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To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Deputy Directors, Circuit Managers, Heads: SLES Coordination and Advice, District Officials, Principals, Chairpersons of governing bodies and employees of public primary and secondary schools

Brief summary: *Policy on corporal punishment and the procedure to be followed when such incidents are reported. This circular is applicable to all employees including educators and public service staff.*

Subject: Prohibition of corporal punishment

1. This circular on the prohibition of corporal punishment hereby supports **Circular 0031/2014** which outlines the Western Cape Education Department's (WCED) amended *Abuse No More Protocol*.

2. **Introduction**

The South African Schools Act (SASA), 1996 (Act 84 of 1996) and the National Education Policy Act (NEPA), 1996 (Act 27 of 1996) ban corporal punishment from schools. The WCED has recorded an increased/unacceptable rate of corporal punishment cases and incidents over the past 2 years and was subsequently compelled to revisit its **awareness** about the policy on the prohibition of corporal punishment. In line with policy, strict disciplinary action will be taken against those employees who administer corporal punishment and/or assault learners at WCED's educational institutions.

In view hereof, the following information and guidelines are provided.

3. **Purpose**

The purpose of this circular is to ensure that all WCED employees are informed.

4. **Legislative framework**

Various laws have been promulgated to give effect, assist and guide employees in refraining from administering corporal punishment:

- Constitution of the Republic of South Africa, 1996
- South African Schools Act, 1996 (Act 84 of 1996), as amended
- Employment of Educators Act, 1998 (Act 76 of 1998), as amended
- South African Council for Educators Act, 2000 (Act 31 of 2000), as amended
- Public Service Act, 1994 (Proclamation 103 of 1994), as amended
- National Education Policy Act, 1996 (Act 27 of 1996)
- WCED Abuse no more protocol document (2001, amended 2014)
- Children's Act, 2005 (Act 38 of 2005)
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), as amended
- SAPS National Instructions 3 of 2008 (Part 4)
- Ethical Code for Educators, South African Council for Educators (SACE)
- Abolition of Corporal Punishment Act, 1997 (Act 33 of 1997)

5. **Definitions**

5.1 **Corporal punishment**

Corporal punishment is defined as any deliberate act against a child that inflicts pain or physical discomfort to punish or contain him/her. This includes, but is not limited to, spanking, slapping, pinching, paddling or hitting a child with a hand or any other object; denying or restricting a child's use of the toilet; denying meals, drink, heat and shelter; pushing or pulling a child with force; forcing the child to do exercise. It is, therefore, not just about caning but also refers to an assault on a person (learner) in any manner whatsoever.

5.2 **Assault**

Assault is the unlawful and intentional application of force to the body of another person or threat of immediate personal force to another person in circumstances where the threatened person believes that the person who is threatening him/her has the intention and power to carry out the threat. Therefore even a threat of assaulting a person, is regarded as assault in terms of the law.

Assault, in terms of legislation is defined as the unlawful and intentional application of force to a person, or a threat that such force will be applied. It is an unlawful attack, or the threat thereof, upon the person of another through blows, physical mishandling or the use of weapons or objects.

5.3 Corporal punishment vs. assault

As indicated in the definitions above it is evident that all forms of corporal punishment shall, by implication be regarded as an act of assault. It should be understood that the WCED takes disciplinary action in all cases of corporal punishment as if they are deemed acts of assault.

5.4 Forms of assault

The following are examples of forms of corporal punishment (assault) that are punishable:

- Any physical act which may cause discomfort or pain to the learner
- Using a stick/belt/cane or any object to threaten learners
- Intention to inflict bodily harm
- Threatening a learner
- Shaking a learner
- Any forms of torture
- Kicking
- Pinching
- Pulling of ears or any other body parts
- Poking at someone with a finger
- Any verbal onslaught, use of vulgar language, swearing, name-calling
- Insulting a learner with racial and/or sexual undertones

Note that premeditation makes the offence more serious and that self-defence and provocation may only influence the sanction, and not the guilty finding in a hearing.

6. Prohibition of corporal punishment

No employee may administer corporal punishment, as defined above, to a learner at any educational institution. Any employee who administers any form of corporal punishment is guilty of an offence and liable on conviction to a sentence which could be imposed for assault. An employee may not conduct or participate in any initiation practices against a learner at a school or in a hostel accommodating learners of a school. Any employee who is guilty of any of these practices, corporal punishment and/or assault will have disciplinary action instituted against him/her.

The prohibition of corporal punishment is intended to encourage a culture of non-violence; of resolving conflict through dialogue and discussion and inculcating a sense of responsibility and self-discipline amongst all stakeholders in the school.

7. **Consequences of administering corporal punishment or assault**

The South African Schools Act prohibits corporal punishment and provides for any person who contravenes it to be guilty of an offence and liable on conviction to a sentence which could be imposed for assault. Employees must therefore take note that the institution of disciplinary proceedings against them in terms of the Employment of Educators Act, 1998 (Act 76 of 1998) does not prevent the WCED or an individual from instituting criminal proceedings against them as required by law. In the case of educators, they will also be subjected to a disciplinary process by SACE.

8. **The principal's responsibility**

- 8.1 Principals are requested to inform their staff of the prohibition of corporal punishment and the subsequent consequences thereof. When a case is reported through the principal of the institution, he/she is compelled to inform the Directorate: Employee Relations, the district office and the district school social worker of the alleged transgressions immediately.
- 8.2 Under no circumstances should cases of corporal punishment be dealt with in terms of the informal disciplinary hearing procedure. All such cases should be heard in a formal disciplinary hearing.
- 8.3 It is the responsibility of the Directorate: Employee Relations to investigate and determine the seriousness of the incident/case and whether the transgressor will be charged or not.
- 8.4 Principals are reminded that they are not required to investigate any allegations but to rather refer the matter to the Directorate: Employee Relations accordingly and the district school social worker to ensure support. It will however be required from the principal to inform the learner's parents/guardians of the alleged incident.
- 8.5 Principals who do not conform to the steps outlined above will make themselves guilty of dereliction of duty which could lead to possible disciplinary action.

9. **Conclusion**

In summary the WCED acknowledges the challenges that employees are subjected to on a daily basis with regard to learner discipline. The WCED therefore strongly encourages employees to consider other alternatives and to refrain from administering corporal punishment as it is **unconstitutional, illegal and undignified**.

10. Heads of institutions are required to inform all staff of the content of this circular as well as the seriousness thereof. All new employees should be made aware of this circular as soon as they are appointed at the WCED's educational institutions.

SIGNED: P A VINJEVOLD

HEAD: EDUCATION

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