CHAPTER 19

CORPORAL PUNISHMENT

Faranaaz Venlava and Tina Power
INTRODUCTION

In February 2016, the Times Live reported that a Grade 3 Free State pupil had died after a teacher assaulted her with a hosepipe. Eight-year old Nthabiseng Mtembo had been repeatedly beaten on her head with a hosepipe for not doing her homework.

In 1996, the South African Schools Act, under Section 10, banned the use of corporal punishment in schools. In 2000 this was confirmed in the Christian Education case. Despite the ban on corporal punishment 20 years ago, teachers are still hitting children at school. It is illegal.

WHAT IS CORPORAL PUNISHMENT?

The United Nations Committee on the Rights of the Child defines corporal punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. The Committee gives some examples of different types of corporal punishment:

- Hitting – with a hand or an object (for example, a whip, stick, belt or hosepipe)
- Kicking, grabbing or throwing
- Scratching, pinching, biting, pulling hair or boxing ears
- Forcing children to stay in uncomfortable positions
- Throwing objects at a learner
- Burning (for example, with hot water or cigarettes).

The Western Cape Provincial government defines corporal punishment 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 with an object; denying or restricting a child use of the toilet; depriving meals, drink, heat and shelter; pushing or pulling a child with force; forcing the child to do exercise.

EXAMPLE 1:

In 2012, a group of Grade 4 learners were disciplined for not doing their homework. They were forced to stand in a ‘motorbike’ position, on their toes. One of the learners had a steel plate in his toes from an accident, and was not able to hold the position as long as the others; this learner was then beaten, for not keeping up. This method of discipline is classified as corporal punishment, and is illegal.

EXAMPLE 2:

The Grade 7 learners of Mpeli Primary School have been taken on an outing to the Planetarium. All the learners are very excited about the trip, and are very loud. Mr Smith, their bus driver, gets very angry with the children. He stops the bus, pulls Skosi off the bus, and hits him, in front of all the other learners. The ban on corporal punishment is not only applicable to educators but to any person, including other members of staff such as bus drivers.
CORPORAL PUNISHMENT
IN THE SOUTH AFRICAN
CONTEXT

HISTORICAL OVERVIEW OF
CORPORAL PUNISHMENT IN SOUTH AFRICA

Prior to 1994, corporal punishment was frequently relied on to ensure discipline in South African schools. It became acknowledged as an essential part of the schooling system. The predominant Christian National Education policy affirmed the role of the teachers as disciplinarians. Generally, corporal punishment was used to discipline unruly children, and was also used as a means to ‘toughen up’ boys and ‘turn them into men’; however, ‘(c)orporal punishment became one of the ways in which the racial and authoritarian apartheid system entrenched itself’, according to a report titled ‘Corporal Punishment of Children: A South African National Survey’.

Robert Morrell, a senior professor in education who has researched and written on corporal punishment, has noted that while corporal punishment was used in boys’ schools – both black and white – black girls’ schools were not exposed to corporal punishment, but black girls’ schools were.

The reliance on corporal punishment and the values attached to it became deeply ingrained into the South African school system and society in general.

THE DEVELOPMENT OF THE PROHIBITION OF CORPORAL PUNISHMENT IN SOUTH AFRICA

The end of apartheid brought with it the end of an authoritarian culture, and a shift towards a culture of human rights. The social and political developments in South Africa created a shift in the education system towards an outcomes-based curriculum (Outcomes-Based Education or OBE), designed to facilitate more participative forms of learning in the new human rights culture. This was coupled with a new national legal framework for schooling. The South African Schools Act and National Education Policy Act (NEPA) of 1996 created a single, unified system of schooling in South Africa. NEPA seeks to facilitate more participative forms of learning in the new human rights culture. This was coupled with a new national legal framework for schooling. The South African Schools Act and National Education Policy Act (NEPA) of 1996 created a single, unified system of schooling in South Africa. NEPA seeks to facilitate more participative forms of learning in the new human rights culture.

Our Constitutional Court has confirmed these principles in two important cases. In S v Williams, the Court held that ‘[a] culture of authority which legitimates the use of violence is inconsistent with the values for which the Constitution stands’. In the Christian Education case, the Court held that there was a need for the legislature to ‘make a radical break from our authoritarian past’.

More recently, the South African Human Rights Commission (SAHRC) issued a report on religious teaching that encourages physical chastisement in the home as a form of discipline of children. The 2016 Joshua Church Report reaffirmed that ‘corporal [punishment] has been declared unconstitutional in all institutions having childcare responsibilities.’ The report went on to say that it is ‘explicitly stated that corporal punishment in institutional settings (like schools) violates the dignity of the child.’
Because corporal punishment was such an ingrained part of society, it has been difficult to shift or change people’s attitudes towards it. This section will highlight some of the common arguments for and against corporal punishment.

**Arguments for Corporal Punishment – ‘Spare the rod, and spoil the child’**

- Learners who receive corporal punishment are more hardworking
- A lack of consequences or punishment can increase violent behaviour by students
- Banning of corporal punishment has resulted in reduced levels of discipline
- Different methods of discipline are not as effective as corporal punishment
- Since the ban on corporal punishment, learners are behaving poorly and are ill-disciplined
- 'Physical punishment only became degrading when it passed a certain degree of severity' (Christian Education). Those in favour of corporal punishment contend that if it is administered justly, it is essential to discipline (they promote the idea of ‘reasonable chastisement’)
- Corporal punishment is a significant part of a cultural or religious belief

The well-known Christian proverb ‘Spare the rod, and spoil the child’ suggests that without corporal punishment children will become ill-disciplined and spoilt. It suggests that beating a child is an important part of the development of a child, and ensures that a child will become diligent and free from sin.

**Arguments against Corporal Punishment**

There is increasing evidence that corporal punishment has harmful effects. In May 2016, the Universities of Michigan and Austin in America published the findings of a study about corporal punishment. The study spanned 50 years, and included more than 150 000 children. It found that ‘sparking is linked to aggression, antisocial behaviour, mental health problems, cognitive difficulties, low self-esteem, and a whole host of other negative outcomes’.

The study found that there were no redeeming effects of corporal punishment. These findings were published in the Journal of Family Psychology, by E Cershoff and A Grogan-Kaylor.

Arguments against the use of corporal punishment include:

- It is an ineffective deterrence mechanism
- Evidence suggests that rather than acting as a deterrent, corporal punishment breeds aggression and hostility
- It makes learners unhappy, which in turn contributes to absenteeism and learners dropping out of school
- Corporal punishment perpetuates the acceptance of violent behaviour in society
- It doesn’t encourage learners to behave appropriately
- It has the potential to weaken the relationship between the learner and the educator, which is crucial for the development of the learner
- It causes psychological harm, including:
  - Emotional damage
  - A negative impact on self-esteem
  - Negative feelings about going to school
  - Negative outcomes for academic performance

The European Commission of Human Rights held that: Corporal punishment amounts to a total lack of respect for the human being, it therefore cannot depend on the age of the human being. The sum total of adverse effects, whether actual or potential, produced by corporal punishment on the mental and moral development of a child is enough to describe it as degrading.

**An ‘Official Ambivalence’ to the Prohibition**

Twenty years after the laws banning corporal punishment came into effect, it is clear that there is still a high prevalence of corporal punishment being administered in schools across the country. It has been suggested that this is in part due to a lack of support for the ban among educators. It is clear that there is still a high prevalence of corporal punishment being administered in schools across the country. It has been suggested that this is in part due to a lack of support for the ban among educators.

Parental support of corporal punishment contributes to the ‘official ambivalence’ of the ban. Many parents were raised in an era in which corporal punishment was commonplace, and like educators, they have not made the necessary shift in accepting the new laws. It is likely that if parents support the use of corporal punishment in schools, they also promote its use at home. This leaves learners being exposed to unsafe environments both at home and at school.

**Examples of When Corporal Punishment Was Not Used for Discipline**

1. A learner was hit with a broken hosepipe until he or she agreed to have sexual intercourse with an educator.
2. A learner was threatened with a knife for refusing to go home with an educator.
3. A group of learners who were allegedly giggling in class were beaten and expelled.
4. A learner was unable to wear his shoes because he or she agreed to have sexual intercourse with an educator.
5. In Gauteng, a learner was verbally abused and harassed by an educator for wearing a string in accordance with the child’s religion.
In 2014, the Minister of Basic Education provided the numbers of reported cases of corporal punishment, as well as the total numbers of reported cases of corporal punishment between 2011 and 2014, and the number of educators found guilty.

Table 19.1: Reported cases of corporal punishment and the numbers of educators found guilty, 2011-2014.

<table>
<thead>
<tr>
<th>PROVINCE</th>
<th>2011/2012</th>
<th>2012/2013</th>
<th>2013/2014</th>
<th>TOTAL</th>
<th>NUMBER FOUND GUILTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>11</td>
<td>2</td>
<td>11</td>
<td>24</td>
<td>2</td>
</tr>
<tr>
<td>Free State</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Gauteng</td>
<td>31</td>
<td>14</td>
<td>21</td>
<td>66</td>
<td>5</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>14</td>
<td>24</td>
<td>5</td>
<td>43</td>
<td>9</td>
</tr>
<tr>
<td>Limpopo</td>
<td>6</td>
<td>6</td>
<td>8</td>
<td>20</td>
<td>3</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>6</td>
<td>8</td>
<td>4</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>North West</td>
<td>6</td>
<td>9</td>
<td>4</td>
<td>19</td>
<td>4</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Western Cape</td>
<td>99</td>
<td>115</td>
<td>188</td>
<td>402</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>179</strong></td>
<td><strong>182</strong></td>
<td><strong>246</strong></td>
<td><strong>607</strong></td>
<td><strong>29</strong></td>
</tr>
</tbody>
</table>

The South African Council of Educators (SACE) is a statutory body that was established to develop and maintain ethical and professional standards for educators. All educators are required to register with SACE, and to abide by its Code of Professional Ethics. Every year SACE submits a report that provides a breakdown of all the complaints per province of alleged abuse by educators. Between 2014 and 2015, SACE received 253 complaints of instances of corporal punishment. Alongside is a breakdown of the number of corporal punishment complaints received per province by SACE in its 2014-2015 Annual Report.

Table 19.2: Corporal punishment complaints received by SACE, 2014-2015.

<table>
<thead>
<tr>
<th>PROVINCE</th>
<th>COMPLAINTS OF CORPORAL PUNISHMENT AND ASSAULT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>8</td>
</tr>
<tr>
<td>Free State</td>
<td>5</td>
</tr>
<tr>
<td>Gauteng</td>
<td>22</td>
</tr>
<tr>
<td>Kwa-Zulu Natal</td>
<td>25</td>
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<tr>
<td>Limpopo</td>
<td>10</td>
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<tr>
<td>Mpumalanga</td>
<td>8</td>
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<tr>
<td>North West</td>
<td>7</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>3</td>
</tr>
<tr>
<td>Western Cape</td>
<td>165</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>253</strong></td>
</tr>
</tbody>
</table>

The General Household Surveys (GHS), produced by Statistics South Africa (StatsSA) annually, include figures for the proportion of learners who have experienced corporal punishment in schools in that particular year.

The GHS observed that there has been a decrease in reported corporal punishment since 2011. The Eastern Cape and KwaZulu-Natal were recognised as the provinces with the highest incidences of corporal punishment. Even though the percentage of learners who experienced corporal punishment at school has decreased nationally since 2011, the actual numbers of learners experiencing corporal punishment remains high. The figure of 12.4% translates to approximately 1.7 million learners being exposed to corporal punishment in 2014. The GHS data also show evidence that the practice of corporal punishment has been on the increase steadily in particular provinces, such as Limpopo, Western Cape and Northern Cape.

This graph shows the percentage of learners who experienced corporal punishment across the provinces between 2011 and 2014.

Figure 19.1: Percentage of learners who experienced corporal punishment 2011 and 2014.
The wealthy are more likely to use corporal punishment on children with disabilities, and educators are more likely to use corporal punishment in a cruel or degrading way.

Punishment of Students with Disabilities

Various international legal instruments have recognised the rights of the child, the right to education, and the right not to be treated in a cruel or degrading way. South Africa has ratified many of these, and is legally bound to ensure that these rights are protected and enforced.

In 1995, South Africa ratified the Convention on the Rights of the Child (CRC). By so doing, our government is obliged to take measures to ensure that our laws reflect the standards and ideals set out in the CRC. Article 19(1) requires state parties to:

- take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual violence, while in the care of parents (s), legal guardians (s), or any other person who has the care of the child.

The CRC places an obligation on state parties to take steps ‘to ensure that school discipline is administered in a manner consistent with a child’s human dignity’ (Art 28(2)). Furthermore, Article 37(a) of UN CRC requires countries that have signed it to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”

Appropriate measures, in the context of corporal punishment, would include ‘legislative measures to protect learners from ‘physical or mental abuse’. It would also include public education programmes for the promotion of positive discipline.

The Constitution

Our Constitution has various rights intended to protect learners from being subjected to corporal punishment in schools.

- Section 12(1) gives everyone the right to freedom and security of the person, which includes the rights:
  - To be free from all forms of violence
  - Not to be treated or punished in a cruel, inhuman or degrading way
- Section 28(1)(d) states that every child has the right to be protected from maltreatment, neglect, abuse or degradation
- Section 10 gives everyone inherent human dignity and the right to have their dignity protected.

National Laws

The Ban on Corporal Punishment

In the 1995 v Williams judgment, the Constitutional Court said that prohibiting corporal punishment was an important part of departing from violent history. As a result, the Court held that juvenile whipping is no longer allowed in South Africa as a form of punishment.

Protecting Learners from Corporal Punishment

South Africa's national laws have been very clear in expressing the need to protect learners from any form of mistreatment.
Serious Misconduct

Seriously assaulting a learner with the intention to cause grievous bodily harm

MISCONDUCT

Assaulting, or attempting to
or, threatening to assault
another employee or person

Victimising or intimidating
learners

SANCTIONS

A fine not
exceeding one
month’s salary

Suspension
(no pay) not
exceeding three
months

Demotion

Dismissal

Counselling

Verbal or written
warning or
final warning

Figure 19.2: Possible outcomes when an educator is found guilty of misconduct.

The National Minister for Education must develop policies about the control and discipline of learners, ensuring that ‘no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any educational institution’.

The Children’s Act of 2005

Section 110(1) of the Children’s Act says that an educator who on reasonable grounds concludes that a child is being abused must report this in the prescribed manner to a designated child-protection organisation, the provincial department of social development, or a police official. Failure to report in terms of Section 110 is a criminal offence. Educators are therefore legally obliged to report acts of corporal punishment being administered by other educators.

SACTIONS

Where there has been a complaint of corporal punishment against an educator at a school, the district office for that school will conduct preliminary investigations of the allegations. Depending on the outcome of the investigation, the district official will refer the case to the Labour Relations Directorate for further investigation and disciplinary hearings.

EEMPLOYMENT OF
EDUCATORS ACT

Schedule 2 of the Employment of Educators Act of 1998 (EEA) governs the procedure for disciplinary hearings against educators. The EEA distinguishes between misconduct and serious misconduct, and attaches different sanctions to each. The EEA states that if the misconduct is also a criminal offence, separate and different proceedings will occur. It does not make provision for legal representation in disciplinary hearings, but it allows for the presiding officer to appoint an intermediary, if the learner is under 18 and will suffer ‘undue stress’ during proceedings. The EEA further states that educators can be dismissed if the presiding officer concludes that a child is being abused.

CHILDREN’S ACT


The Children’s Act provides for the establishment of a National Protection Register. Part B of the Register was established to have a record of persons who are unsuitable to work with children. A court, either in civil or criminal matters, or a forum established or recognised by law in any dispute in any disciplinary proceedings concerning the conduct of that person relating to a child may make a finding that a person is unsuitable to work with children. In criminal proceedings, a person may be found unsuitable to work with children if they are found guilty of murder, attempted murder, or assault with intent to do grievous bodily harm with regard to a child. Once a person’s name appears on Part B of the register, that person may no longer be employed at an institution dealing with children.

The reinstatement of the educator may well be justified in such a case. The educator had shown, her length of service, and the bruise that in his view was of a minor nature. The educator was reinstated.

The Limpopo DOE initiated disciplinary proceedings against the educator in consequence of which the was dismissed. The arbitrator found that while there was a ban in place for corporal punishment, the penalty was too severe. He took into account the remorse the educator had shown, her length of service, and the bruise that in his view was of a minor nature. The educator was reinstated.

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Many cases of corporal punishment are reported in schools, but few educators are found guilty, so it is important to know what to do if you or someone you know has experienced corporal punishment, so that the educator can be appropriately sanctioned. Here’s what you can do:

**LEARNERS**

If you or one of your classmates has been corporally punished, it is important to report it so that it does not happen again. Sometimes it can be intimidating to report incidences like this, especially when it is very common in your school. It helps if you can talk to someone you trust to help you with reporting. The steps below explain the different ways in which you must report an incident. These steps do not need to be done in this order, but it is important that all three are done.

1. **Report the incident to the Department of Social Services, Department of Education or South African Police Service (SAPS).**
2. **Report the incident to the South African Council for Educators (SACE).**
3. **Report the incident to the Service and Department of Social Services.**

**WHAT TO DO WHEN A LEARNER HAS BEEN CORPORALLY PUNISHED**

**TERMINOLOGY**

- **Abuse of authority**: refers to the use of power to abuse a learner.
- **Disciplinary action**: a measure taken by the school authority for the purpose of promoting or maintaining discipline.
- **Disciplinary sanction**: any action taken by the school authority to promote or maintain discipline.
- **Disciplinary act**: any act by the school authority which is intended to promote or maintain discipline.
- **Disciplinary misconduct**: any act of the learner which is intended or likely to promote or maintain discipline.
- **Disciplinary action**: an act taken by the school authority for the purpose of promoting or maintaining discipline.
- **Disciplinary sanction**: any action taken by the school authority to promote or maintain discipline.
- **Disciplinary act**: any act by the school authority which is intended to promote or maintain discipline.
- **Disciplinary misconduct**: any act of the learner which is intended or likely to promote or maintain discipline.

**CASE STUDY**

**STANDER V EDUCATION LABOUR RELATIONS COUNCIL**

An educator had been teaching for over thirty years. He was found guilty of slapping a Grade 11 learner and was dismissed. He took the disciplinary process on review. The court set aside the dismissal and referred the matter back to the Education Labour Relations Council. The court held that the Commissioner had failed to take into account certain factors relevant to the substantive fairness of the dismissal. This included the length of service of the educator. The educator did not deny the commission of the offence. He had accepted that what he had done was wrong, and had subjected himself to a further medical assessment and treatment. It was not in dispute that the offence was the result of provocative behaviour on the part of the learner. The relationship with the school had not broken down. It would appear from the version of the school that disciplinary action was only taken because of pressure from outside the school. There was no evidence that he would commit a similar offence again.

**PROVINCIAL LAWS**

All nine provinces have adopted provincial legislation that prohibits corporal punishment in schools. The Northern Cape, Mpumalanga, Gauteng and the Free State have gone further, and included provisions stating that ‘anyone who administers corporal punishment in schools will be guilty of an offence, and is liable on conviction to a sentence which would be imposed for assault’.

Some provinces have been more proactive than others, and have sent out circulars and published regulations in attempts to address the current levels of corporal punishment in schools in South Africa.

In 2002 the Western Cape Department of Education issued a circular after a growing number of incidents of corporal punishment had been reported. The circular aimed to reinforce what the laws and policies on corporal punishment were, as well as what the consequences of administering corporal punishment are. In 2014 the Gauteng Department of Education issued a similar circular, with the purpose of promoting an understanding of assault and corporal punishment. The circular emphasised that corporal punishment was not to be used, and that ‘positive discipline’ was to be used.

In 2016, KwaZulu-Natal issued a circular to promote an understanding of the acts of corporal punishment, and to ensure that corporal punishment is not administered at our schools. It is not surprising that the three provinces with circulars are the ones with the highest number of reports of corporal punishment.

The two cases studies on this page and the page before are both about educators corporally punishing learners. These cases illustrate that inconsistent approaches are often taken when dealing with corporal punishment. The law is clear on the matter, but the differing sanctions flowing from the different laws have created problems when matters have been reported. However, this should not deter a learner, parent or educator from reporting corporal punishment.

The following section suggests three channels that are available to report corporal punishment. The law is clear on the matter, but the differing sanctions flowing from the different laws have created problems when matters have been reported. However, this should not deter a learner, parent or educator from reporting corporal punishment.

**WHAT IS A FORM 22?**

This is the prescribed form that is used for the reporting of abuse or deliberate neglect of a child. It is set out in Regulation 33, Section 110 of the Children’s Act.

**WHERE CAN YOU GET A FORM 22?**

These forms can be found on the internet, or they can be collected from local police stations or social services. Schools should also keep copies of the form.

**HOW TO FILL OUT THE FORM:**

A separate form must be filled out for each learner. The following information is required:

- The details of the learner (age, gender, date of birth)
- Contact details of a person whom the child trusts
- Details of alleged abuser
- Details of parents
- Nature of the abuse – physical, emotional indicators
- Brief explanation of occurrence, and if there has been any intervention.
**STEP 1: DEPARTMENT OF SOCIAL SERVICE & DEPARTMENT OF EDUCATION**

- Report the matter via the principal, provided the principal is not implicated in the matter. If the principal is implicated, report directly to the Department of Social Services and of Basic Education.
- Complete a form 22.
- The form should go to the Head of the Department of Social Development, and the District Manager in the Department of Basic Education, and a social worker. You can ask an adult at your school for these details.
- Once a form 22 has been filled out, it triggers a child protection investigation by a designated social worker.

**STEP 2: SAPS**

- All incidents of corporal punishment must be reported to SAPS so that a case of assault can be opened against the educator.
- You can report an incident of corporal punishment at your local police station.
- If you are under 18 years of age, a parent, social worker or educator should accompany you to the police station and report with you.
- If you are over 18, you have a choice whether or not to lay a charge.

- If you are helping a classmate or reporting an incident on their behalf, their name must be included in the complaint.
- If you do not feel comfortable lodging a complaint, you can do it anonymously, and it will be accepted.
- Once a form 22 has been filled out, it triggers a child protection investigation by a designated social worker.

**STEP 3: SACE**

- You must lodge a complaint with SACE.
- This can be done by calling the hotline, faxing, emailing or posting your complaint.
- You need to give as many facts, dates and details as possible.

**PARENTS, THIRD PARTIES AND COMMUNITY MEMBERS**

Parents, third parties and community members should also be empowered to report corporal punishment. They must follow the steps above. They can report an incident on behalf of a learner, or can assist a learner in reporting the incident.

**HOTLINES AND NGOS**

- **Cases involving violence/harassment by educators can also be reported via various hotline options:**

  **SACE**
  Tel: 012 679 9700

  **DEPARTMENT OF BASIC EDUCATION:**
  Helpline: 0800 202 933

  **WESTERN CAPE DEPARTMENT OF EDUCATION – SAFE SCHOOLS CALL CENTRE**
  Toll-free number: 0800 45 46 47

  **POLICE CHILD PROTECTION UNITS**
  Tel: 10111
  childprotect@saps.org.za

  **CHILDLINE SOUTH AFRICA**
  08000 55 555

  **CHILD WELFARE SOUTH AFRICA**
  0861 4 CHILD (24653)
  011 452 4110

  Organisations such as the Centre for Child Law, Legal Resources Centre, SECTION27, and Equal Education can also be contacted to assist with such matters, and to provide learners and families with legal advice.

**ALTERNATIVES TO CORPORAL PUNISHMENT**

In *S v Williams*, the court said:

> There is indeed much room for new creative methods to deal with the problem of juvenile justice. The court used community service as an example that would meet the punitive element of sentencing while allowing for the education and rehabilitation of the offender.

Kader Asmal, former Minister of Basic Education, said ‘extensive research shows that corporal punishment does not achieve the desired end — a culture of learning and discipline in the classroom.’ This section aims to highlight alternative methods of discipline that can and must be used in place of corporal punishment.

Raising Voices, an NGO that works at preventing violence against women and children, defines positive discipline as:

> a different way of guiding children. It is about guiding children’s behaviour by paying attention to their emotional and psychological needs. It aims to help children take responsibility for making good decisions, and understand why those decisions were in their best interests. Positive discipline helps children learn self-discipline without fear. It motivates young children clear guidelines for what behaviour is acceptable, and then supporting them as they learn to abide by these guidelines.

On the next page is a table that lists key words to explain the difference between positive discipline and corporal punishment.
As stated in Christian Education, part of the transformation of education requires a ‘coherent and principled system of discipline’ to be established. Part of this process is seen in Section 8 of the Schools Act, which provides that a School Governing Body (SGB) must, ‘after consultation with learners, parents and educators of the school’, adopt a code of conduct. The KZN Department of Education defines a code of conduct as ‘a statement that sets rules that must be followed by members of the school community’. The Schools Act states in Section 8(2) that a Code of Conduct is ‘aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process’.

All learners will be bound by the code of conduct of their school. Adopting a code of conduct must be a consultative process in which all stakeholders get the opportunity to participate. It is important for parents and learners to be involved in these processes, and to engage with the issues relating to methods of discipline, to ensure that learners are safe and that the school’s environment is conducive to learning. The Minister is entitled to publish guidelines to assist SGBs in adopting their codes of conduct. In 1998, the Minister published such guidelines. These guidelines say that codes of conduct must be consistent with the constitution, and further require that ‘positive discipline’ is promoted. Guidelines urge teachers to understand the ‘importance of mediation and co-operation, to seek and negotiate non-violent solutions to conflict’.

Table 19.3: Helpful keywords explaining the difference between positive discipline and corporal punishment.

<table>
<thead>
<tr>
<th>POSITIVE DISCIPLINE</th>
<th>CORPORAL PUNISHMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corrective</td>
<td>Authoritarian</td>
</tr>
<tr>
<td>Nurturing</td>
<td>Controlling</td>
</tr>
<tr>
<td>Learning</td>
<td>Fear</td>
</tr>
<tr>
<td>Tolerance, respect, dignity</td>
<td>Punitive</td>
</tr>
<tr>
<td>Development</td>
<td>Humilitating</td>
</tr>
<tr>
<td>Non-violent</td>
<td>Threats</td>
</tr>
<tr>
<td>Inclusivity</td>
<td>Isolation</td>
</tr>
<tr>
<td>Safety</td>
<td>Pain &amp; suffering</td>
</tr>
</tbody>
</table>

**USEFUL PHRASES FOR POSITIVE DISCIPLINE**

- ‘Please can everyone quiet down now.’
- ‘We are going to begin our life science lesson, and everyone needs to listen carefully.’
- ‘Do you understand why it important that we all quiet down?’
- ‘If you listen carefully and work quietly, I will let you out to break a little earlier today.’

*Note: Some of these are examples that might be more useful for younger learners*

**BAD STATEMENTS**

- Commands – ‘Sit down now and be quiet!’ ‘Write 100 times, “I will not waste my time on silly things.”’
- Forbidding statements – ‘Don’t do that’, ‘Stop that now’
- Criticising statements – ‘You are so stupid!’ ‘What is wrong with you?’, ‘Threatening statements – ‘If you don’t stop that, I will hit you.’

**USEFUL ACTIONS FOR POSITIVE DISCIPLINE**

- Keep eye contact with learners, and nod or smile at them when they are good.
- Give them a few extra minutes of playtime at the end of the day when they have been well behaved.
- Give learners stars on a ‘star board’ for their successes and good work.

*Note: Some of these are examples that might be more useful for younger learners*

**BAD ACTIONS**

- Physically punishing a child.
- Tearing up a learner’s work or throwing work at a learner.
- Not letting learners go to break.
- Making learners sit or stand in uncomfortable positions.
I support the Global Initiative to eliminate all corporal punishment at home, at school, in institutions and community. ... Violence begets violence and we shall reap a whirlwind. Children can be disciplined without violence that instills fear and misery, and I look forward to church communities working with other organisations to ... make progress towards ending all forms of violence against children. If we really want a peaceful and compassionate world, we need to build communities of trust where all children are respected, where home and school are safe places to be and where discipline is taught by example. ARCHBISHOP EMERITUS DESMOND TUTU

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### Table 19.4: An example of levels of misconduct assigned to specific behaviours.

<table>
<thead>
<tr>
<th>LEVEL 1 MISCONDUCT</th>
<th>LEVEL 2 MISCONDUCT</th>
<th>LEVEL 3 MISCONDUCT</th>
<th>LEVEL 4 MISCONDUCT</th>
<th>LEVEL 5 MISCONDUCT</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Being late for class</td>
<td>- Using abusive language</td>
<td>- Hurting another learner</td>
<td>- Selling drugs and rape</td>
<td>- Sexual abuse and rape</td>
</tr>
<tr>
<td>- Failing to do homework</td>
<td>- Being very disruptive in class</td>
<td>- Being very disruptive in class</td>
<td>- Threatening a person with a weapon</td>
<td>- Breaking and entering</td>
</tr>
<tr>
<td>- Talking in class</td>
<td>- Racist and sexist remarks</td>
<td>- Engaging in sexual activities</td>
<td>- Engaging in sexual activities</td>
<td>- Murder</td>
</tr>
<tr>
<td>- Smoking cigarettes</td>
<td>- Sealing and vandalism</td>
<td>- Sexual abuse and rape</td>
<td>- Sexual abuse and rape</td>
<td></td>
</tr>
</tbody>
</table>

The Codes of Conduct must also include the disciplinary actions for the different levels of misconduct. These can include warnings, suspensions and expulsions. It is also important to include the disciplinary process that must be followed when dealing with misconduct. This process can include hearings that are fair and give both parties the chance to present their case. Chapter 3 on school governance provides further information on this topic. It is important to promote the use of positive discipline and to participate in the adoption of codes of conduct. Learners are vulnerable members of society who must be treated with dignity and respect. Creating a society free from violence cannot be achieved unless we show our learners how to be respectful of one another.

### CONSTITUTION AND LEGISLATION


Children's Amendment Act no 41 of 2007.

Children's Act 38 of 2005.

The Employment of Educators Act 76 of 1998.


The South African Schools Act 84 of 1996.

### FURTHER READING


Western Cape Education Department 'Abuse No More Protocol: Dealing Effectively with Child Abuse, Deliberate Neglect and Sexual Offences against Children,' 2014.


Raising Voices 'Positive Discipline: Creating a Good School without Corporal Punishment, Alternatives to Corporal Punishment,' 2009.


Western Cape Education Department 'Learner Discipline and School Management: A practical guide to understanding and managing learner behaviour within the school context,' 2007.


Department of Education 'Alternatives to Corporal Punishment,' 2000.


