

Employment Law

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SOUTH AFRICA

Safe to teach, safe to learn:
Legal ways to stop bullying and harassment

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Safe to teach, safe to learn: Legal ways to stop bullying and harassment

The recent, horrific assault of a learner at a Western Cape school has once again thrust the issue of bullying and violence in schools into sharp focus, underscoring that South Africa continues to record among the highest rates of school bullying globally.

School violence is not only a child protection issue; it is a workplace safety and employment law problem. South African law imposes clear duties on schools to protect learners and staff and equips principals and governing bodies with the authority to act swiftly against bullying, harassment, and abuse, whether perpetrated by learners, parents, or outsiders.

The constitutional and statutory baseline

Bullying violates core constitutional rights, including dignity, equality, and freedom from violence, and triggers the best interests of the child standard. Against that backdrop, the South African Schools Act 84 of 1996 (the Act) requires every public school to adopt and to enforce a learner code of conduct, prohibit initiation practices, and take disciplinary action where conduct endangers mental or physical wellbeing, undermines dignity, humiliates others, violates Bill of Rights protections, or damages property. The Act also empowers governing bodies to impose precautionary suspension for serious misconduct and compels immediate suspension (pending due process) after certain violent crimes on school premises where there are criminal charges.

From an employment perspective, the Occupational Health and Safety Act 85 of 1993 (OHS) obliges employers, including schools, to provide and to maintain a working environment that is safe and without risk to the health of employees. Psychosocial risks such as harassment, intimidation, and work-related violence fall within this duty. The Code of Good Practice issued under the Employment Equity Act 5 of 1998 on the Prevention and Elimination of Harassment in the Workplace (the Harassment Code) reinforces this duty by requiring employers to prevent, investigate, and address harassment, including by third parties such as learners and parents. Schools should therefore treat bullying and abusive conduct as OHS hazards and harassment under the Harassment Code, with documented risk assessments, reporting lines, training, and corrective measures.

Protections for learners

Learners benefit from layered remedies. First, school-based discipline must be prompt, fair, and consistent with the school's code of conduct, ranging from restorative measures to formal disciplinary hearings and, where warranted, recommendations to the relevant authority for expulsion. Secondly, the Protection from Harassment Act 17 of 2011 (the Protection from Harassment Act) enables child victims to seek protection orders without parental consent, providing enforceable prohibitions against contact and further harassment, including cyberbullying. Thirdly, criminal law remains available for assault, intimidation, distribution of harmful digital communications, and related offences. Where a school negligently fails to take reasonable steps to prevent foreseeable harm, the school may be held liable.

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Protections for educators and staff

Educators are entitled to a workplace free from harassment and violence. The Harassment Code recognises direct and third-party harassment and obliges employers to act where the perpetrator is not an employee. Practical implications include clear visitor and communication protocols for parents, restrictions or bans from school premises for abusive individuals, and rapid escalation to protection orders or interdicts for persistent harassment. Schools should ensure accessible internal reporting channels, appropriate support where possible, and anti-retaliation guarantees.

Where a learner harasses or threatens an educator, the school must address the conduct through learner discipline, involve parents, consider precautionary measures to protect the educator, and, if necessary, support the educator in seeking a protection order. Where parents engage in abusive conduct, schools may issue written directives, limit access, require all communications to be in writing through designated channels, and, if ignored, approach a court for an interdict. None of these steps preclude criminal complaints where warranted.

Employment frameworks also matter. The Employment of Educators Act 76 of 1998, and relevant collective agreements govern misconduct, incapacity, and grievance procedures. Schools should integrate the Harassment Code into these frameworks, ensuring that educator complaints of harassment trigger formal investigations, interim safety measures, and remedial or disciplinary steps. The OHS duty requires incident logging, hazard mitigation, and periodic review of controls.

Authority to act: due process with backbone

Principals and governing bodies should exercise their statutory authority confidently but lawfully. Key elements include:

1. clear codes of conduct and parent/visitor policies;
2. fair procedures for learner discipline;
3. proportionate, documented precautionary measures; and
4. legitimate restrictions on access to premises, and consistent record keeping.

Cyberbullying demands the same rigor. It is critical to preserve evidence, apply the Harassment Code irrespective of where the conduct occurred if it impacts the school environment, and consider obligations under privacy and data laws when handling digital material.

Where necessary, schools should coordinate with social workers and the SAPS to protect affected learners and employees.



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**Conclusion**

Schools are not powerless. The law equips them to protect learners and educators and expects them to act. With firm and fair processes grounded in the relevant legislation, principals and HR leaders can secure safe, respectful learning and working environments.

To know more, click [here](#) to view our webinar on Safe Spaces for Teaching and read our Pro Bono Department's alert on bullying in schools [here](#).

Leila Moosa, Lynsey Foot and Haydon Anderson



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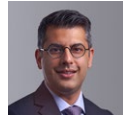
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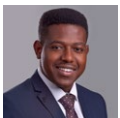
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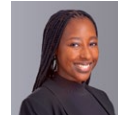
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

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