

Reference: 20190318-2963  
File no.: 3/3/4/3/3/2  
Enquiries: Directorate: Employee Relations

Circular: 0012/2019

Expiry date: None

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 all Employees of public schools

Short summary: *Amendment of the policy on corporal punishment and the procedure to be followed when such incidents are reported. This circular is applicable to all employees including educators, public service staff and governing-body-appointed employees.*

Subject: Prohibition of corporal punishment

1. This circular has been revised and repeals Circular 0024/2016 in its entirety.
2. Introduction

The South African Schools Act, 1996 (Act 84 of 1996) and the National Education Policy Act, 1996 (Act 27 of 1996) ban corporal punishment in schools. The Western Cape Education Department (WCED) has recorded an increased/unacceptable rate of corporal punishment cases and incidents over the past two years and is 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 the 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 as well as governing-body-appointed employees are informed of the prohibition of corporal punishment and the relevant amendment.

#### 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)
- Abuse No More Protocol of the WCED, 2014
- **Children's Act, 2005 (Act 38 of 2005)**, as amended
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), as amended
- South African Police Service (SAPS) National Instruction 3 of 2008 (Part 4)
- Code for Professional Ethics of the 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 or 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, 1996 (Act 84 of 1996), 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 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 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. Governing-body-appointed employees

- 9.1 It has been brought to the WCED's attention that incidences of corporal punishment involving governing-body-appointed employees are not reported.
- 9.2 It is common cause that the WCED has no jurisdiction over governing-body-appointed employees. However, incidents that involve employees in the employ of the governing body of the school must be reported to the district social worker (in terms of paragraph 3.5(d)(i) of the Abuse No More Protocol of the WCED, 2014) and/or the Directorate: Employee Relations. The rationale for this is:
  - a) to ensure that all learners receive the necessary counselling, support and debriefing; and
  - b) depending on the merits of a case, so that the district social worker can report the matter to SAPS.
- 9.3 It is important to note that everyone employed by the WCED and the governing body must be screened – including volunteers and people who do not work directly with children e.g. administrative, security and maintenance employees. The governing body must check whether the applicant is listed on the National Child Protection Register (NCPR), the National Register for Sex Offenders (NRSO), or the SACE Register in order to protect learner rights.

10. 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.

11. 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 WCED educational institutions.

SIGNED: BK SCHREUDER

HEAD: EDUCATION

DATE: 2019-03-09