schools Act 84 of 1996). The learner perpetrator may NOT be placed in a school adjacent to the school of the learner victim. After the disciplinary hearing, the SGB may recommend to the district HoD that the learner be expelled from the school. Where approval for expulsion is not granted, learners will attend counselling or the relevant life skills programme before they may return to class. The district HoD can make an alternative arrangement for the learner's placement at another public school or for the learner to be directed to an alternative supervised location, if the learner is still in the compulsory attendance age in terms of Section 3(1) of the South African Schools Act 84 of 1996). The learner



Level of Offence	Corrective and Restorative Measures
	perpetrator may NOT be placed in a school adjacent to the school of the learner victim.

4.1.1. HEARINGS FOLLOWING REPORTED INCIDENT

- 4.1.1.1. The hearings in the case of repeated level 2 offences and level 3-4 offences must commence within 72 hours of receipt of the complaint.
- 4.1.1.2. The process must adhere to the regulations in the Misconduct of Learners at Public Schools and Disciplinary Proceedings (2000) and the school Code of Conduct. The SGB is to ensure the safety and well-being of victims during the hearing process.
- 4.1.1.3. Both the learner victim and the alleged learner offender have the right to have one internal representative.
- 4.1.1.4. Learners also have the right to choose any person to accompany him/her for support during the hearing process.
- 4.1.1.5. When interviewing, consideration should be given to the victim's developmental age, preference in terms of language, emotional status, concentration and cognitive ability; ensuring regular breaks and debriefing if required.
- 4.1.1.6. In the hearings, the circumstances, such as the nature of the sexual offence, and the context in which the alleged incident occurred have to be examined. A determination on the allegations is made from the facts on a case-by-case basis.
- 4.1.1.7. The committee must provide feedback to both the victim and the alleged offender about the outcome of the investigation within seven days of its conclusion.
- 4.1.1.8. Hearings MAY NOT BE DISCONTINUED for the following reasons:
- there was provocation.
- there was consent.
 - there was a delay between the incident and the reporting of the assault (this must not affect the outcome of the case in any way).
 - the reasons for reporting the sexual offence are deemed to be questionable.



- the complainant's use of drugs or alcohol will affect the outcome of the case.
- there is no corroborating evidence.
- the level of resistance offered by the complainant or the use of force by the alleged offender does not justify investigating the sexual abuse and/or harassment.
- the absence of injury or the extent of injury to the learner victim is not considered 'severe' enough to continue with the investigation.
- the complainant had a previous sexual or personal history with the alleged offender

the results of the forensic/medico-legal examination are inconclusive or inconsistent with the sexual offence.

- the initial statement and any additional statements appear inconsistent.
- there is a possibility of 'alternative dispute resolution mechanisms' (i.e., complainant-alleged offender mediation); and/or
- the complainant's psychological status will affect the outcome of the case.

4.2. DISCIPLINARY PROCEDURES IF AN EDUCATOR IS THE ALLEGED OFFENDER

- 4.2.1. The Education Labour Relations Council (ELRC) provides for compulsory inquiries by arbitrators in cases of disciplinary action against educators, appointed by the DBE, charged with sexual misconduct in respect of learners. Arbitration will proceed in line with the ELRC Collective Agreement 3 of 2018. The judgment of an arbitrator shall be final and binding and has the same status as arbitration awarded under the Labour Relations Act 66 of 1995. Provision has to be made for the legal representation of learners at arbitration upon representation by the ELRC. A report is submitted to the SACE who will undertake their own investigative and disciplinary process.
- 4.2.2. If it is alleged that an educator committed misconduct as contemplated in section 17(1) of the Employment of Educators Act 76 of 1998 or the SACE Code of Professional Ethics, disciplinary procedures will be dealt with in accordance with the provisions of the Disciplinary Code and Procedures for Educators as contemplated in the Employment of Educators Act 76 of 1998, the Code of Good Practice on Dismissal and the Code of Good Practice on the Handling of Sexual Harassment Cases (Schedule 8



of the Labour Relations Act 66 of 1995). This may result in dismissal and deregistration from the SACE Register if found guilty.

4.3 DISCIPLINARY PROCEDURES IF OTHER SCHOOL EMPLOYEE IS THE ALLEGED OFFENDER

- 4.3.1. According to Section 16a of the Public Service Act of 1994, the head of a PED shall immediately take disciplinary steps against an employee of the department who does not comply with a provision of this Act, or a regulation, determination or directive made thereunder.
- 4.3.2. When a chairperson of a disciplinary hearing pronounces a sanction in respect of an employee found guilty of misconduct, the following persons shall give effect to the sanction: (a) In the case of a provincial Head of Department, the relevant executive authority; and (b) in the case of any other employee, the relevant head of provincial department (Public Service Act of 1994, Section 16b).
- 4.3.3. Where an employee may lodge an internal appeal provided for in a collective agreement or in a determination in terms of the Public Service Act of 1994, Section 3 (5), this shall be done after the appeal authority has confirmed the sanction pronounced by the chairperson of a disciplinary hearing.

4.4. DISCIPLINARY PROCEDURES FOR FAILURE TO ADHERE TO THE PROTOCOL

Disciplinary actions will be taken against educators, principals, SGB and SMT members as well as other school staff who do not adhere to these protocol guidelines. According to the SACE Code of Professional Ethics, in case of a breach of ethics (including Section 3.13 of the code, which obligates Educators to take reasonable steps to ensure the safety of a learner), the disciplinary committee may impose sanctions. For employees employed under the Public Service Act of 1994, the sanction for failure to adhere to this protocol will be determined by the head of the relevant provincial department, also taking into consideration Public Service Co-ordinating Bargaining Council (PSCBC) Resolution 1 of 2003.



CHAPTER 5: KEY STAKEHOLDER ROLES AND RESPONSIBILITIES

5.1. SOUTH AFRICAN POLICE SERVICE (SAPS)

- 5.1.1. Receives and investigates level 4 offences of sexual abuse and harassment from the school Principal, or the Circuit Manager if the principal is the alleged offender.
- 5.1.2. Obtains statements from the complainant (learner victim), his/her parents or guardian and other relevant witnesses.
- 5.1.3. Arrests the alleged offenders.
- 5.1.4. Takes the learner victim for a medical examination where applicable in line with the National Police Instruction on Sexual Offences.
- 5.1.5. Takes the accused to court within 48 hours after arrest or 24 hours after arrest in the case of a minor.

5.2. SOUTH AFRICAN COUNCIL FOR EDUCATORS (SACE)

- 5.2.1. The council is responsible for the registration of educators; during registration, educators are to be vetted to ensure that they are not guilty of any sexual offences.
- 5.2.2. If an educator is guilty of a sexual offence, he/she may not be registered by SACE, and if they are already registered, the council has the mandate to de-register the educator.
- 5.2.3. The SACE ethics committee attends to any allegation brought to its attention either through the media, whistle blowers or any member of the community including educators and learners and follows steps as provided in the SACE Act (section 26)
- 5.2.4. The names of educators found guilty of sexual abuse must be submitted to SACE by the national DBE for their continued professional status to be evaluated.
- 5.2.5. The Council submits to the PED and the Department of Basic Education, specifically the Labour Relations Section, a list of the names of educators who are removed from the SACE Register on a quarterly basis, in order for the employer to terminate the services of the educators concerned and for the DBE to monitor the implementation



and to submit the names to the Department of Social Development for registration in the National Child Protection Register.

5.2.6. In case of a complaint of harassment and/or abuse by an educator, a letter of notification must be forwarded to: Chief Executive Officer

South African Council for Educators (SACE), Private Bag X 127,

Centurion 0046 The letter may also be hand delivered to: South African Council for Educators (SACE), 240 Lenchen Avenue,

Centurion 0046

Or it may be emailed to ethics@sace.org.za

5.3. DEPARTMENT OF SOCIAL DEVELOPMENT (DSD)

- 5.3.1. Supports the learner victim and parents or guardians (if they are not the alleged offender) and perpetrators parents or guardians during the investigation and potential court process.
- 5.3.2. In terms of section 110(5) of the Children's Act (Act 38 of 2005), social workers or a designated child protection organisation, are required to ensure the safety and well-being of a child upon receiving a report of sexual abuse and make an initial assessment of the report.
- 5.3.3. DSD social workers provide immediate trauma debriefing and/or long-term counselling directly or refer to a non- governmental organisation.
- 5.3.4. DSD social workers maintain the NRSO register (as do social workers of designated child protection organisations).
- 5.3.5. Provincial Department investigates the truthfulness of a report of sexual abuse or harassment or cause it to be investigated. Without delay initiates proceedings in terms of the Childrens Act 38 of 2005 if the victim is a learner and submit particulars to the District Director for inclusion in part A of the NCPR.



5.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

- 5.4.1. Via Commissioners of Children's Courts, protect learners from further abuse through the issuing of Protection Orders (interdicts) in line with the Protection from Harassment Act 17 of 2011.
- 5.4.2. Subpoena witnesses to testify in court.
- 5.4.3. Provides interpreters so that the proceedings can take place in the language of the learner victim and the alleged offender.
- 5.4.4. Provides for services of intermediaries if required. The intermediary has two functions; a) to protect the witness against hostile cross-examination and b) to assist the witness in understanding the questions posed.
- 5.4.5. Provide, through the courts, the district DBE with the NCPR, containing all convictions of all people charged with child abuse.

5.5. NATIONAL PROSECUTING AUTHORITY (NPA)

- 5.5.1. Institutes criminal proceedings on behalf of the State and carries out all necessary functions required for instituting criminal proceedings.
- 5.5.2. Its Sexual Offences and Community Affairs (SOCA) Unit is to ensure the effective and efficient management of young offenders by prosecutors (aged 7-18).

5.5.2. Assistance to victims is provided through the Thuthuzela Care Centres (also see 5.6.) if one exists in the school's jurisdiction (see Annexure B) or through other facility that provides such support. The Thuthuzela Care Centres are linked to Regional Courts or Sexual Offences Courts (where available), which provide prosecutors, social workers, investigating officers, magistrates, health professionals and police officers. As one-stop facility, Thuthuzela Care Centres are in place to ensure a victim-centred approach, prosecutor-guided investigations, trial and court ready cases with stakeholder cooperation. Ultimately, the aim is to minimize / reduce secondary victimisations, to shorten the cycle period of the case and to improve the conviction rate of reported cases.

5.5.5. Court Preparation Officers, employed by the NPA, assist learner victims through the court preparation program, which will prepare them for the court process.



5.6. NATIONAL DEPARTMENT OF HEALTH (DoH)

5.6.1. Victims receive their medical examination at a Thuthuzela Care Centre (if one is nearby) or at a health facility by a medical doctor or forensic clinician, which they are taken to by a member of the SAPS. If the victim wishes, he or she can be accompanied by a friend, relative, trusted educator or nurse to support her or him during the medical examination. Learners under 12 have to be accompanied by a guardian or parent.

5.6.2. Before any medical examination, the health care worker must provide the complainant with sufficient information and disclose any risk pertaining to the medical examination and procedures.

5.6.3. The health care worker must obtain the informed consent of the learner victim or parent or guardian to conduct the medical examination.

5.6.4. Any and all medical evidence may only be collected and released to the SAPS with the informed consent of the learner victim and/or guardian.

5.6.5. If the complainant declines the medical examination, the collection of evidence or its release to the SAPS, this choice should be respected, and no undue pressure should be exerted upon the learner victim.

5.6.6. As prescribed in the WHO guidelines for medico-legal care for victims of sexual violence (2004), medical services offered to the complainant should include, but not be limited to:

Post-exposure prophylaxis (PEP) for HIV.

- prevention of other sexually transmitted infections.
- emergency contraception to prevent pregnancy.
- treatment of injuries; and
- a forensic examination.

5.6.7. Any victims presenting to a government health care facility must be counselled by the examining health care worker about the potential risk of HIV transmission after a sexual offence has occurred, in accordance with the National Antiretroviral Treatment Guidelines.

5.6.8. If the complainant decides to take PEP, he or she should be given comprehensive adherence counselling and should be encouraged to return to the clinic for a follow-up appointment.



5.7. EDUCATION LABOUR RELATIONS COUNCIL (ELRC)

5.7.1. Serves the public education sector nationally and provincially.

5.7.2. Promotes the maintenance of labour peace in the public education sector, through the provisioning of dispute resolution and prevention services.

5.7.3. Provides for compulsory inquiries by arbitrators in cases of disciplinary action against educators charged with sexual misconduct in respect of learners.

5.7.4. ELRC Arbitrators deal with minor children as witnesses and victims and appointed intermediaries aid the child victim or witness to give evidence.

5.7.5. The Education Labour Relations Council (ELRC) will submit to the SACE a summary of the record of the disciplinary hearings and the sanction of every case where disciplinary steps were taken against a DBE appointed educator in cases of sexual abuse and harassment to enable the SACE to take further steps as provided in the SACE Act (section 26).

5.8. COMMISSION FOR GENDER EQUALITY (CGE)

5.8.1. Investigates gender-related matters and may take on advisory role in sexual abuse and harassment cases at schools.

5.8.2. Respects the internal processes when a sexual abuse matter is reported.

5.8.3. Monitors whether all parties comply with this protocol, ensuring strict adherence from a school level.

5.8.4. Refers matters reported to the Commission to the Department of Basic Education in the relevant province to investigate in accordance with the protocol.

5.8.5. The Commission may be contacted in instances where sexual abuse and harassment incidents have occurred under 0800 007 709.



5.9. CONTRACTORS AND OTHER STAKEHOLDERS AND SERVICE PROVIDERS WHO MAY BE PRESENT ON ANY SCHOOL GROUND

5.9.1. Are obliged to ensure that none of their employees' names are on the NRSO and NCR registers.


M QWASE

ACTING HEAD OF DEPARTMENT

23 JANUARY 2023
DATE