

FACTORS AND ENVIRONMENT FACILITATING/ENHANCING SEXUAL-RELATED MISDEMEANOUR BETWEEN TEACHERS AND LEARNERS

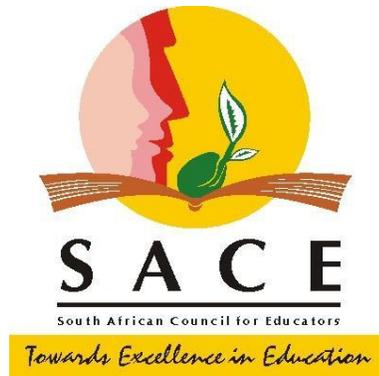


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ACRONYMS

ACRONYMS	DESCRIPTION
DBE	Department of Basic Education
DHET	Department of Higher Education and Training
DoE	Department of Education
EC	Eastern Cape
EEA	Educators Employment Act
FET	Further Education & Training
FS	Free State
GP	Gauteng Province
HoD	Head of Department
HR	Human Resource
KZN	Kwa-Zulu Natal
LP	Limpopo
MP	Mpumalanga
NC	Northern Cape
NEPA	National Education Policy Act
NW	North West
PD	Professional Development
PED	Provincial Education Department
PGP	Professional Growth Plan
SACE	South African Council for Educators
SASA	South African Schools Act
SGB	School Governing Body
SMT	School Management Team
TED	Teacher Education Development
WC	Western Cape

EXECUTIVE SUMMARY

The South African Council for Educators (SACE) serves as a professional council responsible to enhance the status of the teaching profession, promote the development of teachers and their professional conduct. In a quest to accomplish this, SACE has three mandates – registration of teachers, manage a system for continuing professional development, and ensure teachers adhere to the code of professional ethics. The research focuses on the third mandate of ensuring the upholding of professional conduct, because SACE strongly believes that its members should display professionalism that is above reproach and ethical at all times with unquestionable integrity.

In addressing and curbing the developing unusual behaviour and the occurrence of sexually related encounters between teachers and learners SACE has embarked on a research study to investigate factors facilitating sexual related misdemeanor between teachers and learners. The research is conducted as follow up to previous research studies conducted earlier on, about this matter. The current study focuses strongly on the qualitative method on factors facilitating sexually related misdemeanours between teachers and learners. SACE supplied the research organization with the available information which included documents that captured the various reported incidents from the various education departments across all the 9 provinces of South Africa on the reported sexual misdemeanour cases between teachers and learners which were referred to SACE.

A comprehensive list was compiled on the frequency and occurrence of these sexually related cases and the sanctions applied to resolve them. All the key factors that were crucial in determining the scope of the study were taken into consideration such as the offenders' age, gender and the leading provinces on reported sexual cases. The gathered information was divided into key components such as the identified provinces, districts, regions and the type of schools involved as well as the role and position of the perpetrator.

The final research outcomes should be used as a guide to inform all the relevant stakeholders about the importance of sustainable interventions and solutions in the application of short-term, medium-term and long-term strategies in investigating such misdemeanors and meting out the necessary sanctions as a deterrent to prevent future transgressions. The findings and recommendations should indicate the areas where SACE should guide the DBE and DHET in dealing with such perpetrators.

1. Factors and environment Facilitating / Enhancing Sexual-Related Misdemeanour between Teachers and Learners

1.1 INTRODUCTION

SACE conducted the study on factors and environment facilitating/enhancing sexual-related misdemeanour between teachers and learners on cases reported to SACE across the country, including the areas where these sexual encounters between teachers and learners happened. The aim of the research is to enable SACE to establish why these transgressions were committed; as well as the appropriate measures on how to curb the scourge from continuing unabated. The study also aims to determine if the necessary sanctions applied were appropriately executed on those deemed to be perpetrators.

Norms and standards of the teacher-student relationship, particularly in a school, include the idea and view that both the teacher and the learner are to act in ways that promote learning. Behaviour that violates those norms maybe perceived as less than legitimate; in such a case, social capital is far less likely to exist (Coleman, 1988). Social capital is defined by the OECD as “networks together with shared norms, values and understandings that facilitate co-operation within or among groups”. According to this definition, one can think of networks as real-world links between groups or individuals of different views and persuasions (OECD Insights: Human Capital).

Two things have become popular and had a massive effect on the prevalence of sexual misconduct in schools: social media and text messaging. Facebook, Instagram and Snapchat didn't exist 15 years ago, and the number of teenagers with their own cell phones has ballooned. Nearly 80 percent of youth ages 12 to 17 own a cellphone, and 94 percent now have a Facebook account. Classroom sexual predators have been exploiting these new, unsupervised modes of communication to develop improper relationships with students out of sight of parents and principals.

Internet use over time by teens and adults

% within each age group who go online



Source: The Pew Research Center's Internet & American Life Project surveys. All teen data comes from separate surveys of teens and their parents. Methodological info for each survey is available at: <http://pewinternet.org/Data-Tools/Download-Data>

Figure 1: Internet usage by teens and adults

While electronic communications and social networking may have made it easier for educators to cross the line, it also provides a record that makes the contact easier to prove in tracking the communication records.

Professional Code of Ethics-Prohibits sexually related behaviour with a learner/student, with or without consent any sexually related behaviour, ranging from sexual remarks and actual contact.

Harassment/ discrimination policies must encompass unwanted touching, sexual advances, spreading sexual rumours. They must also prohibit these actions on school property and off school grounds during school-sponsored events and outline reporting requirements (*Education Professional Standards Board*).

Teachers are inextricably linked to the integrity of the school system and they occupy positions of trust and confidence, and exert considerable influence over their learners/ students as a result of

their inherent positions.

The aim of the project is to;

- Conduct national and international literature review on the assignment, including the two research reports done by SACE on analyzing the cases reported to it on educator misconduct cases between 2008 and 2016.
- Document analysis on sexual related cases (rape, sexual assault, sexual relationship, improper relationship, sexual harassment, sexual abuse) from the 2008 – 2016 SACE misconduct cases files and any other relevant cases document. A sample from each of the 8 years might be decided upon, if necessary. There are approximately 382 sexual related misconduct files at SACE.
- Conduct interviews with representative sample of teacher unions, teachers, school management teams, learners, parents / community members, SACE Ethics staff, SACE Misconduct Cases Panelists, Provincial Departments of Education Officials/ Labour Relations, School Governing Bodies Associations, and Independent schools associations on the topic / assignment.
- Compare the emerging qualitative trends from 2008 – 2016 on the sexual related cases.
- Describe and analyze the profile of educators, learners, schools, families (where possible) and communities where these cases are happening.
- Learners ending up being impregnated by the teachers in the cases examined
- Produce Final Report and Present it to the Ethics and Professional Development Committees of SACE

A number of complaints on various misconduct areas have been sent to SACE by various sources. One of the top ten cases submitted consistently to SACE in the last five years is on sexual offences between a teacher and a learner/s in terms of the following specific areas:

- Sexual Harassment
- Sexual Abuse
- Rape
- Sexual Assault
- Improper Relationship
- Sexual Relationship

The definition of the above mentioned sexual terminology terms are explained herein;

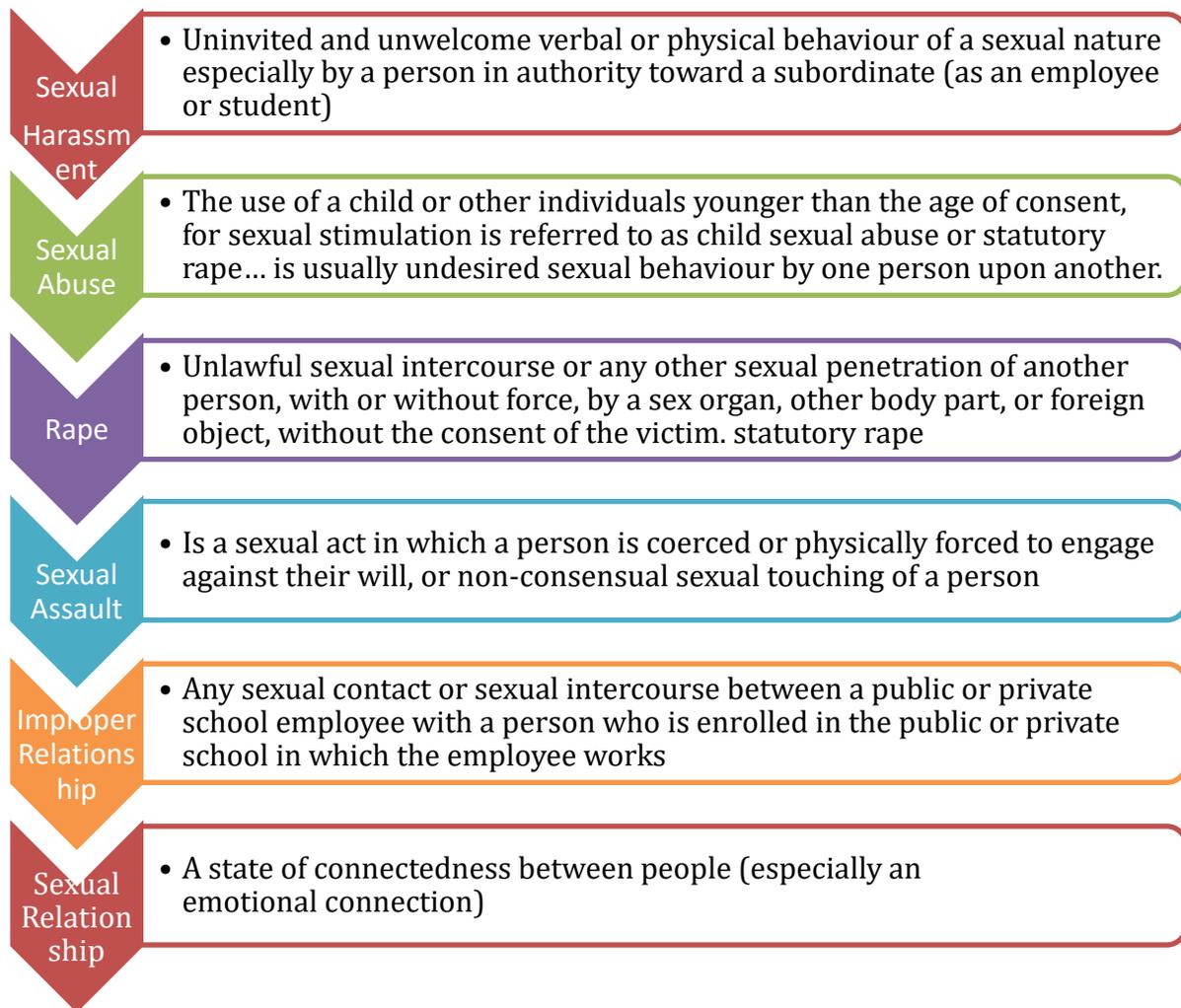


Figure 2: Sexual Terminology

Although “statutory rape” is rarely used in the language of the laws, the term is typically recognized as encompassing the intent of several other named laws such as sexual assault, sexual assault of a minor, rape of a child, carnal knowledge of a minor, unlawful carnal knowledge, sexual misconduct, or child molestation, to name a few. The predominant rationale of statutory rape laws is to protect minors who are said to be incapable of consenting to sexual intercourse or other sexual activities, due to their lack of experiences to make mature, informed decisions. It is believed that youth below the age of consent are less likely to understand and consider the potential consequences of sexual activities, such as sexually transmitted diseases, and pregnancies. These minors are also argued to be unequal to adults, socially, economically, and legally. Because of this, statutory rape laws have been introduced to reduce the power adults may have over minors. These laws do consider that minors will consent to sex. It is the basis for the laws that even if minors consent, adults cannot engage in

sexual activities with them because of the power they have over minors. What the laws do not consider is that minors are consenting to have sex with other minors or slightly older peers who do not have power over them (Smith L. B. & Kercher G. A. 2011).

The study would further investigate the various sexual challenges faced by learners/students in different areas in terms of rural, township and urban spread.

1.2 LEGISLATIVE AND POLICY FRAMEWORK

The following legislation and policies were insightful and informative in conducting this research report:

The South African Schools Act (SASA), 1996 (Act 84 of 1996);

Bill of Human Rights Act (Republic of South Africa, 1996)

The South Africa Constitution of 1996 (Republic of South Africa, 1996);

Prevention of Family Violence Act (133 of 1993);

Employment of Educators Act, 1998 (Act 76 of 1998);

South African Council for Educators Act (Act 31 of 2000);

Basic Education Laws Amendment Act (Act 15 of 2011);

Labour Relations Act 66 of 1995;

The Criminal Law (Sexual Offenses and Related Matters) Amendment Act 29; and

Criminal Law (Sexual Offenses and Related Matters) Amendment (Act 32 of 2007).

1.3 LITERATURE REVIEW

The literature review process took cognizance of the available information on disciplinary educational reports, policy documents, periodicals, journals and literature on teacher/learner relationship encounters and interventions. Most of the available information was scanty on schools sexually related matters locally. However, internationally there are clear guideline policies on teacher and learner behaviour in schools. Endless efforts are made to encourage teachers to behave professionally and ethically at all times.

The main purpose of this research is to establish the factors that facilitate conditions and environment in schools/ institutions when these sexual cases are reported and the speed or delay at which these cases are resolved. The research further aims at determining the conditions of

schools/institutions whereby this behaviour is prevalent or takes place. What compliance measures should be in place for teachers in the schooling sector to be in line with the Constitution of South Africa and all the relevant laws that govern education? The previous research process was largely conducted through applying a desktop research and quantitative method approach.

1.3.1 Global assessment of learner/ teacher relationship challenges

The sexual abuse and exploitation of children rob the victims of their childhood, irrevocably interfering with their emotional and psychological development. Ensuring that all children come of age without being disturbed by sexual trauma or exploitation is more than a criminal justice issue, it is a societal issue. Despite efforts to date, the threat of child sexual exploitation remains very real, whether it takes place in the home, on the street, over the Internet, or in a foreign land (The National Strategy for Child Exploitation Prevention and Interdiction, 2010:1)

Sexual abuse has been as much a constant feature of South African schools as it has been of society in general. Many of our schools have become violent and unsafe environments, particularly for the girl-child. It is also unfortunately a matter on which there has been a resounding silence from society. The silence and shame over sexual matters enables perpetrators to continue with brazen impunity to exploit the poor learners especially the girl child/student.

What has particularly captured public imagination in South Africa is violence of sexual nature against both women and children, including infants. These abuses, takes place in dormitories, in empty classrooms, in hallways and in school toilets. While all learners may be victims to abuse, girls and disabled learners are particularly vulnerable.

1.3.2 Global literature on sexual misconduct of teachers

Sexual misconduct with a student is the most flagrant breach of an educator's duty to protect students and is a violation of the public's trust in the educational system. Every year, cases involving sexual misconduct account for more than half of all disciplinary actions imposed against Pennsylvania educators. This problem is not unique to Pennsylvania. According to a 2004 report issued by the U.S. Department of Education, nearly 1 in every 10 students nationwide will be subject to sexual misconduct by a school employee sometime between kindergarten and 12th grade. U.S. Department of Education, Office of the Under Secretary, Educator Sexual Misconduct: A Synthesis of Existing

Literature, Washington, D.C., 2004.

That's almost 4.5 million students nationwide! While our understanding of the true extent of sexual misconduct in our schools is still evolving, the actual number of cases is likely to be far higher than the number reported. According to the same U.S. Department of Education report, only about 5-6% of child sexual abuse both inside and outside of school is reported.

While you may have heard the term used in other contexts to condemn a variety of acts, within the context of school communities and school employees, the term "sexual misconduct" has a unique and particular legal meaning. The Educator Discipline Act defines Sexual Misconduct as:

"Sexual misconduct" shall mean any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following:

- (1) Sexual or romantic invitations;
- (2) Dating or soliciting dates;
- (3) Engaging in sexualized or romantic dialogue;
- (4) Making sexually suggestive comments;
- (5) Self-disclosure or physical exposure of a sexual, romantic or erotic nature; or
- (6) Any sexual, indecent, romantic or erotic contact with the child or student.

As is apparent in the definition, sexual misconduct is a broad term encompassing any behavior designed to establish an inappropriate relationship with a child or student, ranging from inappropriate comments to sexual intercourse. It is important not to confuse sexual misconduct with sexual abuse. While the definition of sexual misconduct covers all forms of sexual contact and what is commonly referred to as sexual abuse, it also includes non-sexual behaviors that may lead up to sexual contact. In addition, while sexual misconduct may involve criminal behavior, the term also captures conduct that, although it is not illegal, is designed to prepare the student for future sexual contact. For purposes of educator misconduct, the term sexual misconduct refers to a broad set of inappropriate behaviors including sexual abuse of students.

Sexual abuse or exploitation is an extreme type of sexual misconduct. It is also a specific category of child abuse. The precise legal definition of sexual abuse or exploitation can be found in the Child Protective Services Law. Sexual abuse or exploitation includes any physical, verbal, or visual sexual behavior between an educator and a child or student. The term sexual abuse or exploitation also includes a number of sex-related crimes when committed against a child. Sexual abuse or exploitation can happen in person or via technology.

School employees who engage in sexual misconduct with students may be male or female, young or old. While most studies show a higher proportion of male offenders, some analysts believe that female abusers might be underreported if the target is male because males have been socialized to believe they should be flattered or appreciative of sexual interest from a female. It is important to set aside any preconceived notions regarding who engages in sexual misconduct. Most offenders do not fit the stereotype of an abuser as an easily identifiable danger to children. They cannot be picked out of a crowd. Many are those most celebrated in their profession. Their popularity makes it difficult for accusations to be believed or allows them to explain away the behavior. District officials and community members may ignore accusations on the belief that outstanding teachers can't be abusers. (U.S. Department of Education, Office of the Under Secretary, Educator Sexual Misconduct: A Synthesis of Existing Literature, Washington, D.C., 2004).

While there is no clear profile of an offender, there are some shared characteristics and patterns of behavior. More often than not sexual relationships between educators and students are the culmination of a series of boundary crossings. Oftentimes, the teacher-student relationship may initially be appropriate, but at some point the relationship shifts to serving the needs of the teacher and not the needs of the student. There may be an increase in the frequency of interaction as well as an increased level of intimacy, which ultimately may lead to a sexual relationship. In many cases, the teacher takes on a new role with a student, which causes the traditional relationship to become blurred. When teachers become confidants, friends or counselors of students, a dual relationship is created which creates an ambiguity in the student-teacher relationship where roles are less defined. This ambiguity helps to foster inappropriate actions and educator misconduct (Pennsylvania Professional Standards and Practices Commission) [Accessed 12 May 2017].

1.4 SEXUAL MISDEMEANOR CONCEPT

South African educators have a legal and moral duty to refrain from sexual misconduct. The question is why, with law and policy in place for regulating educator sexual misconduct, does the problem of educator sexual misconduct still persist? The high incidence of educator sexual misconduct is especially baffling in the light of the serious repercussions that educators found guilty of some forms of sexual misconduct may face – for example, dismissal and deregistration from the South African Council for Educators (“SACE”), never to teach again (Coetzee, 2012).

Using “sexual harassment” as an umbrella concept results in a concept that originated in labour law being applied to the educator-learner relationship, which, although an unequal relationship, is not an employment relationship. In an attempt to overcome this problem, sexual harassment is simply very broadly defined by omitting the references to the employment relationship. For example, the Department of Education took the definition of sexual harassment from the Code of Good Practice on the Handling of Sexual Harassment Cases published in 1998 – meant for the workplace – and adapted it for the education environment:

Sexual harassment is;

- i. Unwanted conduct of a sexual nature.
- ii. Sexual attention constitutes sexual harassment if;
 - a. The behaviour is persisted (although a single incident of harassment may constitute sexual harassment).
 - b. The recipient has made it clear that the behaviour is considered offensive, and or
 - c. The perpetrator knew or should have known that the behaviour is regarded as unacceptable
- iii. Sexual harassment may include unwelcome physical, verbal or non-verbal conduct.
- iv. It may include discrimination or offensive behaviour on the basis of the, gender or sexual orientation of a person.
- v. Sexual harassment is not limited to situations where an unequal power relationship exists between parties involved.
- vi. Sexual harassment can be committed by and against a male or female person.”

This definition creates confusion, since it severed sexual harassment from its intended application within labour relations to make it applicable to educator-on-learner sexual misconduct. It is indicated in the Amended Code of Good Practice itself that it is not applicable to sexual harassment outside the

working environment and that where sexual harassment occurs outside the working environment should be given to the Promotion of Equality and Prevention of Unfair Discrimination Act 40 of 2000 (Coetzee, 2012).

1.5 SACE PREVIOUS RESEARCH STUDY ON SEXUAL MISCONDUCT

The number of reported cases of improper relationships between teachers and students is growing at an alarming rate and needs to be addressed by the all the provincial education departments as a matter of urgency.

The widespread use of social media platforms that allow students and teachers to easily communicate outside the classroom is seen as a major factor in the rise of inappropriate teacher-student relationships.

The proposed legislative changes would require that school districts adopt, implement and enforce local policies on electronic communications between teachers and students. Stricter regulations and enhanced penalties alone are not going to eliminate the problem. They will, however, go a long way toward ensuring violators don't continue to manipulate the system by resigning and going to work in another school district (San Antonio Express-News; 25 March 2017).

1.6 AREAS FOR CONSIDERATION IN DEALING WITH SEXUAL MISCONDUCT

The available policies and laws including adherence to the documents; based on the current study, the available information was a very important consideration in investigating the study broadly and encompassing the qualitative study in a mixed method research approach.

2. RESEARCH METHODS AND DESIGN

2.1 RESEARCH METHODOLOGY

The Research methodology applied in this study was derived from quantitative studies carried earlier on, whilst the current study is focussing on a qualitative method in order to derive the maximum benefit of both approaches. The latter research method applied in the research was qualitative, which was aimed at investigating the relationship and the factors facilitating sexual related misdemeanor between teachers and learners.

The research comprised mostly the qualitative research method. Qualitative research refers to any data collection technique or data analysis procedure that generates non-numerical data (Saunders, *et al.*, 2009). Qualitative research seeks to achieve an in-depth understanding of a situation. It is designed to tell the researcher how (process) and why (meaning) things happen as they do (Cooper & Schindler, 2011). The researchers concurred to use the qualitative research method and complement it with quantitative research method because this process enabled the researchers to unearth and consolidate the underlying factors and themes that emerged.

2.2 RESEARCH DESIGN

The research design served as a framework or blueprint for conducting the research project, or as a conduit through which conditions for collecting and analyzing data were synthesized. According to Babbie (2008), it is a strategy or scientific inquiry aimed at finding something. Its aim is to plan and structure a research project in such a way that the validity of the research findings are maximized (Mouton & Marais, 1991). The implicit purpose of the research design is to detail the procedures for obtaining the required information to structure and solve the research problem.

The design process of facilitating/enhancing sexual-related misdemeanor between teachers and learners was conducted based on the following premise as indicated in Figure 3;



Figure 3: The research design process

2.3 THE EMPIRICAL INVESTIGATION PROCESS

The empirical investigation process can be broken down as follows:

- **Unit of analysis**

The targeted unit of analysis was the educators, principals, and officials (district, regional offices) in the different provinces and schools including union members. The perceptions of the respondents are very important within the sector, and the sample was opened to all the participants. In some instances learners who were victims may be contacted.

- **Demographic details**

Participants included their gender, age, position occupied and engage with some people who were 'alleged' to have committed the sexual misdemeanor/offense (where possible).

- **Research group**

The research group unit of analysis was the teachers who were accused of having sexual encounter/transgression with learners.

2.4 SURVEY LIST DESIGN

The design of the empirical investigation was based on a supplied excel spreadsheet and information gathered from SACE files. The case files had information about the 'alleged' offenders who were reported to SACE for disciplinary action over the years, including cases of sexual related misdemeanors between teachers and learners.

The list and themes related to factors facilitating sexual related misdemeanor between teachers and learners reported to SACE over the years. The research results were analyzed and prioritized according to the coded themes based on most accused participants; who in this case entailed educators, HOD's, Principals, and officials.

The emerging themes were divided according to the following categories;

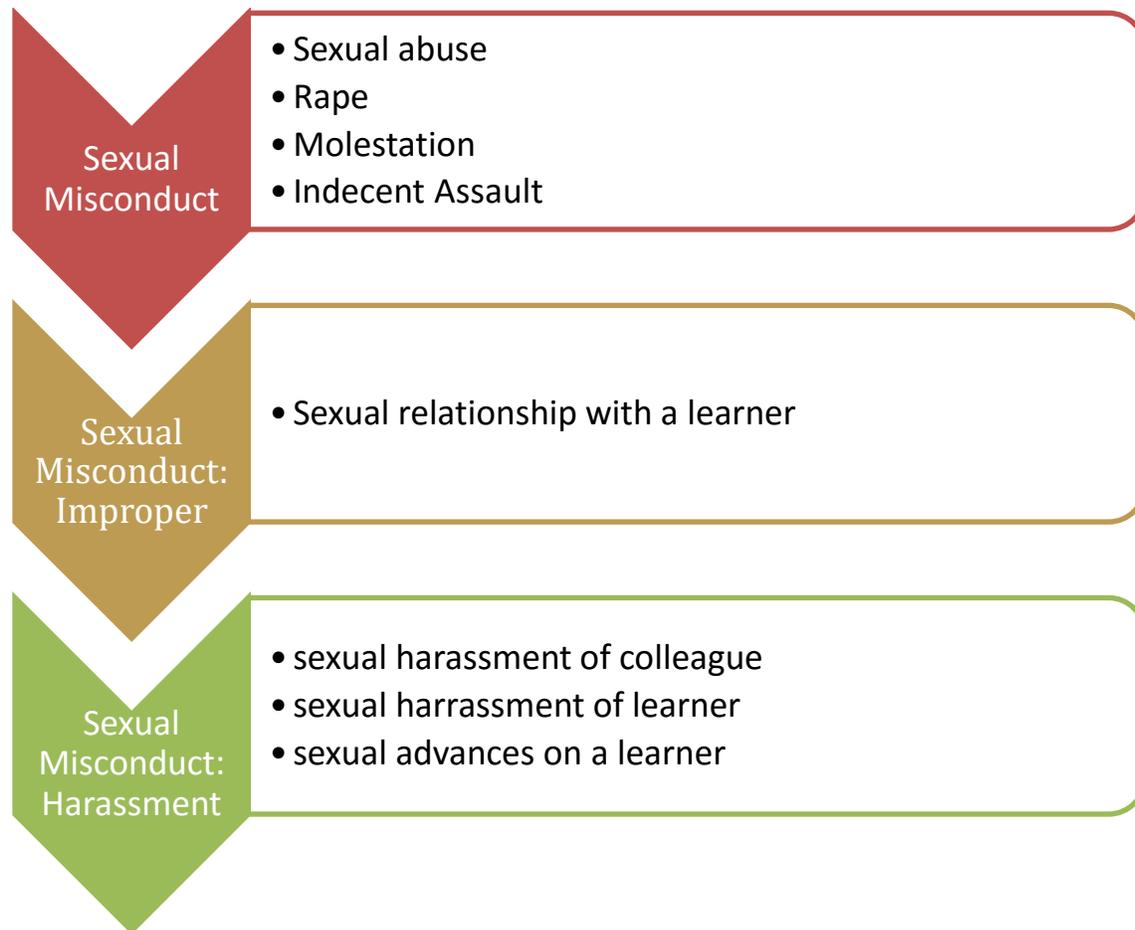


Figure 4: The sexual misconduct themes

2.5 RELIABILITY AND VALIDITY OF THE SUPPLIED INFORMATION

In determining the reliability and validity factor of the information, it is imperative to briefly explain these two concepts separately, including how they relate or add value to this research.

2.5.1 Reliability

Reliability refers to the consistency and the dependability of the measures (Rose & Sullivan, 1996)

and the accuracy and precision of a measuring or assessment instrument (Kerlinger, 1986).

2.5.2 Validity

The validity of the research instrument may be determined as content validity, concurrent validity, construct validity or face validity. This study uses content and constructs validity, discussed in turn here. If the assessment is valid it may also be reliable (Field, 2009).

2.5.3 Reliability and validity of the current research

The information gathered in this research is both valid and reliable, based on the information supplied by SACE and various respondents.

2.6 THE PROVINCIAL REPORTING PROFILE OF DISCIPLINARY CASES

The sexual misdemeanor offenses were mostly committed within the different provinces of South Africa. The frequency level of reporting differs from province to province due to different mechanisms and prioritization; the research investigated this odd and abnormal behaviour (anomaly) in order to enable SACE an opportunity to implement sustainable support systems between local schools, regions, districts and provinces. The role of SACE is unambiguous and mandatory in interacting and offering the necessary support to the schooling sector.

All the provinces report their cases from different provincial education departments (PED's) to different statutory bodies including DBE and DHET, who refer these cases to SACE for further investigation and application of the appropriate sanction where applicable and necessary. Some of the cases are highlighted by media.

3. ANALYSIS OF QUANTITATIVE RESEARCH FINDINGS

3.1 THE ANALYSIS AND INTERPRETATION OF THE EMPIRICAL DATA

The qualitative empirical data is crucial in complementing the aforesaid study. It is aimed at consolidation and triangulation of the relevant information, including factors facilitating sexual related misdemeanors between teachers and learners investigated by SACE and the sanctions meted out to the transgressors.

3.2 PROVINCIAL TRENDS ON REPORTED CASES

The number of reported sexual related misdemeanor between teachers and learners to SACE is insignificant if compared to the total number of educators in the whole system; however, the gravity and sensitivity of these sexual related misdemeanors cannot be ignored and under estimated. In 2012 the total number of educators in the system was 425 167 against the number of reported disciplinary cases to SACE which was 324, whilst in 2016 the number grew to 384 in total and in percentage translated to 1.11%.

The current research study indicates a growing trend in the number of sexual related misdemeanors reported to SACE. This might be attributed to the level of awareness by the alleged victims and the systems in place to process these cases. This situation demands from SACE immediate intervention strategies in order to deal with these cases speedily and decisively. The graphic illustration of these trends is indicated in the figure below.

Table 1: Offenses type by age category in 2012

OFFENSE TYPE	<24	25-34	35-44	45-54	55-64	65+	Not Specified	Grand Total
Sexual Misconduct: Assault / Abuse / Rape		6	24	17	6	1	41	95
Sexual Misconduct: Harassment	1	4	18	23	2	1	40	89
Sexual Misconduct: Improper / Sexual relationship with Learner	3	11	28	6	1		93	142
Grand Total	4	21	70	46	9	2	174	326

The study depicts the number of reported sexual misdemeanor cases according to different offenses conducted. Table 1 above indicates that most offenses occurred under the non-specified as the age of those were not captured in the data. The leading offense was improper/ sexual relationship with a learner with 142 cases reported, followed sexual misconduct of assault/abuse and rape with 95 cases reported and sexual misconduct of harassment with 89 cases reported.

3.3 POSITION OF ACCUSED

The position of the accused is a very important factor in the sexual misdemeanor between teachers and learners of cases reported to SACE as it depicts the severity of the problem as educators are considered to be upholders of the law, and should demonstrate exemplary behaviour in their respective schools which is their work place and the communities they serve.

3.4 THE EDUCATOR AND THE LEARNER CONDUCT

The conduct of the educator and the learner must be above reproach according to SACE code of ethics as highlighted below; there are unambiguous expectations from the educator behaviour and conduct because of their high profile role of serving as 'loco parentis'. Some of the key areas of conduct to be observed by especially the educator;

An educator is expected to:

- respects the dignity, beliefs and constitutional rights of learners and in particular children, which includes the right to privacy and confidentiality;
- acknowledges the uniqueness, individuality, and specific needs of each learner, guiding and encouraging each to realize his or her potential;
- strives to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa;
- exercises authority with compassion;
- avoids any form of humiliation, and refrains from any form of abuse, physical or psychological;
- refrains from improper physical contact with learners;

- refrains from courting learners from any school;
- refrains from any form of sexual harassment (physical or otherwise) of learners;
- refrains from any form of sexual relationship with learners from any school;
- refrains from exposing and/or displaying pornography material to learners and/or keeping same in his/her possession;
- uses appropriate language and behaviour in his or her interaction with learners, and acts in such a way as to elicit respect from the learners;
- takes reasonable steps to ensure the safety of the learner;

4. THE QUANTITATIVE FINDINGS IN REPORTED SEXUAL MISDEMEANORS BETWEEN TEACHERS AND LEARNERS

4.1 INTRODUCTION

The main purpose of this chapter is to consolidate and integrate the findings on Sexual Misdemeanor cases reported to SACE. The findings are based on the various offenses, including transgressions committed by educators, in the different provinces of South Africa. Hence, it is imperative for SACE to consider this information in order to intervene appropriately and decisively.

This section is aimed at highlighting the various offenses that have been committed at schools in the different provinces.

4.2 THE SUMMARY OF HIGHLIGHTED OFFENSES

Table 2: Number of offenses of reported sexual misdemeanor cases

Number of offenses committed	2008	2009	2010	2011	2012
Sexual Misconduct: Assault / Abuse / Rape	8	13	31	23	20
Sexual Misconduct: Harassment	5	22	22	20	20
Sexual Misconduct: Improper / Sexual relationship with Learner	19	17	28	60	18
Grand Total	32	52	81	103	58

The total number of cases reported between 2008 and 2011 showed an increasing trend of cases reported with 2011 indicating the highest number of reported cases which totaled 103. However, in 2012 there was a significant decline on the number of reported cases which totaled 58.

Table 3: Percentage of sexual misdemeanor cases

Number of offenses committed	2008	2009	2010	2011	2012
Sexual Misconduct: Assault / Abuse / Rape	3%	5%	6%	4%	4%
Sexual Misconduct: Harassment	2%	8%	4%	3%	4%
Sexual Misconduct: Improper / Sexual relationship with Learner	6%	6%	5%	10%	4%
Grand Total	11%	19%	15%	17%	12%

The leading sexual misconduct was the one of improper sexual relationship with the learner. In 2008, 2009 and 2010 it was at 6%, 6% and 5 % respectively, however, there was a significant increase in 2011 of 10%, whilst in 2012 there was a significant decline to 4%. Educators who have improper

relationships with their learners have an adverse effect on the learners' education and it puts both parties in a vulnerable position. This was followed by another form of sexual misconduct that entails assault, abuse and rape. In 2008 to 2009 the reported cases increased steadily from 3%, 5% and 6% respectively. However, in 2011 and 2012 it declined to 4% for both years. Another form of sexual misconduct was classified as harassment which had low percentages of 2% and 4%, however, in 2009 the percentage was very high, 8%.

4.3 OFFENSES COMMITTED BY EDUCATORS

Table 4: Offenses committed by educators

Offenses	2008	2009	2010	2011	2012
Sexual Misconduct: Assault / Abuse / Rape	7	12	24	11	14
Sexual Misconduct: Harassment	3	16	11	8	12
Sexual Misconduct: Improper / Sexual relationship with Learner	18	16	20	34	10

5. ASSESSMENT AND ANALYSIS OF ASSAULT AND SEXUAL OFFENSES

There are stringent laws prohibiting sexual interaction of the learner with the educator, the level of misconduct is labeled as a sexual misconduct that incorporates an improper/sexual relationship with the learner, it is regarded as a dismissible offense according to section 17 of the Employment of Educators Act of 1998.

This comes at the backdrop of the power relations that are vested on educators who act as 'loco parentis'. These powers in brief are legitimate power (position power), it is an official authority delegated to an employee (educator) whereby he or she may legitimately expect any subordinate, to adhere to lawful instructions. The Power by reward refers to promotion and/or merit recognition and may be withheld by exercising authority over the granting thereof. In relation to education this typically refers to sexual favouritism where only those will be rewarded who respond to sexual advances. Coercive Power refers to instilling fear, either psychological or physical in subordinates or even schoolchildren.

Section 17 of the Employment of Educators Act 28 prohibits educators from committing sexual or any other form of harassment, which by implication prohibits them from having sexual relations with learners. If any educator is found to have transgressed this prohibition, such an educator is guilty of

misconduct in terms of the Act and liable to suspension (Employment of Educators Act 76 of 1998).

Based on the above-mentioned information it is imperative to assess and analyze the assault and sexual offenses based on the age of the offender in order to determine the underlying causes and factors.

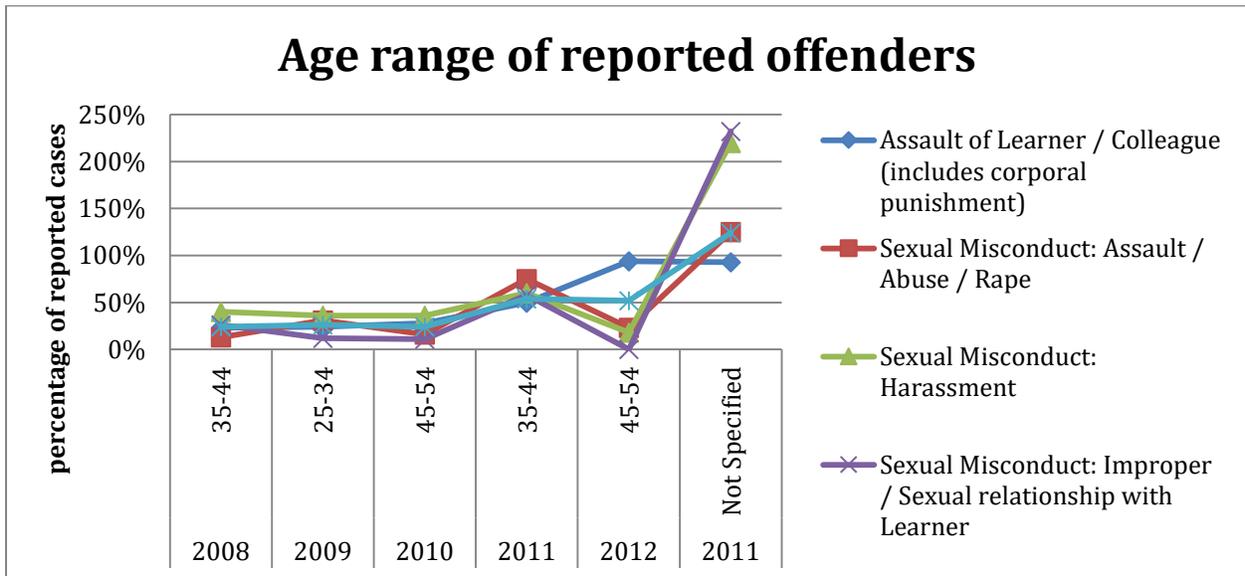


Figure 5: Age range of reported offender

Figure 5 graphically depicts the leading offenses as the Sexual misconduct improper/sexual relationship with the learner and sexual harassment misconduct with 232% and 220% increase over the 5-year period.

5.1 PROVINCIALY REPORTED SEXUAL MISDEMEANOR CASES

Table 5: Provincially reported sexual misdemeanor cases

Reported cases Provincially	Eastern Cape	Free State	Gauteng	Kwa-Zulu Natal	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape	Grand Total
Sexual Misconduct: assault / Abuse / Rape	10	9	21	18	6	6	3		22	95
Sexual Misconduct: Harassment	7	8	23	19	2	5	4	1	20	89
Sexual Misconduct: Improper / Sexual relationship with Learner	10	23	23	27	13	24	8	3	11	142
Grand Total	27	40	67	64	21	35	15	4	53	326

Sexual Misconduct: Improper / Sexual relationship with Learner

Table 5 shows that in total 326 cases of sexual assault of the learner were provincially reported to SACE over a 5-year period in 2012. The trend shows the sexual offenses in most provinces; with Gauteng and Kwa-Zulu Natal having the most cases of sexual assault of the learner.

The above quantitative study resonates well with the current study conducted mainly following the qualitative method below.

5.2 THE QUALITATIVE RESEARCH STUDY RESPONSE

Sexual harassment is an unfortunate, often damaging, experience that girls and boys face daily in their school lives. Quite apart from the ultimate forced sexual act, sexual harassment includes abusive language and gestures, sexual advances, touching and groping, passing unwanted notes, and character assassination through graffiti.

The victims are often times silent sufferers, particularly when they are in the same school environment with the perpetrators. Sexual harassment harms both boys and girls physically, psychologically and emotionally. It embarrasses, humiliates and shames the victims. Because of the negative attitudes and practices in the African cultural set up, such as forced marriage, abduction and considering women as sexual objects, sexual harassment is unfortunately viewed as part of normal practice and is therefore widely tolerated (FAWE,2005:23).

The researchers found it prudent to first interview the SACE staff dealing with Ethics in order to embark on this qualitative study from an informed position on the main and critical issues dealt with or encounter in the schools which pose a challenge in pursuing sexual related cases and misdemeanors committed by educators.

The researchers found that most of the cases the SACE staff was dealing with were very challenging, and subsequently resulted in emotionally challenging the SACE personnel involved with such very sensitive cases. This implies that the SACE staff also needs counselling in order to cope with such trauma that has been created by these dastardly acts, committed to learners by educators who have reneged on their role as educators and have become perpetrators and view schools as their hunting ground as human predators.

There was a strong feeling that the school trips are used as a spring board for the sexual exploitation of learners by some educators, although cultural events were also used, however, the information in the files indicated that these misdemeanors occurred at school during school hours. The provinces that have the most cases in this learner educator sexual misdemeanor were Kwa-Zulu Natal and Gauteng respectively.

Most complaints are referred to SACE by the media, the Department of Basic Education and Department of Higher Education and Training and other interested parties. The challenges are that the victims in most instances are not willing or keen to testify against the perpetrators due to shame and fear of the repercussions. However, the reasons such as intimidation and embarrassment including vulnerability are advanced. Sometimes, the lack of cooperation and proper guidance including support from the school and authorities are experienced. The 'bribery' rate is rife in coercing the victims not to testify by silencing them using 'money' or 'buying' them not to cooperate with the officials and authorities. There is also poor reporting of these incidents.

5.3 PROCESS OF DISCIPLINARY INQUIRIES/INVESTIGATIONS/HEARINGS

The researchers were privy to attend a few cases of disciplinary inquiries and hearings in the Western Cape, Eastern Cape, Mpumalanga, Free State and Limpopo.. SACE issues a summons to both accused and victim and other witnesses to attend a disciplinary enquiry. The issued document has a case number and details of the accused as follows; full name and surname, SACE registration number, registered address; capacity and place of employment and the related charges or accusations.

Below are some of the inquiries and hearings that the researchers observed.

SEXUAL HARASSMENT CASE A

The first case involved an educator who had sexually abused eight learners in the school. Learners were called in one by one to explain what transpired to the SACE investigator. One of the learners indicated that the teacher 'brushed' their thighs and breast in class whilst teaching them, the learner had to change where she sits in order to avoid the fondling continuing in front of her class mates, apparently the boys in the classroom were not impressed by the teacher's behaviour, they too wanted to testify against the teacher to register their dissatisfaction and disapproval of his weird actions. The learner said she informed her mother about the teacher's peculiar behaviour; the mother took up the matter with the principal. The teacher insulted them when they complained about his inappropriate behavior. They were labeled 'tiekieline' 'nondindwa' 'prostitutes' and 'baboons' when they rejected the teacher's advances.

Another learner complained about the teacher harassing them and reiterated what other learners said about the teacher in touching their thighs and massaging their shoulders in class during a lesson.

Sadly some of the learners decided to no longer come to school or continue with their studies in order to avoid the 'pest' teacher who has the audacity of fondling them in the class during lesson time. The SACE investigator had to trace some of the learners at their homes in order to verify the allegations about this teacher.

SEXUAL MISCONDUCT/ HARASSMENT CASE B

In this case the learner was no longer at the same school where the misdemeanor happened and the previous principal had retired in June the previous year. The implicated teacher was seen as rude, very rough and intimidating to other staff members including the principal. He was accused of stealing a time book and later suspended for child abuse. He also referred to his colleagues as 'amagundwane' meaning rats who work when others are not working or are on strike. This case came from a parent who phoned and complained that his child is being abused by one of the staff members at the school. The learner was sent by her granny to go and buy airtime for the granny at a 'spaza' shop. The teacher waylaid the learner, the teacher informed the learner that he has been sent by the principal to fetch her urgently and take her to the principal, the learner was shocked by this weird information, the teacher was exploiting that the learner was intelligent and trusted by the principal as she seemed very responsible.

The learner reluctantly went into the teacher's car at the back, she knew the way to the principal's house, however, she was amazed to see the teacher driving towards an opposite direction and stopped at a secluded spot next to the cemetery, she alleges that the teacher jumped to the back seat and fondled her claiming he loves her, she later took her to his place and slept with her the whole night, in the morning he took her back to her grannies place. When the learner complained that she was afraid of her father and granny, the teacher wrote down his cellphone number and gave them to the learner and informed her to give them to her father so that he can phone him. The father was very angry and phoned the teacher who proposed to meet with the father at the learner's home, the teacher came with a friend; he later proposed to pay 'inhlawulo' damages for what he has done. The granny and the father were willing to accept the 'inhlawulo' money; this compromised the future of the learner.

After hearing what the teacher has done, the principal contacted the circuit manager, who was equally shocked about this matter, the parent was assisted to open a case against the teacher, who was later arrested and later released. The child protection unit took over the case. The danger is that the teacher has returned to the same school due to the delays by authorities and the system to take decisive action about the teacher who is a child pest.

The affected learner has been taken to a place of safety in order to continue with her schooling uninterrupted. The learner has described the teacher as a rapist and an animal in her statement.

SEXUAL MISCONDUCT/HARASSMENT CASE C

The accused teacher resigned last year (2016) at the school, the principal discovered very late that the teacher had similar charges/cases of impregnating learners, as there were two other learners in another school impregnated by the same teacher, this was the third case.

He was brought to the school to assist with Mathematics and Science as these posts were hard to fill due to the scarcity of teachers in this field. A fight ensued in town between the teacher's wife and the learner at the school who was known to be the teacher's girlfriend. The parents of the learner regards the teacher as a 'saviour' for the family as he was giving them the money indirectly by supporting the learner, the teacher borrowed the learner his car, the learner was seen on several occasions driving the teachers car around the village. The teacher has since relocated to Gauteng; he resigned claiming financial matters as he was pursued by money lenders who wanted their money. According to the principal such cases are prevalent in the area.

SEXUAL MISCONDUCT/HARASSMENT CASE D

The teacher was accused of having written a letter requesting the release of a boy learner in a boarding school, the teacher acted as a guardian of the learner. The teacher committed fraud by using the letterhead of the school to grant the concession. When the hearing took place the teacher brought along a lawyer to represent him.

The teacher was accused of having abused his powers by completing forms in releasing the learner fraudulently, the said learner spent the whole weekend with the male teacher at his place, and this learner was taken away from a special school for learners with special needs (LSEN). Social workers claim that the learner has become a social recluse and does not want to mix with other learners. When required to draw, the learner draws the private parts of the teacher and he generally displays anger.

SEXUAL MICONDUCT/HARASSMENT CASE E

The teacher was facing five charges of sexual assault. The teachers' salary was docked, the male

teacher was accused of touching the private parts of girl learners and in turn the teacher had forced the learners to also touch his private parts. The charges included indecent assault of learners, the teacher complained that his salary was docked for the same case/misdemeanor and he had gone to court and was sentenced for the same offense, the case has dragged for a number of years. Some of the abused learners were no longer at school due to the lapse of time. This case has been dragging on for many years and the teacher is almost at a pensionable age.

The accused teacher seemed confused and bewildered by the charges and he pleaded guilty to all of them as he felt he wanted this case to be concluded as speedily as possible.

SEXUAL MISCONDUCT/HARASSMENT CASE F

The teacher has been suspended for impregnating a learner and encouraging a learner to commit abortion. The charges were proposing love to a learner, fostering love with a learner, sexual intercourse with a learner, impregnating a learner and encouraging the learner to commit abortion. The teacher pleaded not guilty to all charges.

The teacher was represented by a union member, the case was not concluded because the learner could not attend the hearing due to work commitments (although the hearing was on a Saturday), and the shocking revelation was that the learner had contracted HIV/Aids after sleeping with the teacher concerned.

The cases cited above are just a tip of an iceberg of the sexual misconduct, sexual harassment and sexual abuse experienced by learners in some schools in South Africa. There must be a concerted effort by all concerned parties to eradicate this scourge that is bedeviling the educational sector. The silence and patriarchal system must be overcome in order to improve the situation.

Based on the few above-mentioned cases it is imperative for SACE to continue with investigations and hearings in order to protect the learners from the perpetrators who are masquerading as teachers whilst they destroy the future of learners under their care. SACE must propose to the education department to develop tighter legislation and an efficient mechanism of ensuring that such teachers do not enter the education system.

6. RESEARCH FINDINGS

The final observations indicate that the factors and environment enhancing sexual misdemeanors are very complex to deal with and resolve. This is due to the sensitivity of the matter between the victims (learners) and perpetrators (teachers). The emerging contributory factors are;

- Culture plays a major role in dealing with such matters in some of the provinces; the cultural dynamics of a society/ community contribute immensely in dealing with resolving such matters.
- The patriarchal society contributes to perpetuating this situation and maintaining the status quo; as there is an inherent tendency to heap all the blame to the victim (learner) who in most cases is blamed for what has happened or transpired.
- The alleged perpetrators use a lot of intimidation tactics to undermine, vilify and belittle victims by labeling them prostitutes, tikieline (whores/cheap women).
- Money is used to bribe and silence the victims; in some cases by promising parents/ guardians that the perpetrator intends marrying the victim by paying “inhlawulo” fine in admittance of guilt and later it can be considered as “lobola” which is a dowry, part payment, especially in the rural areas.
- Perpetrators exploit the plight of learners, especially those who are raised by grannies (grandparents) and aunts including orphans, they use their vulnerable situation at home to commit sexual misdemeanor/misconduct.
- Financial incentives are used to persuade victims to drop the charges or cases opened against them; third parties are used to coerce victims’ parents and relatives to accept the offered amounts as settlement for sexual misdemeanor/misconduct.
- Some learners have been taken to places of safety (boarding schools) to protect them from the teachers who are pestering them.
- Some learners have dropped out of school due to sexual harassment and pestering by the perpetrators.

6.1 RECOMMENDATIONS ON CONTRIBUTORY FACTORS THAT ENHANCE AND FACILITATE SEXUAL MISDEMEANORS

- A comprehensive review of educational policies/guidelines/regulations related to dealing with sexual harassment or sexual misconduct in all types of schools including private schools.
- School Governing Bodies must exercise their powers or be well informed and empowered on processes/guidelines to be followed when dealing with matters of sexual harassment and sexual misconduct in schools.
- Parents/Guardians must be informed of their rights when dealing with sexual harassment matters reported to them by their children, and know what steps to follow in reporting the matter to the authorities including processes of escalating the matter if they encounter unnecessary barriers along the way.
- Parents/Guardians must be informed about how they (consciously or naively) are defeating the ends of justice by accepting money/incentives to cancel cases of sexual impropriety by the teachers; they must not connive with the perpetrators to compromise their children's future.
- SACE must consider adding a clause that states that includes; commitment to not perform any acts of sexual harassment and sexual misconduct with the learners in the SACE CERTIFICATE OF REGISTRATION process.
- SACE must collaborate with the law enforcement agencies to expedite sexual harassment and sexual misconduct cases.
- SACE must establish a hotline in order to fast track the cases that may be delayed due to unforeseen circumstances.
- SACE must consider developing an online guideline on the gravity of sexual harassment or sexual misconduct behaviour between teachers and learners in collaboration with the Department of Basic Education and the Department of Higher Education.
- SACE must expedite its intervention strategies in order to deal with these cases speedily and decisively.
- SACE must consider ways of witness protection especially learners/victims of sexual harassment and sexual misconduct
- SACE should consider an advocacy campaign for teachers and communities creating awareness of sexual misconduct and sexual harassment and the consequences for the teachers and communities.

6.2 THE ENVIRONMENT THAT FACILITATE SEXUAL MISDEMEANORS

- Classrooms (after school)

- School halls (after school)
- School offices (after school)
- Staff rooms (after school)
- School trips/excursions
- Sports activities
- Coaching sessions
- Teachers' homes/houses

6.3 RECOMMENDATIONS FOR ENVIRONMENT THAT FACILITATE SEXUAL MISDEMEANORS

Schools must consider ways of creating sexual awareness campaigns with an intention of emphasizing the learners' rights on these matters.

Schools must have clear policies on what is acceptable interaction between the teachers and learners; including what is unacceptable behaviour.

Learners must be encouraged to report any unusual encroachment and unusual remarks by their teachers.

Learners must be taught to question the motives of the teacher who wants to meet with them after hours/on weekends and during the holidays at secluded places alone.

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