

Section 3

3. MANAGEMENT PROCEDURES

The best interest of the child (victim or offender) will be the overriding factor and this will govern how the process is managed when a report of child abuse, deliberate neglect or sexual offence is made. South African legislation places duty to report and failure to do so is a criminal offence.

3.1 Compulsory Reporting

3.1 (a) Section 54 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007)

- (i) In terms of this section every person has a duty to report;
“Knowledge that a sexual offence had been committed against a child”
or
“Knowledge, reasonable belief or suspicion that a sexual offence had been committed against a person who is mentally disabled”;
- (ii) The report must be immediate; and
- (iii) It must be to a police official.
- (iv) Failure to report under this section is a criminal offence (Section 54 1(b) and 2(b)).
- (v) The penalty for non-reporting is a fine or imprisonment of 5 years or both a fine and imprisonment.
- (vi) Where a report is made in ‘good faith’ in relation to Section 2(b), (“a reasonable belief or suspicion of a sexual offence committed on a mentally disabled person”), that person shall not be liable for any civil or criminal proceedings as a result of such a report.
- (vii) Part 4 of the SAPS National Instruction 3/2008 sets out who may make a report of a sexual offence and reiterates compulsory reporting under Section 54 of Act 32 of 2007.
- (viii) It is important to note that in terms of this National Instruction, a SAPS official may not turn anyone away who reports a sexual offence committed on a child or a person who is mentally disabled.

(b) Section 110 (1) of the Children’s Act, 2005 (Act 38 of 2005) (as amended)

- (i) In terms of this section certain professionals e.g. “Teacher”, has a duty to report (See Annexure F for a full list);
- (ii) They must on reasonable grounds conclude that the child has been abused in a manner causing physical injury, sexual abuse or deliberate neglect;
- (iii) Conclusion must be reported in the prescribed form (Form 22); and
- (iv) It must be reported to the “Provincial Department of Social Development or a Police Official”.
- (v) Failure to report under this section is 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).

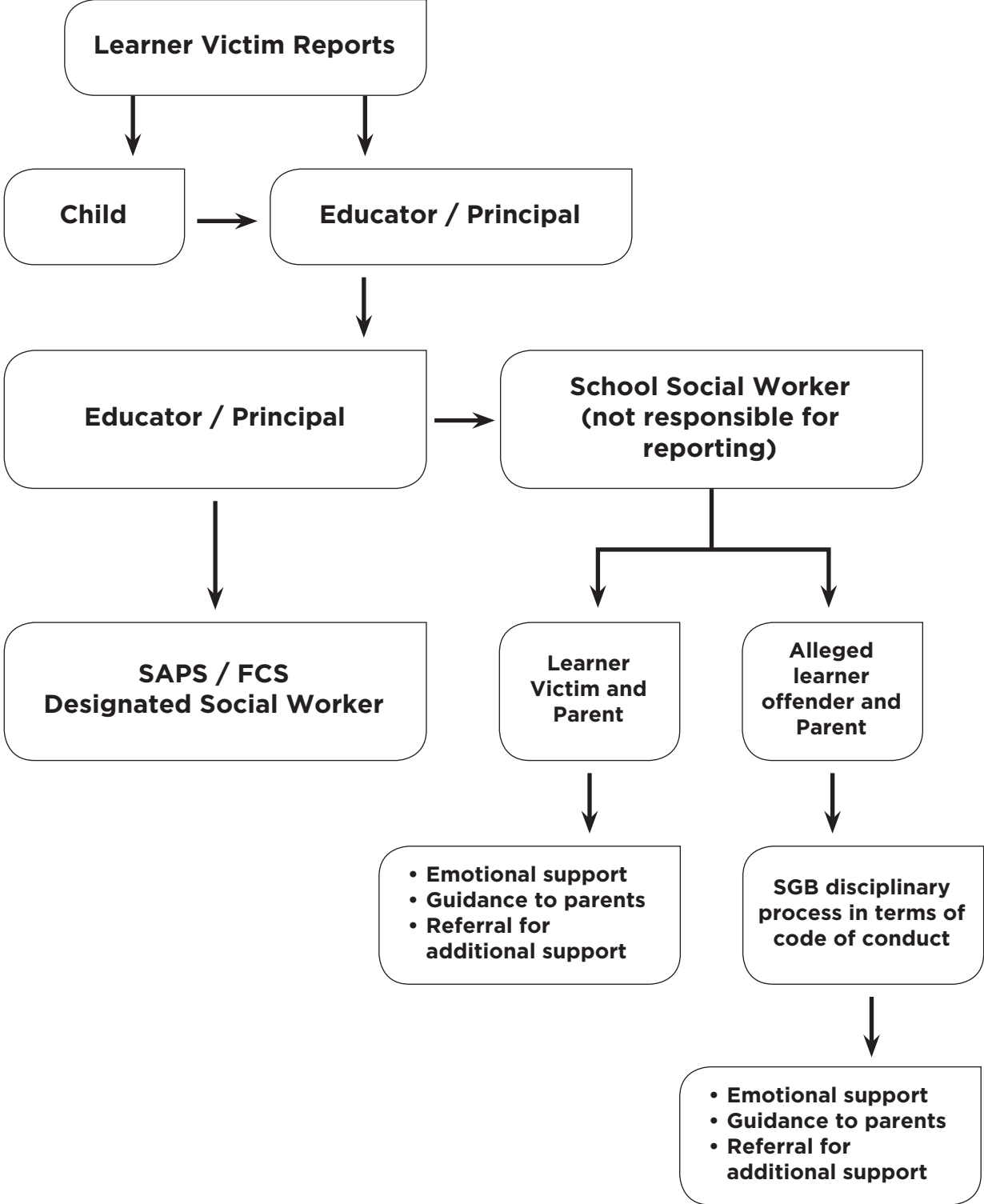
(c) Section 110 (2) of the Children's Act, 2005 (Act 38 of 2005) (as amended)

- (i) In terms of this subsection "Any person" who on "reasonable grounds believes that a child is in need of care and protection"; may report belief (not compulsory, has a discretion); to the "Provincial Department of Social Development, a designated child protection organisation or a police official".
- (ii) There is no penalty for this section because it is not compulsory to report.
- (iii) Abuse in terms of the Children's Act creates a discretion as to whom the abuse must be reported to e.g. SAPS or a designated social worker, but not in relation to the actual reporting of the offence.
- (iv) In the case of a sexual offence, SAPS (FCS Unit) must be involved.

3.2 Disclosure

- 3.2
- (a) Always act in the best interest of the child.
 - (b) Disclosure is a process and it must be managed with care, sensitivity and confidentiality.
 - (c) At the time of disclosure clarify confidentiality and explain the consequences of the disclosure to the learner victim, i.e. that in order to help him/her, you are legally obliged to report the case to other role-players such as a social worker and/or SAPS.
 - (d) Ensure the safety of the child.
 - (e) Actions and interventions must be immediate (including reporting the matter to SAPS and/or a designated social worker).
 - (f) Effective management of the process will ensure that the learner victim, alleged learner offender and employee are protected from additional and unnecessary emotional trauma and victimisation, as the case may be.
 - (g) During the disclosure process, the learner victim must under no circumstances be questioned to verify the truthfulness of the allegation, since the educator/principal's role is merely to receive the report and to further report the matter to either SAPS or a designated social worker, as the case may be.
 - (h) It is sufficient to know that there was an abuse, what type of abuse and who the suspected perpetrator is in order to decide which process to follow and adequately manage the disclosure process.
 - (i) If a report is made to an educator and the educator reports it to a principal, then the principal should not question the learner again but should rather immediately assist in involving the relevant role-players.
 - (j) The management of the disclosure process is immediate and there should be no delays in involving the relevant role-players, e.g. SAPS and DSD should be contacted on the same day that the disclosure is made.

**Diagram 1: DISCLOSURE PROCESS -
Learner on Learner disclosure**



3.3 Learner on Learner Disclosure

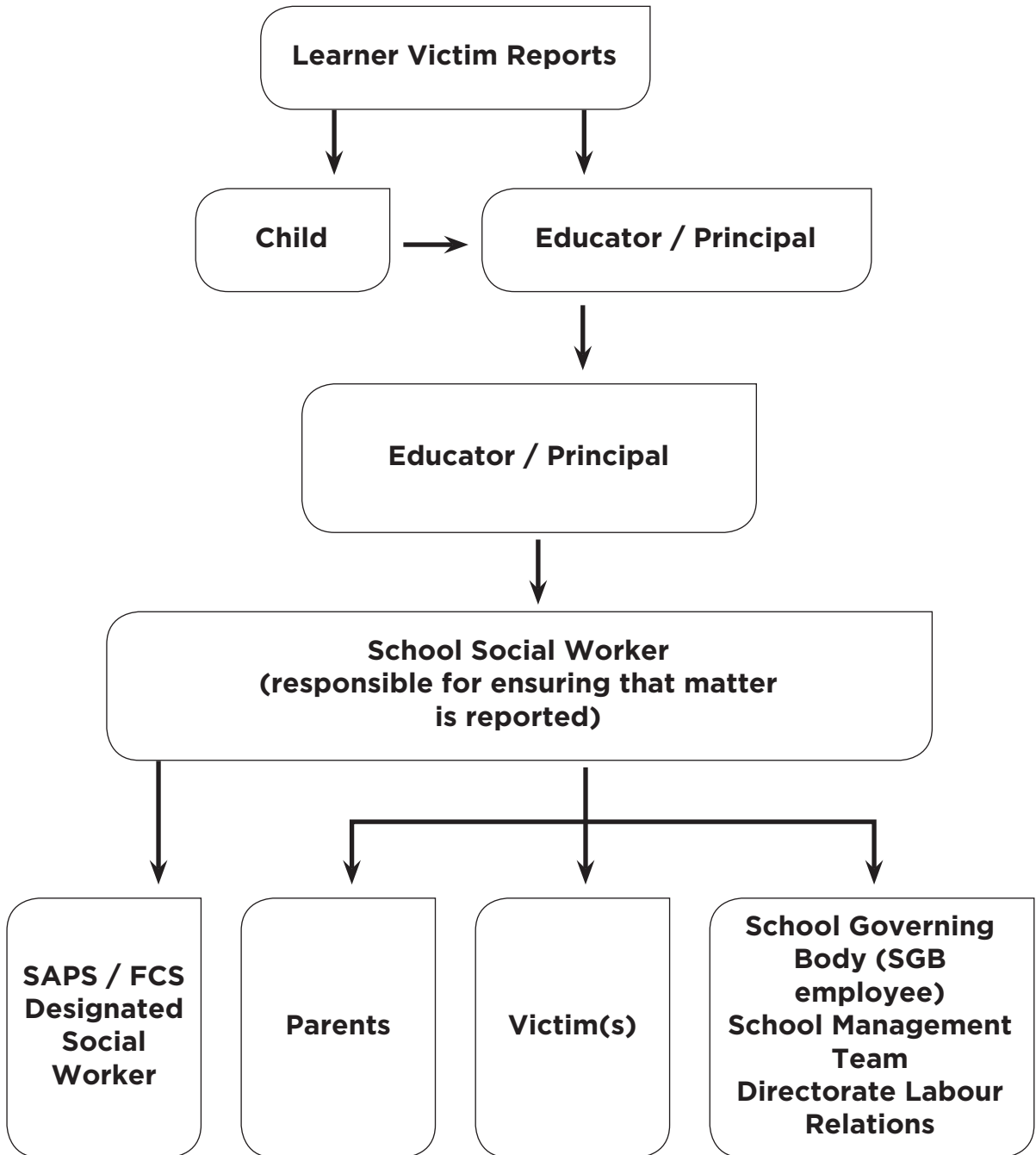
- (a) Disclosure can be made by a learner victim to either another child (learner) [who would in turn disclose to an educator] or the learner victim can disclose directly to an educator.
- (b) The learner victim must not be cross examined. Only obtain information relevant for reporting purposes.
- (c) Explain the procedure that will follow and the different roles and responsibilities of each stakeholder and why they are relevant to the process.
- (d) As soon as the disclosure has been made, notify the following role-players immediately:
 - (i) SAPS ([FCS] Family Violence Child Protection and Sexual Offences Unit) in the case of a sexual offence;
 - (ii) a designated social worker in the case of abuse other than a sexual offence;
 - (iii) the school social worker in the area; and
 - (iv) the parents of both the learner victim as well as the alleged learner offender.
- (e) A child offender (learner) who physically abuses another learner should be reported in the prescribed manner to a designated social worker or the police when the physical abuse constitutes behaviour such as:
 - (i) using a dangerous object against another learner or staff member;
 - (ii) committing an act of assault;
 - (iii) threatening or endangering the safety of fellow learners or educators; and
 - (iv) repeatedly being found guilty of physically harming other learners.
- (f) If the transgression was in violation of the School's Learner Code of Conduct, the Regulations Relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape (Provincial Gazette 6939, dated 11 December 2011 or any other legislation, then due process in relation to disciplinary hearings, as stated in the above mentioned Regulations should be followed.
- (g) The Learner Code of Conduct must make provision for the transgression.
- (h) The school social worker must assist in managing and guiding the process to ensure that both learners are supported during this period.
- (i) Young alleged offenders need to be supported.
- (j) Such support should be seen as an attempt to prevent the alleged offender from committing further abuse.
- (k) The alleged learner offender must be referred to relevant role-players for emotional support and therapy.
- (l) It is important to ensure that the social worker or SAPS become involved as soon as possible, depending on the seriousness of the abuse.
- (m) The learner victim must be referred for counselling and/or psycho-social support by the school social worker where applicable.

3.4 Guidelines regarding the management of disciplinary measures against a learner being the alleged perpetrator

- (a) The Learner Code of Conduct must make provision for the transgression(s).
- (b) The disciplinary process, aligned with the Regulations Relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape (Provincial Gazette 6939, dated 11 December 2011, can only take place if there has been a transgression of the school's Learner Code of Conduct or other legislation.
- (c) In a situation where the learner victim and the alleged learner offender are at the same school, the alleged perpetrator may be suspended for 7 days, awaiting a disciplinary hearing.
- (d) The disciplinary hearing should take place according to a prescribed procedure, in the Regulations as referred to in subparagraph 3.4(b).
- (e) The individual's right to a fair and reasonable hearing should be honoured.
- (f) These principles should also apply to the way in which arguments are presented.
- (g) In deciding the most appropriate sanction, take into consideration:
 - (i) The age and developmental phase of the learner;
 - (ii) Learner's disciplinary record and willingness to change;
 - (iii) Learner's regret and willingness to put the offence right; and
 - (iv) Recommendations from professional service providers supporting the alleged learner offender.

- (h) Both the learner victim and the alleged learner offender have the right to legal representation should they choose to have such representation.
- (i) Always remember to act in the best interest of the child.

**Diagram 2: DISCLOSURE PROCESS -
WCED Employee on Learner disclosure**



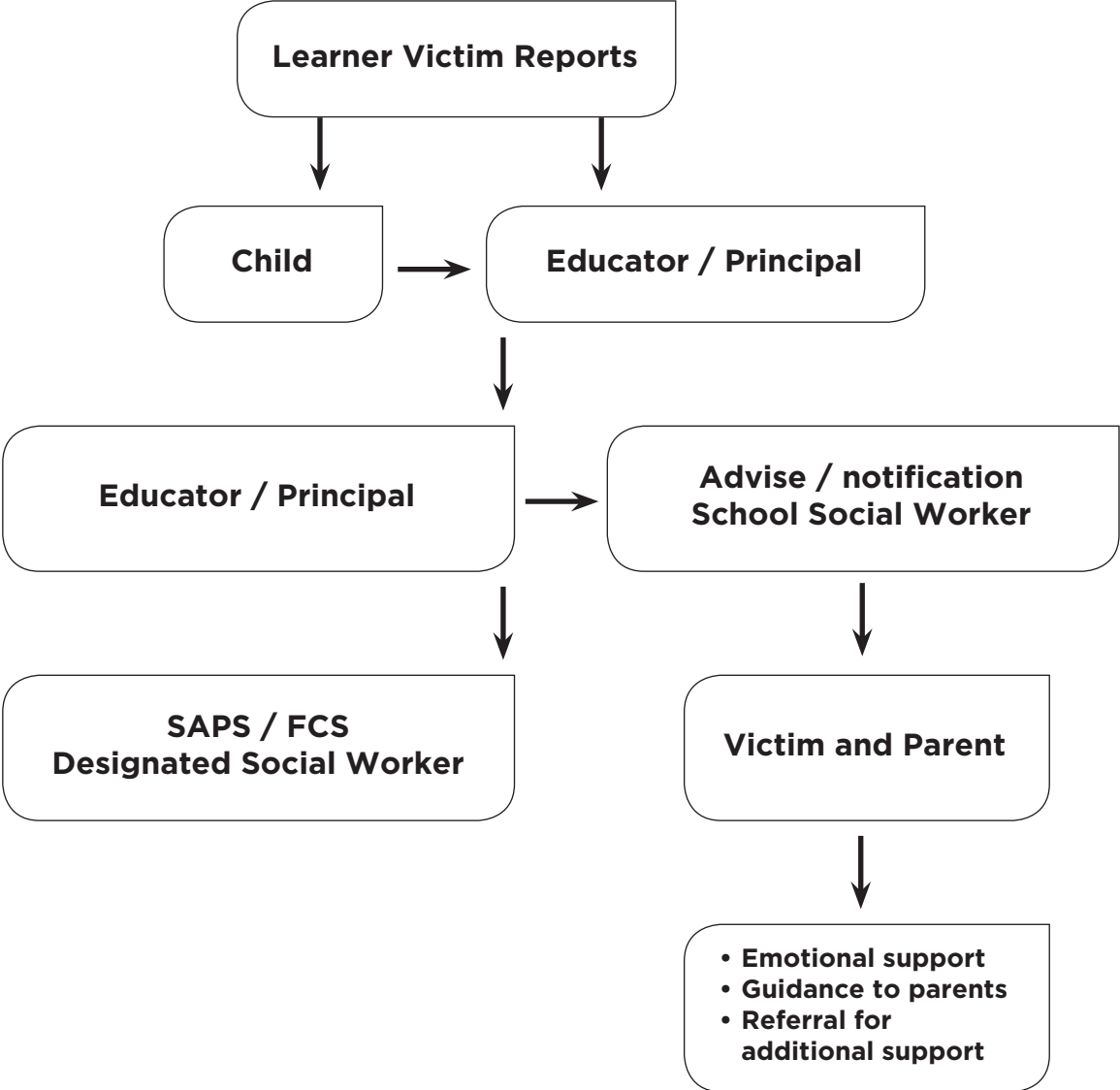
3.5 Guidelines regarding the management of disciplinary measures against an employee identified as an alleged offender.

- (a) Disclosure can be made by a learner victim to either another child (learner) [who would in turn disclose to an educator] or the learner victim can disclose directly to an educator.
- (b) The learner victim must not be cross examined. Only obtain information relevant for reporting purposes.
- (c) Explain the procedure that will follow and the different roles and responsibilities of each stakeholder and why they are relevant to the process.
- (d) As soon as the disclosure has been made, notify the following role-players immediately:
 - (i) The school social worker (to assist in the managing of the process);
 - (ii) SAPS (FCS [Family Violence, Child Protection and Sexual Offences Unit]) in the case of a sexual offence;
 - (iii) A designated social worker or SAPS in the case of abuse other than a sexual offence;
 - (iv) Directorate: Employee Relations or the School Governing Body (SGB), where the alleged employee offender was employed by them; and
 - (v) The parents of the learner victim.
- (e) If the disclosure has revealed that the Principal is the alleged employee offender, the educator to whom the disclosure was made must inform the School Social Worker or the relevant Circuit Team and forward all documents pertaining to the report, so that they can assist in managing the process.
- (f) The Principal or educator, to whom the disclosure was made, may not inform or confront the alleged employee offender of the complaint before contact has been made by a Labour Relations Officer.
- (g) The School Social Worker should also be informed to assist with getting the Directorate: Employee Relations involved and to further assist with guiding and managing the process of reporting.
- (h) Do not hold a meeting with the learner victim and alleged employee offender.
- (i) The Principal must inform other staff members that there is a report, without disclosing the identity of the learner victim or the alleged employee offender and specific details of the disclosure. If the principal is the alleged offender then the deputy principal should fulfil this role.
- (j) If the alleged employee offender is an employee contracted in the service of the SGB, the said employer should act upon the conditions of the service contract. (Refer to Annexure H)
- (k) Where the alleged employee offender is employed by the SGB, an SGB hearing will take place.
- (l) Corporal punishment should also be seen as physical and emotional abuse and therefore should be dealt with in terms of this policy.
- (m) Both the alleged employee offender and the learner victim are entitled to representation.
- (n) Make use of an intermediary to assist the learner victim in giving evidence during the SGB hearing.
- (o) Ensure separate seating arrangements to avoid contact between the learner victim and alleged employee offender.
- (p) Be aware of the learner victim's developmental age with regard to: questioning, concentration, the need for regular breaks, language, emotional status and time of interview or hearing.

3.6 Corporal punishment

- (a) Corporal punishment is not allowed at any South African School and is as such expressly prohibited.
- (b) The National Education Policy Act, 1996 (Act 27 of 1996) states that: "No person shall administer corporal punishment or subject a student to psychological or physical abuse at any educational institution".
- (c) The South African Schools Act, 1996 (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".

**Diagram 3: DISCLOSURE PROCESS -
Parent, Family Member or Community Member
on Learner disclosure**



3.7 Disclosure Process: Parent, Family Member or Community Member offence on Learner

- (a) Disclosure can be made by a learner victim to either another child (learner) [who would in turn disclose to an educator] or the learner victim can disclose directly to an educator.
- (b) The learner victim must not be cross-examined. Only obtain information relevant for reporting purposes.
- (c) Explain the procedure that will follow and the different roles and responsibilities of each stakeholder and why they are relevant to the process.
- (d) If the disclosure reveals a parent as the alleged perpetrator it is advised not to contact the other parent before the designated social worker or SAPS become involved, in order to prevent intimidation of the learner victim.
- (e) As soon as the disclosure has been made, notify the following role-players immediately:
 - (i) SAPS FCS Unit in the case of a sexual offence;
 - (ii) a designated social worker in the case of abuse other than a sexual offence; and
 - (iii) the school social worker in your area.
- (f) It may be advisable for the learner victim to obtain a Protection Order as well, under certain circumstances.
- (g) This should be brought to the attention of the designated social worker so that the learner victim can be assisted during this process.
- (h) The school must assist in ensuring the safety of the learner victim by communicating with the designated social worker or other child protection agency in order to have the learner victim sent to a place of safety or a family member if it is deemed unsafe for the learner victim to return home.
- (i) The School (principal and educators) must provide continuous emotional support to the learner victim and monitor the learner victim's social, emotional and academic functioning.
- (j) Provide regular feedback to the designated social worker.
- (k) Arrange for additional academic support if necessary.

3.8 Role-players that can be contacted depending on the type of offence or the circumstances

- (a) The school social worker at the Education District Office will help the principal and the employee to decide on the involvement of other relevant agencies, e.g.:
 - (i) The Department of Social Development
 - (ii) Social Welfare Service Providers in the community
 - (iii) The designated child protection organisation
 - (iv) The school psychologist
 - (v) SAPS in the area where the report/ disclosure was made e.g. within the school's jurisdiction. SAPS will in turn contact the FCS Unit in the case of a sexual offence
 - (vi) Employee Relations, when employees are the alleged offenders
 - (vii) The SGB where the alleged employee offenders are employed by this body
 - (viii) The learner victim's parent(s) provided that they are not the alleged offenders
 - (ix) The Department of Health school nurse (if available), or (if applicable) the Medical Practitioner at a health care facility
 - (x) Education for Learners with Special Education Needs (ELSEN) school nurse
 - (xi) The Thuthuzela Care Centre closest to the school