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SCHOOL SAFETY—LEGAL REQUIREMENTS FOR TEACHERS AND ALL WHO HAVE ACCESS TO CHILDREN

At this time of the year as SGBs appoint new teachers or recommend teachers for departmental temporary posts, it is important to make sure that the teachers are fit to teach and that all persons who work with the learners, or work at the school, are cleared to work with children.

Firstly, all teachers must be registered with the South African Council for Educators (SACE). It is the teacher's duty to register himself/herself.

It is important for SGBs to be aware of the powers and duties assigned to the SACE (rhymes with ace) in addition to registering qualified teachers.

Secondly, because school staff work with children, employers are required to check **all employees** against the National Child Protection Register (NCPR) and the National Register for Sex Offenders (NRSO). Complying with this legislation is not simple. The provincial department of education is required to vet its employees but SGBs are responsible for staff appointed by them.

These requirements contribute towards making schools safer places.

THE SOUTH AFRICAN COUNCIL FOR EDUCATORS

The South African Council for Educators is the regulatory authority for the teaching profession. It was established in terms of the South African Council for Educators Act 31 of 2000. Members of the Council are appointed by the Minister of Basic Education and include teachers/college lecturers (the majority), representatives of the Minister of Basic Education, Governing Body Associations, independent school sector and the Higher Education Council. The Act applies to educators, lecturers and management staff of public and independent schools, Further Education and Training (FET) Colleges and adult learning centres (collectively hereafter referred to as educators). The Council performs similar functions to that of the controlling bodies of other professions

In terms of the SACE Act section 21 (2) "No person may be employed as an educator by any employer unless the person is registered with the council". Educators must register prior to taking up a position.

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The SACE Act describes the powers and duties of the Council which include:

- Registration (or provisional registration of teachers) of appropriately qualified teachers;
- Promotion of the profession, including managing a system for the promotion of continuing professional development of educators (known as the CPTD system);
- Compilation and maintenance of a Code of Professional Ethics;
- Levying fees to finance the work of Council;
- Advising the Minister on educational matters.

What relevance does the SACE Act have for SGBs?

SGBs have the obligation to ensure that only registered teachers are employed at the school. To be registered the teacher must have a qualification that meets the minimum requirements determined by the Council. In special circumstances, teachers may be provisionally registered, for example, when a suitably qualified person cannot be found (some evidence of the school having tried to find a qualified teacher may be needed),

when persons with a degree are studying towards a post graduate certificate of education (PGCE), and when students are in their final year of studying towards a teaching qualification. Provisional registration is for a specific period only. Such registration may be renewed to allow more time for the completion of the qualification but the Council is reluctant to continue provisional registration for unqualified persons unless they are working towards obtaining a qualification.

Teachers are responsible for registering themselves. Schools should not assume this responsibility for teachers. Schools should, however, maintain a list of the SACE registration numbers of teachers, paying particular attention to the validity of provisional registration certificates. This list should be readily available should SACE wish to inspect the school for compliance with the Act. At present SACE full registration is awarded upon production of an approved qualification and is valid indefinitely. It is likely that this will change in the future.

All teachers are now required to obtain 150 Continuing Professional Teacher Development (CPTD) points over a period of three years. It is therefore, a requirement that they undertake professional development work. The points can be obtained in many different ways through teachers' own choice of activities, school organised programmes as well as those provided by external providers or the department of education. Twice a year, teachers are supposed to submit a record of the points they have obtained. Currently teachers' registration certificates are valid indefinitely but it is likely that in the near future teachers will have to renew their "licence to teach" by demonstrating that they have met the CPTD points target. From 2020 beginner teachers will have to complete an induction process before being fully registered to teach. The SGB, as an employer of teachers and in support of the professional management of the school, can assist teachers by ensuring that there is a budgeted amount set aside for the professional development of staff. Some of these costs can be reclaimed in terms of the Skills Development Act provided the school is paying the Skills Development Levy and submits a Work Skills Plan annually. The principal, as the manager of professional matters and the professional development needs of all staff, is responsible for ensuring that teachers are exposed to development opportunities which will improve their effectiveness as teachers. The SGB is responsible for providing the resources to do so.

Teachers are required to pay levies to the Council (R15,00 per month at present). The levy is deducted from state-paid teachers' salaries by the provincial education departments. Similarly, it works well when schools deduct the levy from the SGB-paid teachers' salaries and then submit a lump sum to SACE, with a list of the names and registration numbers of the teachers. This could be done once a quarter. Failure to pay levies can result in the teacher being removed from the register and thus not entitled to be employed at the school.

The SACE Code of Professional Ethics is a really important document and its provisions are applicable to all teachers. SGBs would find it helpful to know what it contains. Any person can lodge a complaint to SACE when a violation of the Code takes place. The complaints must be made in writing. It is an offence for teachers to be aware of violations and not report them to the Council. SGBs may become involved in disciplinary investigations and hearings as complainants or witnesses. Trivial issues should be dealt with through effective professional management but unacceptable conduct by teachers must be reported. In all cases sufficient evidence will be required for a complaint to be upheld and for a sanction to be imposed on a teacher. Witnesses have to be prepared to give evidence and to be cross-examined. Complaints cannot be made based on rumours and suspicions. Hearsay evidence is not acceptable. When children are concerned there is provision for their protection in the process. Depending on the offence, sanctions include fines, anger management training, and striking off the register (or sometimes suspended striking off). In many cases there may be a concurrent education department disciplinary process and even criminal prosecution.

As SGBs fulfil their responsibilities towards the Council and support teachers to develop themselves professionally and to conduct themselves in an ethical manner, they contribute towards developing teacher professionalism in their schools and in South Africa.

OTHER PROFESSIONAL COUNCILS

Psychologists, speech therapists, school nurses and other professional support staff are required to belong to their respective professional councils which have similar powers and duties as SACE. SGBs need to ensure that all these professionals are lawfully registered to practise and that they have accumulated sufficient CPD points to retain their certification.

LEGISLATION APPLICABLE TO ALL PERSONS WHO WORK WITH CHILDREN OR WHO HAVE ACCESS TO CHILDREN

The following information is important because it applies to all persons employed at the school who work with children or who have access to children. This includes all teachers, professional support and administration staff, maintenance staff and coaches of extra-mural activities. Employers are responsible for compliance.

The **Children's Act** 38 of 2005, section 126 (1)(a) requires employers offering services which allow for access to children to establish from the Registrar of the **National Child Protection Register** (NCPR) whether the potential employee's name is listed on

Part B of the register. This must be done prior to employing the person.

To establish whether the person's name appears in Part B of the Child Protection Register which is administered by the Department of Social Development (DSD), the employer should complete and submit Form 29, available from the DSD (also see the GBF website). (A person can enquire about him/herself using Form 30.)

If the potential employee's name appears on the register, he or she will not be allowed to work in an environment which allows for access to children.

In addition, the **Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMAA)**, Chapter 6, made provision for the **National Register for Sex Offenders (NRSO)**. Persons recorded in this register are not permitted to work with or have access to children. Employers are supposed to complete Form 8 obtainable from the Department of Justice and Constitutional Development (DoJ&CD) which administers the register. Individuals are also able to apply for a clearance certificate for themselves. However, the register is not yet properly operational and is only accessible to the South African Police Service (SAPS), the Department of Correctional Services, the Department of Health and the DSD. (There is also an amendment to this Act, the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2015, which while interesting, is not specifically relevant to the NRSO.)

The DoJ&CD has issued the following statement on their website:

PLEASE NOTE:

The issuing of clearance certificates or verifying individuals for any purpose is not yet operational. The application forms, J738 (Form 7), J739 (Form 8) and J741 (Form 10) should therefore not be submitted to the Registrar's office, until the process of issuing clearance certificate by the NRSO have been implemented (sic).

People applying for employment, entity registration or clearance certificates, are advised that, in addition to the acquisition of the SAPS clearance certificate, to also disclose to their employers (on affidavit) that they have never been convicted of a sexual offence against a child or a mentally disabled person. This is provided for in terms of Section 46(1), (2) and (3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007. This affidavit must be placed in the employee's file to be utilised at a future date once the Register becomes fully operational.

The SAPS clearance certificate process is explained on this link:

https://www.saps.gov.za/services/applying_clearance_certificate.php

There are service providers who will, for a fee, do the verification of potential employees.

Despite all these efforts to verify the suitability of persons to work with children, the safety of children cannot be guaranteed. Schools must still run education programmes for children of all ages about safety (interpreted in a very broad sense). Children must be warned about unsafe people, spaces and situations and taught how they can report anything that made them feel unsafe.

Even if the school obtains the necessary clearance certificates and verifies all personnel, it does not mean that everyone is therefore safe to work with children. It could just mean that the person has not yet been apprehended or sentenced for a sexual offence. If a person has never been charged or found guilty of an offence, the person's name will not appear on the register.

School safety is a priority and there is no room for complacency in any school no matter how safe it appears to be.

Additional resources relevant to *Undercurrents* Vol 8 No 29 can be found on the GBF website:

South African Council for Educators Act 31 of 2000

South African Council for Educators Code of Professional Ethics

The Children's Act 38 of 2005,

The Children's Act Form-29

The Children's Act Form-30

Department of Social Development Child Protection Register pamphlet

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

Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act 2015