

# PROTOCOL TO DEAL WITH INCIDENCES OF CORPORAL PUNISHMENT IN SCHOOLS



**basic education**

Department:  
Basic Education  
**REPUBLIC OF SOUTH AFRICA**





# **Protocol to Deal with Incidences of Corporal Punishments in Schools**

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“Children do not lose their human rights by virtue of passing through the school gates.”

*Committee on the Rights of the Child, General Comment No. 1, 2001*

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## ABBREVIATIONS & ACRONYMS

<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>DBE</b>	Department of Basic Education
<b>EEA</b>	Employment of Educators Act
<b>GHS</b>	General Household Surveys
<b>ISASA</b>	Independent Schools Association of South Africa
<b>MEC</b>	Member of the Executive Council
<b>NASGB</b>	National Association of School Governing Bodies
<b>NSSF</b>	National School Safety Framework
<b>SACE</b>	South African Council for Educators
<b>SAHRC</b>	South African Human Rights Commission
<b>SAPS</b>	South African Police Services
<b>SASA</b>	South African Schools Act
<b>SGB</b>	School Governing Body
<b>StatsSA</b>	Statistics South Africa
<b>SAPA</b>	South African Principal's Association
<b>PED</b>	Provincial Education Department

## DEFINITIONS

**Minister:** means the Minister of Education.

**MEC:** means a Member of the Executive Council of a province who is responsible for education in that province.

**HOD:** /Head of Department means the head of an education department.

**Province:** means a province established by section 124 of the Constitution

**School:** means a public or independent school which enrolls 40 learners in one or more grades between zero and grade twelve.

**Principal:** means an educator appointed or acting as the head of a school.

**Member of staff:** means a person is employed at a school.

**Education department:** means the department established by section 7(2) of the Public Service Act, 1994 (Proclamation No.103 of 1994), which is responsible for education in a province.

**Officer:** means an employee of an education department appointed in terms 25 of the Educators Employment Act 1994 (Proclamation No 138 of 1994)

**Learner:** Any person enrolled in an education institution as defined in the South African Schools Act

**Grade:** means that part of an education programme which a learner may complete in one school year, or any other education programme which the Member of the Executive Council may deem equivalent thereto.

**Educator:** Refers to any person who teaches, educates or trains other persons at an education institution or assists in rendering education services or education auxiliary or support services provided by or in an education department. It means anyone defined in terms of the Employment of Educators Act (E of 5).

**Parents:** Means the parent or guardian of a learner or the person legally entitled to custody of a learner.

**Abuse:** Means unjust or unwanted practice e.g. physical, emotional, verbal or sexual abuse including victimisation or ill treatment.

## BACKGROUND/PROBLEM STATEMENT

Corporal punishment of children is a violation of human rights. It contravenes international instruments that prohibit the use of cruel, inhumane and degrading treatment (Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the African Charter on Human and People's Rights and the African Charter on the Rights and Welfare of the Child. Wherever it occurs and whoever the perpetrator – breaches their fundamental rights to protection from all forms of violence and respect for their human dignity. Corporal punishment violates children's rights to education.

Decades since the Convention on the Rights of the Child confirmed that human rights belong to children as to all other people, children continue to be assaulted in the name of "discipline" in homes, schools and other settings, and that adults responsible for educating children still attempt to justify the infliction of pain on the developing bodies and minds of those in their care.

The contradictions are obvious. Hitting children teaches violence not peace, disrespect not respect, conflict not resolution. Children are illegally subjected to corporal punishment in schools; institutions meant for care and protection of children. Notwithstanding the efforts of government and progress made in creating a legislative framework, acts of corporal punishment in schools continue.



## INTRODUCTION

Corporal or physical punishment has been prohibited in South African schools since 1996. South Africa's ratification of international conventions such as the United Nations Convention on the Rights of the Child and regional charters such as the African Charter on the Rights and Welfare of the Child has further cemented the country's commitment to protecting children from violence. However, despite these legal provisions, the 2012 National School Violence Study (NSVS) provides evidence to suggest the continued use of physical punishment within South African schools as a means of effecting discipline.

Corporal punishment is part of a manifestation of gender-based violence in that it serves the same purpose of exerting power and control as do other forms of gender-based violence. Often parents expect and demand teachers use 'mild' forms of corporal punishment, as it is believed to be an important part of teaching children discipline. This practice is prohibited in schools as parents cannot abdicate their responsibility to discipline their children.

The Department of Basic Education therefore condemns in the harshest possible terms any subverted, reckless and irresponsible attempts by principals, teachers and/or any support staff member to undermine the existing legislative framework prohibiting the use of corporal punishment in schools. Prohibiting corporal punishment is an obligation under international human rights law, and not a voluntary gesture based on good-will.

## PURPOSE OF THE DOCUMENT

Protocol to Deal with Incidences of Corporal Punishments in Schools is essentially to highlight the abolishment of corporal punishment in schools and to provide clear guidance to provinces, districts and schools on how to deal with issues of corporal punishment. The protocol aims to create a national framework to standardise the education sector's response to corporal punishment and to facilitate implementation of the prohibition of corporal punishment throughout the education system and embed the Positive Behaviour Intervention Systems programmes – in order to empower all stakeholders to respond constructively towards learner ill-discipline.

## DEFINITION

### CORPORAL PUNISHMENT

The United Nations Committee on the Rights of the Child defines ‘**corporal**’ or ‘**physical**’ punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices).

In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.” (Committee on the Rights of the Child, General Comment No. 8, paragraph 11).

This definition is a useful benchmark because it emphasises the various physical forms that corporal punishment might take, and establishes that this full spectrum of physical punishment, even acts that many consider ‘mild’, constitute corporal punishment. There is no threshold below which physical force against a child is acceptable

# CHAPTER 1: LEGISLATIVE FRAMEWORK

## 1.1 INTERNATIONAL LAW

### 1.1.1. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child puts an obligation on governments to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” (article 19(1)).

In relation to education, governments must “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention” (article 28(2)). The Convention emphasises that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” (article 37(a)).

The aims of education (article 29(1)), stresses that realising a child’s right to education must entail ensuring there is no corporal punishment (paragraph. 8):

*“Children do not lose their human rights by virtue of passing through the school gates”.*

Education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life.

Education must also be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school. Compliance with the values recognized in article 29 (1) clearly requires that schools be *child-friendly in the fullest sense of the term and that they be consistent in all respects with 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.”

### 1.1.2. AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Charter on the Rights and Welfare of the Child requires states to ensure that discipline by parents and at school respects the child’s human dignity (articles 11 and 20) and that children are protected from all forms of torture and inhuman treatment by parents and others caring for the child (articles 16 and 17). The African Charter also provides 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

The **South African Constitution** (Section 12) stipulates: *Everyone has the right not to be treated or punished in a cruel, inhuman or degrading way*. The South African Bill of Rights (Chapter 2 of the Constitution) makes many references to the way children or people should be treated.

- Everyone has inherent dignity and all have the right to have their dignity respected and protected. (Section 10);
- Everyone has the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman or degrading way.” (Section 12(e) ;
- The best interest of the child shall be paramount in any matters affecting the child. (Section 28).

### 1.2.2. NATIONAL EDUCATION POLICY ACT (1996)

Section 3(4) (n) of the National Education Policy Act 32 states that the Minister of Education shall determine the national policy for the: control and discipline of students at education institutions: Provided that no person shall administer corporal punishment, or subject a student to psychological or physical abuse at an education institution.

### 1.2.3. THE SOUTH AFRICAN SCHOOLS ACT (NO. 84 OF 1996)

The South African Schools Act (Act 84 of 1996) states in Section 10(1) No person may administer corporal punishment at a school to a learner; (2) any person who contravenes subsection 1 is guilty of an offence, and liable on conviction to a sentence which could be imposed for assault.

Section 8 of SASA provides that an SGB must adopt a code of conduct for learners, 'after consultation with learners, parents and educators of the School Section 8(4) states that all learners attending a school are bound by the code of conduct of that school. The section further provides that the Minister may establish guidelines for the consideration of SGB's in adopting of a code of conduct.

Pursuant to this provision in 1998, the then Minister of Basic Education published the 'Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners'. These Guidelines affirm that school codes of conduct abide by the Constitution and respect the rights of learners. The Guidelines require that school codes promote 'positive discipline' and not be 'punitive and punishment orientated'.

The Guidelines state further that:

*Corporal Punishment has been abolished. Educators and learners have to learn the importance of mediation and co-operation, to seek and negotiate non-violent solutions to conflict and differences and to make use of due process of law.*

The Guidelines require that school codes:

- (a) inform learners of conduct that is permissible and conduct that is prohibited;
- (b) advise learners as to the grievance procedures, and to
- (c) advise learners of due process procedures during disciplinary hearings.

Sections 8(7)-8(9) of SASA make provision for the use of an intermediary in disciplinary proceedings if it appears to an SGB that a learner may suffer undue stress during a disciplinary hearing.

Section 9 of SASA sets out the due process provisions in instances where a learner is suspended or expelled.

### 1.2.4. CHILDREN'S ACT 38 OF 2005

In terms of section 7(1) (h) of the Children's Act, when applying the best interests of the child standard, the child's physical and emotional wellbeing must be taken into consideration.

Chapter 7 of the Children's Act (as amended), provides measures for the general protection of children. The Chapter contains two parts, namely, Part 1 relating to a Child Protection System and Part 2, regarding the National Child Protection Register. Within these two parts there are expansive provisions which seek to enhance the protection afforded by the law to children.

## CHAPTER 2: KEY ELEMENTS OF IMPLEMENTING AND ENFORCING THE PROHIBITION OF CORPORAL PUNISHMENT IN SCHOOLS

2.1 Implementing the prohibition of corporal punishment in schools is not only about promoting positive, non-violent discipline. To be effective, implementation requires a comprehensive range of measures aimed at preventing the use of corporal punishment, equipping teachers with the necessary positive, non-violent disciplinary techniques and responding appropriately when the prohibition is breached.

The following will support the implementation of this prohibition and non-violence in education:

- a) Conduct widespread public education and awareness raising, among adults and children, about the prohibition of corporal punishment and the reasons for it;
- b) Disseminate information on the dangers of corporal punishment and the consequences;
- c) Provide detailed guidance, for all involved, on how the law prohibiting corporal punishment should be implemented in the best interests of children;
- d) Communicate children's rights to protection from corporal punishment and all other cruel or degrading forms of punishment to children and adults;
- e) Promote positive, non-violent forms of discipline to the public, children, parents, other carers, teachers, etc;
- f) Establish a range of appropriate responses and sanctions to address the continued use of corporal punishment by teachers – for example, make compliance with prohibition a condition of employment and breaching of the prohibition punishable as misconduct; place on school administrations and head teachers the responsibility for ensuring corporal punishment is not used;
- g) Monitor compliance with the prohibition through school monitoring mechanisms, including confidential interviews with staff and children with all necessary safeguards;
- h) Establish independent complaints procedures for children, staff and other adults, ensuring protection for those who report the use of corporal punishment;
- i) Ensure clear direction and training for all providers of education at all levels (school principals, teachers, assistants, volunteers and other adults who come into contact with children), through initial and in-service training on the law and on positive, non-violent disciplinary strategies, to support and enforce prohibition;
- j) Identify key public figures and a wide range of partners who can support implementation of the law and transformation of attitudes;
- k) Attract the necessary resources; and
- l) Evaluate the impact of law reform and other measures, through a baseline survey and regular follow-up surveys, interviewing children and parents.

## CHAPTER 3: ROLES AND RESPONSIBILITIES

### 3.1. DEPARTMENT OF BASIC EDUCATION

- 3.3.1. Provide the necessary guidelines, protocols and support to ensure that corporal punishment is prohibited and ultimately eliminated from all schools.
- 3.1.2. Improving school management and governance is central, with guidelines and action plans on eliminating corporal punishment developed and enforced with the support of provincial and district officials, teachers, parents and children.
- 3.1.3. Developing training modules on positive behaviour interventions and support programmes to provide behaviour-change techniques for teachers, children, administrators and parents.
- 3.1.4. Ensure school-level interventions are accompanied and supported by wider systemic change in the education system involving policy development, budgetary allocations and employment policies.
- 3.1.5. Training and support to teachers in the use of non-violent or positive methods of discipline.
- 3.1.6. Collaborating with teachers' unions and education authorities as a means of enforcing legislation to protect children from violence.
- 3.1.8. Encourage community dialogues and working with local norms and understandings to bring about change from within.
- 3.1.9. National action plans to implement the Global Goals on Sustainable Development need to retain the focus on protecting children from violence, abuse and exploitation.
- 3.1.10. Ensure school environments are enabling, supportive, inclusive and safe spaces in which children can learn and flourish.

### 3.2 PROVINCIAL DEPARTMENTS OF EDUCATION

- 3.2.1 Provincial Departments must provide an annual circular to all schools informing all District and Circuit officials, Principals, Senior Management officials, and teachers of the abolishment of corporal punishment in schools.
- 3.2.2 Adopt a zero tolerance policy approach when corporal punishment is reported and provide a simple and accessible reporting mechanism in all schools.
- 3.2.3 Develop a provincial mechanism to enable learners, parents and caregivers to report incidences of corporal punishment.
- 3.2.4 Provide an annual circular to all schools to inform teachers, principals and school governing bodies to their obligation to act against corporal punishment, as well as clearly spell out the sanctions that may be imposed against anyone who violates the prohibition.
- 3.2.5 Advocate this protocol widely and on an ongoing basis so that all stakeholders including teachers, parents, learners, school governing bodies and teacher unions are aware of its contents.
- 3.2.6 Consistently investigate and prosecute each case of corporal punishment.
- 3.2.7 Improve labour relations processes to ensure that teachers refrain from violating the prohibition.
- 3.2.8 Impose the minimum sentences based on the severity of the violations as contained in this protocol.
- 3.2.9 Develop a disciplinary procedure that protects children from intimidation and coercion.

### 3.3. DISTRICTS

- 3.3.1. Monitoring and support to schools in terms of the implementation of the Protocol.
- 3.3.2. Establish a range of appropriate responses and sanctions to address the continued use of corporal punishment by teachers.
- 3.3.3. Provide and coordinate services for learners experiencing behavioural difficulties. Engage in appropriate interagency agreements in order to streamline the provisioning of services to support learners with social and behavioural problems.
- 3.3.4. Provide appropriate professional development opportunities for teachers on the use of alternatives to corporal punishment.
- 3.3.5. Monitor and support principals in ensuring that school planning addresses the implementation and annual review of the Code of Conduct for learners.
- 3.3.6. Ensure that regional/district support services and local interagency services provide appropriate services to school communities.
- 3.3.7. Work with principals and other government departments (e.g. SAPS and Social Development) to ensure that mechanisms are developed at a local level to provide appropriate placements for learners requiring temporary alternative placement.
- 3.3.8. Support principals and other school personnel to manage critical incidents related to learner behaviour, and facilitate mediation with community members when necessary.
- 3.3.9. Address grievances of community members who believe a school's management of a learner's behaviour has been unjust. Investigate all reported cases of corporal punishment.
- 3.3.10. Provide regular refresher courses on discipline and classroom management to schools.
- 3.3.11. Record and report all reported cases of corporal punishment to the province on a quarterly and annual basis
- 3.3.12. Monitor compliance with prohibition of corporal punishment through school inspection mechanisms, including confidential interviews with staff and children with all necessary safeguards.

## **3.4. SCHOOLS**

### **3.4.1 PRINCIPALS**

- 3.4.1.1. Adopt a whole school approach that will ensure classroom discipline reflects the school's policies that must reflect the establishment of ground rules, consistent implementation of the rules, knowledge of learners and focus on relationship building.
- 3.4.1.2. Devise positive strategies to deal learners with behavioural and social difficulties; involvement of parents and the use of professional assistance
- 3.4.1.3. Establish an independent complains system with an appropriate interagency for learners, staff, parents and other adults, ensuring protection for those who report the use of corporal punishment.
- 3.4.1.4. Develop, implement and regularly review, and monitor, in consultation with the school community and governing body (SGB), a Code of Conduct for Teachers and Learners that is consistent with departmental policies.
- 3.4.1.5. Train existing and new staff about children's rights, the law and non-violent discipline through in-service training and inductions for all providers of education at all levels (principals, teachers, assistants, non-teaching staff, volunteers and other adults who come into contact with children).
- 3.4.1.6. Ensure that parents/ guardians have access to the school's Code of Conduct for Learners, support materials and related documents, and are aware of their rights to advocacy and of avenues open to them should they have grievances relating to the school's management of learner behaviour.
- 3.4.1.7. Promote structures in class and at school level to enable learners to be involved in the management of their behaviour, support and enable parents /guardians and teachers to form relationships within which learner behaviour may be managed positively.
- 3.4.1.8. Involve appropriate regional/district support services and other agencies to support staff and families in managing learner behaviour effectively.
- 3.4.1.9. Use system wide level consequences and interagency support programmes with learners who do not respond to class and school consequences.

## **3.5. SCHOOL GOVERNING BODIES**

- 3.5.1. Improving school governance is central, with guidelines and action plans on eliminating violence in schools, including corporal punishment developed and enforced with the support of principals, teachers, parents and children.
- 3.5.2. All the actions of the schools at all times – towards learners, parents, or educators – must respect the constitutional principles of protecting human dignity, equality and freedom.
- 3.5.3. All schools must make their code of conduct available to all learners. Learners cannot be expected to follow rules that they have not seen, discussed and agreed to. Adopt a code of conduct for learners at the school which sets out disciplinary procedures.
- 3.5.4. Ensuring such transparency and fairness helps to keep all informed of what actions will be taken against them if they commit an offence. Serious offences that may warrant suspension and expulsion are determined and published in the Government Gazette by the Member of the Executive Council (MEC) who is responsible for education.



### 3.6. EDUCATORS

- 3.6.1. As custodians of children's hopes and aspirations, educators must accept the responsibility for creating an environment that will help children thrive and develop to their full potential.
- 3.6.2. Creating a safer school requires a school-wide commitment. It will require the school's administration and educators to learn new skills and collectively reflect on the school's methods.
- 3.6.3. Breaking cycles of violence requires greater attention to the gendered nature of corporal punishment. This is imperative, given that boys are significantly more likely to experience corporal punishment, which reinforces gender stereotypes and notions of violent masculinities at a young age. While not ignoring the significant risk of other forms of violence faced by girls, breaking cycles of violence requires a greater understanding of how norms are internalised and the role played by corporal punishment in instilling these.
- 3.6.4. Participate in the development and review of the school's mission statement in light of its commitment to learners and the types of outcomes it desires for children.
- 3.6.5. Participate and provide input into the establishment of policies and procedures to support and encourage the use of preventive strategies that teach problem-solving and social skills and implement these policies and procedures.
- 3.6.6. Implement problem-solving and social skills instruction that has been incorporated into the curriculum in line with PBIS programmes.
- 3.6.7. Participate in ongoing staff training in preventive strategies and methods to provide direct instruction in social skills.
- 3.6.8. Participate in the development of more intensive instructional opportunities in academic, social and problem-solving skills should the general teaching strategies prove insufficient for individual learners, as well as implement and evaluate these instructional opportunities.
- 3.6.9. Model and support the use of preventive strategies of problem-solving and social skills with learners and their interactions with adults.

### 3.7. LEARNERS

- 3.7.1. Participate in the development of and review of the school's mission statement in light of its commitment to students and the types of outcomes it desires for children.
- 3.7.2. Participate in and give input into the examination of the school's educational practices that are designed to teach the necessary problem-solving and social skills.
- 3.7.3. Understand and follow the stipulations of the Learner Code of Conduct.

### 3.8. PARENTS

- 3.8.1. School communities are empowered through the South African Schools Act to develop their own disciplinary code. The code of conduct is essential to the successful implementation of an alternative to corporal punishment as it sets up the framework and the consequences for misbehaviour.
- 3.8.2. Community dialogue and working with local norms and understandings to bring about change from within, is more effective and respectful than imposing from the outside and avoids stigmatizing different groups of people.
- 3.8.3. Involving children in the establishment of school rules and standards, such as through school clubs and learner councils is a promising approach to reducing violence and improving learner behaviour.
- 3.8.4. Participate in the development and review of the district's mission statement in light of its commitment to learners and the types of outcomes it desires for children.
- 3.8.5. Assist in the implementation of the student code of conduct.
- 3.8.6. Participate in and give input into the examination of the district's educational practices that are designed to teach the necessary problem solving and social skills.
- 3.8.7. Support policies and procedures that encourage the use of preventive strategies that teach problem-solving and social skills.
- 3.8.8. Advocate for and participate in ongoing parent effectiveness training opportunities as they relate to discipline in the home and school.
- 3.8.9. Work with the "school family" to ensure parents understanding of what is expected in the classroom and what parents can do to support the school's efforts

### 3.9 REPORTING OBLIGATIONS

- 3.9.1. All cases of corporal punishment must be reported to the Principal if he/she is not the perpetrator. In cases where the Principal is the perpetrator the report from the victim must be filed through the Circuit Manager or District Director.
- 3.9.2. The person to whom the incident has been reported to must follow the procedures as set out below:
  - Get as much information as possible from the complainant (learner) about the allegation, through a written statement.
  - Forward all the relevant documents together with a report by the Head of the Institution to the Directorate: Dispute Management at Head Office and mark them "Urgent".
  - Inform the Governing Body and the school Circuit Manager about the allegations and confirm with him/her that the matter has been referred to the District Director.
  - Also inform the learner's parents of the incident and that it has been referred to Head Office for further handling and that they will be contacted in due course by an official of the Department.
  - The District Office and/or Head Office will investigate the matter and forward a report with recommendations for the Head of Department's approval. Where an educator is found guilty, disciplinary action will be instituted and the matter will be reported to SACE.
  - Under no circumstances should cases of corporal punishment be dealt with in terms of the informal disciplinary hearing procedure. All cases should be heard in a formal disciplinary hearing. Any sanction, e.g. warnings, issued at institutional level, will be null and void and the process will be redone through a formal disciplinary hearing.

## CHAPTER 4: DISCIPLINARY CASES

### 4.1 COMPLAINTS PROCEDURES

- 4.1.1. Where there has been a complaint of corporal punishment against an educator at a school, the district office for that school must conduct preliminary investigations into the allegations. Depending on the outcome of this investigation the district official will refer the case to the Labour Relations Directorate for further investigation and disciplinary hearings.
- 4.1.2. Schedule 2 of the Employment of Educators Act (EEA) governs the procedure for disciplinary hearings against educators. The schedule states that if the misconduct is also a criminal offence, separate and different proceedings will occur. No provision is made for the legal representation of learners at disciplinary proceedings. Noteworthy, however, is the provision which enables the presiding officer to appoint an intermediary in instances where a witness is under 18 years of age and will suffer 'undue mental stress or suffering' during proceedings.
- 4.1.3. In terms of section 17 (1) (d) an educator is guilty of serious misconduct and must be dismissed if he or she is, 'found guilty of seriously assaulting, with the intention to cause grievous bodily harm to a learner, student or other employee'. In terms of section 18(1) (u) an educator is guilty of misconduct if he or she 'intimidates or victimises fellow employees, learners or students'. In terms of section 18(1)(r) 'an educator is guilty of misconduct if he or she 'assaults, or attempts to, or threatens to assault, another employee or another person.

### 4.2 SUSPENSION OF AN EDUCATOR IN TERMS OF THE EMPLOYMENT OF EDUCATORS ACT

#### 4.2.1. PRINCIPLES

- 4.2.1.1. The employer must have valid and fair reason for imposing a precautionary suspension against an educator, based on fair labour relations principles
- 4.2.1.2. The period of precautionary suspension must be reasonable and justifiable but should not exceed 90 calendar days. Precautionary suspensions must be reviewed on a regular basis.
- 4.2.1.3. Educator must, without delay and throughout the process be informed of the process steps that the Department is initiating.
- 4.2.1.4. If precautionary suspension is imposed on the educator, he/she is entitled to a speedy and effective finalisation of the disciplinary process.
- 4.2.1.5. The educator may return to work should the hearing not be concluded within 90 calendar days; however this does not prohibit/ preclude the employer from continuing with the disciplinary process nor does it render the educator immune from the allegations preferred against him/ her.
- 4.2.1.6. Precautionary suspension in terms of the disciplinary code does not constitute a judgement, and must be on full pay.
- 4.2.1.7. Disregard of the peremptory provisions of a statute is fatal to the validity of the proceedings affected.

### 4.3 SCOPE OF APPLICATION OF PRECAUTIONARY SUSPENSIONS / TRANSFER

- 4.3.1. In the case of serious misconduct in terms of section 17, the employer may suspend the educator on full pay for a maximum period of three months. In the case of misconduct in terms of section 18, the employer may also suspend an educator in accordance with the procedure contemplated in item 6 (1), or transfer the educator to another post if the employer believes that the presence of the educator may jeopardise any investigation into the alleged misconduct, or endanger the well-being or safety of any person at the work-place. Learners who are victims of serious misconduct by an educator must at all times be protected against intimidation or harassment.
- 4.3.2. If an educator is suspended or transferred, the employer must do everything possible to conclude a disciplinary hearing within one month of the suspension or transfer (see item 6 (3) (a));
- 4.3.3. The presiding officer may decide on any further postponement. Such a postponement must not exceed 90 days from the date of suspension.
- 4.3.4. The employer guideline on the management of precautionary suspensions is necessary to ensure that such transfers/suspensions are managed in accordance with the principles of administrative justice, natural justice and fairness. The maintenance of a good labour relations atmosphere in the workplace requires that acceptable and fair procedure is in place and observed.
- 4.3.5. This guideline serves a dual purpose in that it provides a policy framework, which enables management to maintain satisfactory standards, and educators to have access to procedures whereby alleged failures to comply with these standards may be fairly and objectively addressed.
- 4.3.6. The guideline on the management of suspensions shall be in writing, consulted with labour, and made available to educators. The essential elements of any procedure for dealing with suspension are that the:
- basis for the suspension is clear;
  - reasons for suspension are well defined;
  - educator is informed of the reasons for the decision, and
  - educator has the opportunity to respond to the impending suspension.

### 4.4 DELEGATION

4.4.1. Departments are required and encouraged to in terms of item 4 (1) of Schedule 2 of the Employment of Educators Act, develop their respective Labour Relations Delegations of Authority. This will assist to quickly manage discipline.

### 4.5 GROUNDS FOR SUSPENSION

- 4.5.1. The Disciplinary Code and Procedure provides for the circumstances under which an educator may be transferred or suspended on full pay.
- 4.5.2. A decision to transfer/suspend should be taken with care, in the light of the circumstances involved. There are essentially two aspects to consider when transferring/suspending an educator:
- Reasonable suspicion of serious misconduct
  - If there is a reasonable basis for believing that the presence of the educator at the workplace might interfere with the investigation, the witnesses and evidence, Transfer/precautionary suspension shall only be considered where the continued presence of the educator in the workplace is inappropriate due to:

- ❖ The effective operation of the workplace;
- ❖ The interests of the public;
- ❖ The interests of the educator;

4.5.3. Before an educator is suspended it should be ensured that a preliminary hearing is conducted in compliance with the *audi alteram partem* rule, giving the educator an opportunity to present his/her reasons to opposing the precautionary suspension. The process involved does not require the “criminal justice” model of workplace disciplinary action in that the employer can make a decision on whether to suspend or not on a balance of probabilities.

4.5.4. The approach to hold a hearing before suspension is consistent with fair labour practice. This means that an educator should not be suspended unless there are prima facie grounds for believing that the educator has committed serious misconduct and there is some objectively justifiable reason for excluding the educator from the workplace.

4.5.5. In the case where a teacher has committed serious misconduct against a learner, the precautionary suspension/transfer hearing must be held within 24 hours of the Department being aware of the misconduct and the decision to suspend/transfer must be communicated to the transgressor immediately after the hearing.

#### **4.6 TRANSFER (ALTERNATIVE TO SUSPENSION)**

4.6.1. The educator is temporarily transferred to another work location or re-assigned other duties as a precautionary measure. The intent is for temporary removal from the place of work or nature of work to avoid circumstances where, for instance, the presence of an educator at the workplace or in the specific environment might jeopardise any investigation into the alleged misconduct or intimidate any person, particularly a learner as a victim.

4.6.2. Re-assignment of duties or transfer shall always be given priority (except where a learner is the victim) over a precautionary suspension in order to curb expenditure.

#### **4.7. SUSPENSION WITH FULL PAY**

4.7.1. The educator is not allowed to take up his/her duties until the suspension is lifted, but must be available at a location acceptable and accessible to the employer for the purpose of completing the investigation.

4.7.2. Any condition attached to a suspension shall be regarded as a lawful instruction. Breach of the instruction could result in further disciplinary action in appropriate circumstances.

4.7.3. Suspension shall not amount to a breach of contract by the employer because the educator remains on full pay although prevented by the employer from performing duties, which shall be within a month or 90 days, depending on the complexity of the matter and the length of the investigation.

4.7.4. The educator may be relieved of his/her duties at this stage. An example of a notice of intention to suspend is attached as Annexure A.

4.7.5. Examples of a notification transfer or reassignment of duties and a notification of suspension are attached as Annexure B and Annexure C, respectively.

## 4.8 RECORD KEEPING

4.8.1. The employer shall keep records of each transfer/suspended educator specifying the following:

- The nature of the alleged transgression.
- The reasons for the transfer/suspension.
- The period of transfer/suspension.
- The financial implications of the transfer/suspension.
- The written notifications of the transfer/suspension.
- Responses from the educator in regard to the transfer/suspension.
- The reasons for the extension of a suspension.
- Date of termination of the transfer/suspension.

## 4.9 REVIEW OF SUSPENSION

4.9.1. If an educator is transferred or suspended as a precautionary measure, the employer must hold a disciplinary hearing within a month or 90 days, depending on the complexity of the matter and the length of the investigation;

4.9.2. The chair of the hearing must decide on any further postponement. If it is decided that the transfer/suspension should be extended, the educator must be informed of the valid reasons for the further extension and given an opportunity to make representations.

4.9.3. The reasons for the extension, and the educator's response, if any, shall be carefully reviewed by the delegated authority to ensure that there are sufficient reasons to extend the transfer/suspension.

4.9.4. The suspension shall be lifted after the lapse of 90 days as prescribed in the framework unless otherwise ordered by the chair of the hearing.

4.9.5. The disciplinary procedure shall, notwithstanding the decision to lift a transfer/suspension, be continued until the disciplinary process has been finalised.

4.9.6. Where the investigation into alleged misconduct finds no grounds for a charge of misconduct, it is desirable to give written notice of termination of suspension, effective from a specified date, which may indicate that no grounds for a charge of misconduct were found and that no further steps will be proceeded with.

## CHAPTER 5: SUPPORT AND INTERVENTIONS

### 5.1 South African Council for Educators (SACE)

5.1.1. SACE is a statutory body that was established to develop and maintain ethical and professional standards for educators. Educators are required to register with SACE and to abide by its Code. Educators that are found to be in breach of the Code are sanctioned by SACE.

5.1.2 All teachers found guilty of assault with the intention to do grievous bodily harm must referred to SACE for their continued professional status to be evaluated

### 5.2 PARTNERSHIP PROTOCOL BETWEEN SAPS AND DBE

5.2.1. The Protocol sets out the framework for close inter-departmental co-ordination in order to create safe, caring and child friendly schools in which quality learning and teaching can take place. The aim of the Protocol is to develop and support the implementation of school-based crime prevention programmes.

### 5.3 NATIONAL SCHOOL SAFETY FRAMEWORK (NSSF)

5.3.1 The NSSF is a guiding strategy that creates a system to improve schools to respond to violence. The NSSF contains tools to identify gaps in schools in relation to the minimum safety requirements. It monitors school progress in dealing with violence, and supports existing policies, acts and regulations

### 5.4 DEPARTMENT OF SOCIAL DEVELOPMENT

5.4.1. In terms of section 110(5) social workers or a designated child protection organisation are empowered to ensure the safety and well-being of a child on receiving a report of abuse and make an initial assessment of the report. In cases where the nature of abuse is as indicated in rubric 11 above, they must report the matter to the police for further investigations to be conducted towards a criminal case.

*Corporal punishment no longer has a place in our schools. It does not serve to teach lessons to learners about discipline but destroys their experience of school, which becomes a place of violence and undermines the learners' sense of safety and security. Corporal punishment and assault become associated with the fear of power rather than a respect for authority.*

## Non-Governmental Support Organisations

### **Commission on Gender Equality**

10<sup>th</sup> Floor Braamfontein Centre  
23 Jorissen Street Braamfontein 2001  
Tel: (011) 403 7182  
Fax: (011) 403 7188

### **Disabled Children Action Group**

3<sup>rd</sup> Floor Norlen House  
17 Buitekant Street Cape Town 8001  
Tel: (021) 462 4105  
Fax: (021) 462 4665

### **National Children's Rights Committee (NCRC)**

P O Box 626 Rivonia 2128  
Tel: (011) 807 7474  
Fax: (011) 807 7477

### **National Children's Rights Committee (NCRC)**

P O Box 616 Rivonia 2028  
13 Wessels Road Rivonia  
Tel: (011) 807 7474/5  
Fax: (011) 807 7477  
Email: [101663.2442@compuserve.com](mailto:101663.2442@compuserve.com)

### **Women Against Child Abuse**

P O Box 18689 Sunward Park 1470  
Unit 1 Rutland Mews 30 Main Road Edenvale  
Tel: (011) 452 0836  
Fax: (011) 452 0834

### **South African Human Rights Commission (SAHRC)**

Johannesburg  
Private Bag 2700 Houghton 2041  
Tel: (011) 484 8300  
Fax: (011) 484 7146/8403  
Cape Town  
P O Box 3563 Cape Town 8000  
Tel: (021) 426 2277  
Fax: (021) 426 2875

### **Agisanang Domestic Abuse Prevention & Training (ADAPT)**

P O Box 39127 Bramley 2018  
Oliver Tambo Community Centre  
128 2<sup>nd</sup> Street Wynberg  
Tel: (011) 786 6608  
Fax: (011) 885 3309

### **National Children and Violence Trust in South Africa**

P O Box 71924 Bryanston 2021  
2<sup>nd</sup> Floor, East Rand Centre  
166 Hendrik Vervoerd Drive Randburg  
Tel: (011) 789 2480/1  
Fax: (011) 789 2478  
Email: [ncvt@iafrica.com](mailto:ncvt@iafrica.com)

### **Children's Rights Research and Advocacy Project**

C/o Community Law Centre  
Private Bag X17 Bellville 7535 Cape Town  
Tel: (021) 959 2950  
Fax: (021) 959 2411  
Email: [jsloth@law1.uwc.ac.za](mailto:jsloth@law1.uwc.ac.za)



**Women Against Women Abuse**

P O Box 1478 Johannesburg 2000  
12<sup>th</sup> Floor Longsbank Building  
187 Bree Street Johannesburg  
Tel: (011) 836 5656  
Fax: (011) 836 5620

**Children and Violence Intervention Programme**

P O Box 1477 Pietermaritzburg 3200  
House No 20, Unit J Imbali Township Pietermaritzburg  
Tel: (0331) 45 4221 Ext 2167

**Centre for the Study of Violence and Reconciliation (CSVR)**

P O Box 30778 Braamfontein 2017  
49 Jorissen Street Braamfontein  
Tel: (011) 403 5650  
Fax: (011) 339 6785

**Child Abuse Action Group (CAAG)**

P O Box 30677 Braamfontein 2017  
Tel: (011) 793 5033  
Fax: (011) 793 5033

**Child Abuse Alliance**

P O Box 29177 Sandringham 2131  
47 Greenclose Crescent Fairmont Extension 2  
Johannesburg  
Tel: (011) 485 3350  
Fax: (011) 377 5958

**Community Counselling and Training Centre (CCATC)**

P O Box 15 Manenberg 7767  
2a Scheldt Road Manenberg Cape Town  
Tel: (021) 691 5924  
Fax: (021) 691 5924  
Email: [ccatc@iafrica.com](mailto:ccatc@iafrica.com)

**Pietersburg Child Welfare Association**

P O Box 304 Pietersburg 0700  
76a Bok Street Pietersburg  
Tel: (015) 297 3326/7  
Fax: (021) 297 3326/7

**South African National Council for Child and Family Welfare (SANCCFW)**

P O Box 30990 Braamfontein 2017  
KSI Building 11 Bicard Street Braamfontein  
Tel: (011) 339 5741  
Fax: (011) 339 8123  
Email: [cwo@icon.co.za](mailto:cwo@icon.co.za)

**Childline / Safeline**

Johannesburg  
0800 055555 (office hours)  
(011) 648 1342 Code 5515 (after hours)  
Pretoria  
0800 123321  
Cape Town  
(021) 638 1155 (office hours)  
(021) 26 1100 (after hours)  
Durban  
(031) 23 0904  
Port Elizabeth  
(041) 57 1997

<p><b>National Institute for Crime Prevention and Reintegration of Offenders (NICRO)</b>  P O Box 10005 Caledon Square 7905  139 Hatfield Street Gardens Cape Town  Tel: (021) 461 7253  Fax: (021) 461 5093</p>	<p><b>Child Welfare</b>  Actonville (011) 421 4879  Alberton (011) 907 3003/4/5  Amanzimtoti (031) 903 5171  Benoni (011) 849 5241  Bloemfontein 9051) 30 3311  Boksburg (011) 52 4365/6  Brakpan (011) 740 0100/1  Cape Town (021) 761 7130  Durban (031) 309 1508  Durbanville (021) 96 1418  East London (0431) 21 258  Edenpark (011) 904 1601  Edenvale (011) 452 5941  Germiston (011) 825 3655  Heidelberg (02934) 21 049  Johannesburg (011) 331 0171  Krugersdorp (011) 953 1908  Middelburg (0132) 27 561  Nelspruit 901311) 53 330  Newcastle (03431) 26 228  Olifantsrivier (02742) 2 602  Oudshoorn (0443) 29 2837  Pietermaritzburg (0331) 42 8971  Pietersburg (0152) 297 3326  Pretoria (012) 46 9236  Roodepoort (011) 763 1129  Rustenburg (0142) 21 604  Sasolburg (016) 76 2368  Sharpville (0160 51 1327  Springs (011) 812 2345  Tembisa 9011) 926 2805  Umlazi (031) 908 1624</p>
<p><b>National Network on Violence Against Women (NNVAW)</b>  P O Box 72957 Lynwood Ridge 0040  476 Kings Highway Lynwood Pretoria  Tel: (012) 348 1233  Fax: (012) 348 1235</p>	
<p><b>Border Institute for Counselling and Advising Abused Children</b>  2 Zilmer Court Albany Street East London 5201  Tel: (0431) 29 052</p>	
<p><b>Child Guidance Clinic (CGC)</b>  University of Cape Town (UCT)  Private Bag Rondebosch 7701  Chapel Road Rosebank Cape Town  Tel: (021) 650 3901  Fax: (021) 689 1006  Email: <a href="mailto:cgcrs@protem.uct.ac.za">cgcrs@protem.uct.ac.za</a></p>	
<p><b>Child Health Unit (CHU)</b>  46 Sawkins Road Rondebosch 7700  Tel: (021) 685 4103  Fax: (021) 689 5403  Email: <a href="mailto:isabbel@rmh.uct.ac.za">isabbel@rmh.uct.ac.za</a></p>	

**Children's Resource Centre (CRC)**

P O Box 1187 Woodstock 7915 Community House  
41 Salt River Road Woodstock  
Cape Town  
Tel: (021) 447 5757  
Fax: (021) 447 8597  
Email: [crcchild@iafrica.com](mailto:crcchild@iafrica.com)

**Helping Hand Shelter for Abused Women and Children**

87 Randpark Drive Randpark Ridge Ext 1 2194  
Johannesburg  
Tel: (011) 792 2953  
Fax: (011) 792 2953

**Life Line/Childline Western Cape**

56 Roeland Street Cape Town 8001  
Tel: (021) 461 1113  
Fax: (021) 461 6400  
Email: [lifeline@iafrica.com](mailto:lifeline@iafrica.com)

Umvoti (0334) 32 556

Vanderbijlpark 9016) 33 2021

White River (01311) 51 001

Witbank (0135) 656 2471









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222 Struben Street

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