



## **Frequently Asked Questions (FAQ)**

### **Collective Agreement No. 3 of 2018 (Inquiry by the Arbitrator)**

**1. Who do you contact if you suspect sexual abuse of a learner by a teacher?**

The first point of contact is the Principal of the school, unless he/she is the perpetrator.

If the matter is not escalated after reporting to the Principal, the [Department of Education](#) (Circuit Manager, District Head Office) should be contacted.

The [South African Police Service \(SAPS\)](#) can also be contacted as well as the [South African Council for Educators](#).

**2. Who can report sexual abuse of learners by a teacher or sexual/romantic relationship between a learner and teacher?**

Any member of the public.

**3. What is sexual misconduct?**

A romantic or sexual relationship between a teacher and a learner.

This also includes inappropriate misconduct such as sending text messages to learners; communication on social platforms such as WhatsApp that is of a sexual nature; taking and sending nude photographs and/or videos; propositioning a learner and inappropriate touching.

**4. Does the age difference between the teacher and learner count when classifying sexual misconduct?**

No it does not. A romantic or sexual relationship between a learner and teacher is inappropriate, irrespective of age. Teachers must refrain from having romantic relationships with learners, regardless of age.

**5. Can you only report suspicion or knowledge of sexual misconduct between a teacher and learner at the same school?**

No. You can report the matter as long as it involves a teacher and a learner, it does not have to be confined to the same school.

**6. What happens when I have knowledge of an inappropriate teacher and learner relationship or of a teacher that abuses learners and do not report it?**

Section 54 of the Criminal Law (sexual offences and related matters) amendment Act 32 of 2007, stipulates the following:

*Section 54(1) (a) a person who has knowledge that a sexual offence has been committed against a child must report such knowledge immediately to a police official.*

*(b) A person who fails to report such knowledge as contemplated in paragraph (a) is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years or both a fine and such imprisonment”*

**7. Am I guaranteed protection if I report a matter, will the perpetrator know that I am the one who reported him/her?**

You can report anonymously to any of the abovementioned organisations.

**8. Who investigates allegations of sexual misconduct against teachers?**

The Department of Basic Education and Provincial Departments of Education.

**9. What happens once the Department concludes its investigation?**

The Department of Education formulates charges and refers the matter to the [Education Labour Relations Council \(ELRC\)](#) for inquiry by the Arbitrator.

**10. What is Inquiry by the Arbitrator?**

It is a disciplinary process in the form of an arbitration, as outlined in ELRC [Collective Agreement No. 3 of 2018](#).

The Inquiry is conducted in terms of the ELRC's [dispute resolution](#) processes.

The outcome of this inquiry is final and binding and has the same status as an arbitration award, meaning there is no appeal and can only be reviewed by the Labour Court.

**11. What happens when a teacher is found guilty of sexual misconduct?**

In terms of Section 17 of the [Employment of Educators Act 76 of 1998](#), dismissal is mandatory.

The Arbitrator has a duty, in this regard, to determine if the teacher is fit to work with children. Once declared unsuitable, the ELRC has a duty to submit a report to the Director-General of Social Development to be added to the [National Register for Sex Offenders \(NRSO\)](#). The ELRC will also submit a report to the SAPS in terms of Section 54 of the Criminal Law (sexual offences and related matters) amendment Act 32 of 2007.

The award is also issued to SACE.

For further clarity, kindly contact the following persons at the ELRC:

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Issued by the General Secretary of the ELRC.