

# A Legal Perspective on Sexual Grooming Behaviours as Professional Boundary Violations

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## Abstract

A literature review revealed that sexual grooming can be counteracted in public schools by focussing on educators' professional boundary violations. However, there is a scarcity of literature where sexual grooming behaviours are linked to professional boundary violations and on the handling of these behaviours from a legal perspective. Such information would be most valuable to school principals, departments of education, bodies overseeing the teaching profession and forums and courts that consider cases dealing with educator-on-learner sexual grooming. Following on an article titled "Sexual Grooming of Children in Teaching as a Trust Profession in South Africa" the author, in this article, concentrates on sexual grooming behaviours as professional boundary violations. She not only links typical grooming behaviours with professional boundary violations but also considers the law and policy that governs it, and which would apply when dealing with such as a breach of the *South African Council for Educators Code of Professional Ethics*, and or misconduct. Sexual grooming behaviours are associated with the violation of professional relationship boundaries which protect learners from the abuse of power and trust, inappropriate communication, educators exceeding their tasks and roles, educators physically abusing learners and educators invading learners' personal space and privacy. To allege that an educator has committed a professional boundary violation it is essential to distinguish between boundary violations which are acceptable and boundary violations that are inappropriate and part of sexual grooming. The author suggests a test that can be used to make this distinction and that would make it possible to deal with boundary violations before a sexual grooming pattern forms. The article is concluded with recommendations *inter alia* to rephrase section 17(1)(f) of the *Employment of Educators Act 76 of 1998* so that it would be unambiguous and be able to cover sexual grooming as a form of serious misconduct.

## Keywords

Educator-on-learner sexual grooming; legal perspective; professional boundary violations; South African Council for Educators.

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## 1 Introduction

Professional boundaries are set where there is a need to protect those whose safety and wellbeing were entrusted to a professional and who are in unequal relationships with the professional.<sup>1</sup> For example, learners who are placed in the care of educators are protected by professional boundaries set for educators. Professional boundaries are determined by a professional's defined tasks and roles and the prescribed ethical standards that must be adhered to while executing such.<sup>2</sup> Professional boundaries shape professional relationships.<sup>3</sup> Educators have a duty to vigilantly protect these boundaries and their professional relationships with learners.<sup>4</sup> Failing to do so would constitute a professional boundary violation,<sup>5</sup> which could be dealt with as a transgression of the profession's ethical code and or misconduct.<sup>6</sup>

Coetzee<sup>7</sup> contends that "[a]ll forms of educator sexual misconduct presuppose a boundary transgression". That this is true about sexual grooming is evident from the fact that groomers intentionally aim to create "boundary diffusion" and "role confusion".<sup>8</sup> Educators who groom commonly form dual relationships in order to blur the lines and make the roles less defined during the grooming process, and to enable them to re-establish the diffused boundary or revert to the educator's role when it is necessary to conceal the inappropriate behaviour or relationship or defend an allegation.<sup>9</sup> It is the discernible relationship between grooming behaviours and educator boundary violations which makes addressing inappropriate boundary violations the best way to battle educator-on-learner sexual grooming.<sup>10</sup>

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<sup>1</sup> ATRA *Managing Professional Boundaries* 3.

<sup>2</sup> Wojciechowska "Managing Personal and Professional Boundaries" 151.

<sup>3</sup> Morgan 2016 <https://www.headteacher-update.com/best-practice-article/safeguarding-maintaining-professional-boundaries/147893/>.

<sup>4</sup> Morgan 2016 <https://www.headteacher-update.com/best-practice-article/safeguarding-maintaining-professional-boundaries/147893/>; *Sheldon-Lakey v S* (CA 42/2014) [2016] ZANWHC 33 (14 July 2016) (hereafter *Sheldon-Lakey* case) para 18.

<sup>5</sup> Coetzee 2015 *PELJ* 2127.

<sup>6</sup> See section 2.

<sup>7</sup> Coetzee 2015 *PELJ* 2127.

<sup>8</sup> Spiegel 2003 cited in Bennett and O'Donohue 2014 *JCSA* 961.

<sup>9</sup> ATRA *Managing Professional Boundaries* 10; Queensland College of Teachers *Professional Boundaries* 4.

<sup>10</sup> Christopher "Specific Concerns for Teachers, School Counselors, and Administrators" 29; Patterson and Austin 2008 *ASBJ* 19.

That sexual grooming is regarded as an offence that goes hand in hand with professional boundary invasion was mentioned in *Ncakeni and Gauteng Department of Education*.<sup>11</sup> The arbitrator alluded to the fact that educators must keep a professional distance between themselves, learners and parents, and not make either learners or parents emotionally, or otherwise one can add, dependent on them. Of course, that is exactly what sexual groomers aim for and why they look for a vulnerability to exploit or a need to fulfil.<sup>12</sup>

While performing the desk study for the article "Sexual Grooming of Children in Teaching as a Trust Profession in South Africa", the author discovered that there are clear links between sexual grooming behaviours and professional boundary violations, which prompted her to look into this further. She discovered that there are no guidelines in South Africa for educators regarding professional boundary violations. Educators' professional boundary violations are dealt with in terms of the South African Council for Educators (SACE) *Code of Professional Ethics* (as a breach of set professional standards) and/or in terms of the *Employment of Educators Act 76 of 1998* (as misconduct). This article has developed from the belief that dealing early with boundary violations, either as breaches of professional standards or misconduct, can prevent sexual grooming.

The article is divided into five sections. Following on the introduction, the author offers a legal perspective on South African educators' professional boundary violations before looking at different processes and guidelines suggested to determine the difference between boundary violations that are benign and those that constitute sexual grooming behaviour. Thereafter the author discusses grooming behaviours that are tantamount to the violation of professional relationship boundaries which protect learners from: abuse of power and trust, inappropriate communication, educators exceeding their tasks and roles, educators physically abusing learners and educators invading learners' personal space and privacy. In the last part of the article conclusions are drawn and recommendations made on how sexual grooming can be counteracted in schools by focussing on professional boundary violations. Suggestions are further made on how section 17(1)(f) of the *Employment of Educators Act 76 of 1998* can be amended to also cover sexual grooming as a form of serious misconduct.

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<sup>11</sup> *Ncakeni and Gauteng Department of Education* PSES58-13/14GP (23 April 2014) (hereafter *Ncakeni* arbitration) paras 118, 122.

<sup>12</sup> Badenhorst *Grooming Process in Child Pornography* 21; Bennett and O'Donohue 2014 *JCSA* 964; Lanning and Dietz 2014 *JIV* 2825; *Strydom v S* (A463/2014) [2015] ZAGPPHC 272 (5 February 2015) (hereafter *Strydom* case) para 9.

## 2 A legal perspective on South African educators' professional boundary violations

Teaching as a profession in South Africa is regulated by SACE,<sup>13</sup> which controls entry into the profession and requires educators to be registered, to undergo professional development, and to adhere to the ethical and professional standards as set out in the *SACE Code of Professional Ethics*. Professional boundary violations would constitute a breach of this code and may draw sanctions ranging from a caution, a reprimand, a fine, immediate suspension, or temporary or permanent deregistration.<sup>14</sup> An educator that is deregistered may not teach in any school in South Africa.<sup>15</sup> Permanent deregistration ends the educator's teaching career, but a dismissed educator will still be able to find another teaching post at another school.

An educator who sexually grooms a learner breaches several professional standards in relation to teaching as a profession as set out in the *SACE Code of Professional Ethics*.<sup>16</sup> In general an educator who sexually grooms learners breaches the professional standard of upholding and promoting learners' human rights, which gives expression to the constitutional and statutory imperative in this regard.<sup>17</sup>

Abusing their power and the trust put in them, or exceeding their professional tasks and roles means the educators fail to act in a manner that upholds teaching as a noble calling<sup>18</sup> and promotes the dignity and status of the teaching profession.<sup>19</sup> As is discussed below, sexual grooming behaviours often include the use of inappropriate and or sexualised language, which constitutes a violation of the communication boundaries. Educators are expected to use appropriate language, to use language that will elicit respect from learners, to refrain from sexting with learners and from exposing learners to or sending pornographic material to learners.<sup>20</sup>

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<sup>13</sup> Section 2 of the *South African Council for Educators Act* 31 of 2000 (hereafter *SACE Act*).

<sup>14</sup> SACE date unknown [https://www.sace.org.za/assets/documents/uploads/sace\\_31646-2023-01-17-0000\\_SACE\\_Booklet\\_Yellow\\_BOOK\\_OF\\_ETHICS\\_\\_proof\\_5.1.pdf](https://www.sace.org.za/assets/documents/uploads/sace_31646-2023-01-17-0000_SACE_Booklet_Yellow_BOOK_OF_ETHICS__proof_5.1.pdf) paras 8.2.1 to 8.2.4, 8.3.

<sup>15</sup> Section 2(2) of the *SACE Act*.

<sup>16</sup> SACE date unknown [https://www.sace.org.za/assets/documents/uploads/sace\\_31646-2023-01-17-0000\\_SACE\\_Booklet\\_Yellow\\_BOOK\\_OF\\_ETHICS\\_\\_proof\\_5.1.pdf](https://www.sace.org.za/assets/documents/uploads/sace_31646-2023-01-17-0000_SACE_Booklet_Yellow_BOOK_OF_ETHICS__proof_5.1.pdf) (hereafter *SACE Code of Professional Ethics*) paras 2.1, 3.5, 3.6, 3.8-3.16.

<sup>17</sup> *SACE Code of Professional Ethics* para 2.3. See the discussion of these imperatives in Coetzee 2018 *CARSA* 32-35.

<sup>18</sup> *SACE Code of Professional Ethics* para 2.1.

<sup>19</sup> *SACE Code of Professional Ethics* para 7.2. Also see ATRA *Managing Professional Boundaries* 3; Newman 2007, cited in Wurtele 2012 *Children and Youth Services Review* 2450.

<sup>20</sup> *SACE Code of Professional Ethics* paras 3.11-3.14.

Should the sexual grooming behaviours include physical contact, the educator could be held accountable for breaching physical boundary prohibitions such as not humiliating or physically or psychologically abusing or sexually harassing a learner;<sup>21</sup> not having improper physical contact with learners;<sup>22</sup> not courting learners;<sup>23</sup> or not having any form of sexual relationship with learners.<sup>24</sup>

Certain sexual grooming behaviours such as giving children alcohol, drugs or cigarettes<sup>25</sup> and exposing and/or displaying pornography to learners<sup>26</sup> are illegal, and as such constitute a transgression of the professional standards that an educator may not contravene South African law<sup>27</sup> and engage in illegal activities.<sup>28</sup> Educators violating the professional boundaries by invading learners' personal space and privacy transgress the standard requiring them to respect learners' right to privacy and confidentiality.<sup>29</sup>

The author investigated whether current forms of serious misconduct as provided for in section 17 of the *Employment of Educators Act 76 of 1998* can cover boundary violations occurring as part of sexual grooming. Section 17(1)(c), "having a sexual relationship with a learner of the school where he or she is employed", has been used in *Gauteng Department of Education and Rasekhula*<sup>30</sup> to deal with sexual grooming. The author argues that this form of serious misconduct covers only physical boundary transgressions and not non-contact or initial grooming behaviour that precedes the sexual relationship.

In the *SADTU obo July and Northern Cape Department of Education*<sup>31</sup> the educator was charged (as an alternative count) for transgressing section 17(1)(f) in that he had made sexual utterances on Facebook messenger. Section 17(1)(f) reads "(f) causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e)". Literally interpreted this means an educator causes a learner to commit forms of serious educator misconduct such as theft, bribery, corruption regarding examinations or progression, sexual assault on a learner, having a sexual relationship with

<sup>21</sup> SACE *Code of Professional Ethics* paras 3.5, 3.9.

<sup>22</sup> SACE *Code of Professional Ethics* para 3.6.

<sup>23</sup> SACE *Code of Professional Ethics* para 3.8.

<sup>24</sup> SACE *Code of Professional Ethics* para 3.10.

<sup>25</sup> See s 10(1) of the *Liquor Act 59 of 2003* and s 4(1) of the *Tobacco Products Control Act 83 of 1993*.

<sup>26</sup> Section 19 of the *South African Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* (hereafter the *Sexual Offences Act*).

<sup>27</sup> SACE *Code of Professional Ethics* para 7.6.

<sup>28</sup> SACE *Code of Professional Ethics* para 7.9.

<sup>29</sup> SACE *Code of Professional Ethics* para 3.1.

<sup>30</sup> *Gauteng Department of Education and Rasekhula* ELRC990-21/22GP (25 April 2022) (hereafter *Rasekhula* arbitration) paras 15, 16, 19.

<sup>31</sup> *SADTU obo July and Northern Cape Department of Education* PSES610-18/19NC (14 May 2019) (hereafter *SADTU obo July* arbitration) paras 7, 28, 38.

a learner, assault, or the possession of illegal substances. The arbitrator thus interpreted the section to mean that the misconduct on the part of the educator was that he caused the learners to perform a sexual act. Because the section is ambiguous, this interpretation can be questioned. It does not make sense to make *causing a learner to commit a form of educator misconduct* a specific further form of serious educator misconduct. One could argue that "causing a learner to perform a sexual act" is not covered by this section.<sup>32</sup> Ultimately, none of the forms of serious misconduct that draw mandatory dismissal satisfactorily covers either the boundary violations inherent in sexual grooming or sexual grooming as such.

Sexual grooming is also addressed as section 18-misconduct. The arbitrator in *Diholo and Gauteng Department of Education*<sup>33</sup> dealt with sexual grooming as a transgression of section 18(1)(g), that is, the abuse of the educator's position to advance or hamper the interests of any person, and in *Sogoni and Western Cape Education Department*<sup>34</sup> as a transgression of section 18(1)(q), that is, conducting him- or herself in a manner unbecoming to the teaching profession. In the *Ncakeni* arbitration<sup>35</sup> the educator was found guilty of violating section 18(1)(q) after it was determined that asking the learner for her cell phone number, setting up meetings after school, making sexually suggestive remarks, making love proposals and stroking the learner's thigh were all examples of grooming.

Although section 18 misconduct does not draw compulsory dismissal, Coetzee argues that sexual grooming in trust professions should be regarded as a dismissible offence.<sup>36</sup> In the *Dauids and Western Cape Department of Education*<sup>37</sup> the arbitrator explained that even though the educator had not been charged with a section 17 offence for which dismissal was mandatory, the seriousness of the offence (which included grooming the learner) warranted a dismissal because the educator had destroyed the trust relationship and proved to pose a risk to the school. The arbitrator dealt with sexual grooming as a section 18(1)(dd) transgression, arguing that the educator had committed the criminal offence of the sexual grooming of a child as set out in section 18 of the *Criminal Law (Sexual Offences and*

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<sup>32</sup> Unfortunately, the Memorandum on the Objects of the Education Laws Amendment Bill, 2000 does not include an explanation on the reason it was necessary to insert this sub-section – see the *Education Laws Amendment Bill* [B48-2000].

<sup>33</sup> *Diholo and Gauteng Department of Education* PSES933-18/19GP (9 May 2019) (hereafter *Diholo* arbitration) para 36.

<sup>34</sup> *Sogoni and Western Cape Education Department* PSES407-19/20WC (17 February 2020) para 9, 93, 121.

<sup>35</sup> *Ncakeni* arbitration paras 63, 113, 123.

<sup>36</sup> Coetzee 2023 *PELJ* 23.

<sup>37</sup> *Dauids and Western Cape Department of Education* ELRC767-21/22WC (6 May 2022) (hereafter *Dauids* arbitration) paras 25-26.

*Related Matters*) Amendment Act 32 of 2007. In the *Ncakeni* arbitration it was also held that sexual grooming is a dismissal offence.<sup>38</sup>

An investigation into the links between the professional boundary violations which form part of sexual grooming and the forms of educator misconduct brought the following to the fore:<sup>39</sup>

Section 18(1)(g): "misuses his or her position in the Department of Basic Education or a school or adult learning centre to promote or to prejudice the interests of any person." This will most probably be the best choice to address professional relationship boundaries in relation to the abuse of power and trust, and the overstepping of the boundaries implicit in the performance of tasks and roles. Regarding the transgression of physical boundaries, the argument could be made that, depending on the facts of the case, the educator transgressed section 18(1)(g) because the educator acted contrary to the child's best interests and the realisation of the right to education as a result of the physical abuse.

Section 18(1)(q) - "while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner." This would be suitable to deal with violations of professional boundaries in relation to communication and to tasks and roles, and could also be used for physical boundary violations.

Section 17(1)(b) - "committing an act of sexual assault on a learner ..." This could be used for transgressions of physical boundaries when the transgression constitutes sexual assault that is perpetrated as part of the grooming process.

Section 17(1)(c) - "having a sexual relationship with a learner of the school where he or she is employed." This could be used if penetrative sexual acts were part of the grooming.

Section 18(1)(dd) - "commits a common law or statutory offence." This could be alleged where an educator gives children alcohol, drugs or cigarettes, and exposes them to pornography or X-rated films, or where the elements of sexual grooming, rape, statutory rape or any other sexual offence could be proved.<sup>40</sup> Although it may seem illogical to charge an educator only with misconduct and not serious misconduct in these instances, it should be kept in mind that dismissal is available, albeit not as mandatory sanction.<sup>41</sup>

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<sup>38</sup> *Ncakeni* arbitration para 113.

<sup>39</sup> Sections 17(1)(b) and (c), 18(1)(g), (q) and (dd) of the *Employment of Educators Act* 76 of 1998.

<sup>40</sup> See s 10(1) of the *Liquor Act* 59 of 2003; s 4(1) of the *Tobacco Products Control Act* 83 of 1993; s 19 of the *Sexual Offences Act*.

<sup>41</sup> Coetzee 2011 *CARSA* 53-55.

To be able to allege successfully that an educator has committed a professional boundary violation it is essential to distinguish between boundary violations which are accepted as normal and boundary violations that are part of grooming tactics.

### 3 Distinguishing between normal and grooming behaviour

It is difficult to tell apart normal behaviour between an educator and learner that may constitute legitimate boundary violations and behaviours that is part of grooming behaviour.<sup>42</sup> This contention is supported by the finding of Winters and Jeglic<sup>43</sup> in a study conducted amongst 363 undergraduate students during which participants were unable to distinguish between grooming behaviours and seemingly normal social interactions. In a later study Gushwa, Bernier and Robinson<sup>44</sup> identified a need to teach K-12 student teachers in the United States of America how to distinguish between acceptable behaviour and behaviour that could constitute boundary violations.

The main reason why it is difficult to distinguish between grooming behaviour and acceptable behaviour is that sexual groomers commonly intentionally choose behaviour that closely resembles innocent social behaviour.<sup>45</sup> Furthermore, sexual groomers create positive relationships with colleagues and parents so that when an allegation is brought, colleagues and parents will tend to give the accused the benefit of the doubt.<sup>46</sup> The groomer creates a specific view that will counter any other view of inappropriateness. Munro and Fish<sup>47</sup> refer to this as confirmation bias, which is based on the premise that once you've formed an opinion, it's difficult to change it and evidence supporting a contrasting view will be overlooked or most probably be interpreted to support the existing view.

ATRA<sup>48</sup> maintains that detecting grooming behaviours is even more difficult where educators live and work in rural or small, close-knit communities,

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<sup>42</sup> Acceptable boundary transgressions could include instances such as where a pre-school educator assists a learner who had an accident to put on clean clothes or an educator puts an arm across the shoulders of a learner who has just learned her parents have been in an accident. Such conduct will constitute an inappropriate boundary transgression when it is performed to satisfy the needs of the educator rather than those of the learner (see ATRA *Managing Professional Boundaries* 3, 5).

<sup>43</sup> Winters and Jeglic 2017 *Deviant Behavior* 727, 731.

<sup>44</sup> Gushwa, Bernier and Robinson 2019 *JCSA* 145.

<sup>45</sup> Bennett and O'Donohue 2014 *JCSA* 963; O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 2; Winters and Jeglic 2017 *Deviant Behavior* 724-725.

<sup>46</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 8; *Strydom* case para 3; Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 5.

<sup>47</sup> Munroe and Fish *Hear no Evil, See no Evil* 10, 19.

<sup>48</sup> ATRA *Managing Professional Boundaries* 6. ATRA stands for Australasian Teacher Regulatory Authorities and consists of the collective regulating the teaching



have a "dual" relationship with learners such as being a coach or extra-curricular instructor for activities outside of school, and use social media as part of their professional practice. To these Graham, Bahr, Truscott and Powell<sup>49</sup> add educators who frequently work alone with learners and educators acting as house parents in hostels. Over and above these, the Queensland College for Educators<sup>50</sup> lists young, inexperienced educators, who will because they are only a few years older than some learners and have a lot in common with them tend to see these learners as their peers.

Bennett and O'Donohue<sup>51</sup> propose a two-step process that can be used to assess whether behaviour constitutes sexual grooming behaviour. The first step is to determine whether the behaviour in and of itself is inappropriate. If it is, the second step is to determine whether it is reasonable to argue that this inappropriate behaviour increases the likelihood of future child sexual abuse. It may be difficult to assess "a likelihood" of future sexual abuse. The guidelines of the New South Wales Ombudsman for the Protection of Children<sup>52</sup> may offer a solution. It suggests that for violations of professional boundaries to constitute grooming behaviour there must be

evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and that there is no other reasonable explanation for it.

A four-step test that combines the suggested process of Bennett and O'Donohue<sup>53</sup> and the guidelines of the New South Wales Ombudsman for the Protection of Children<sup>54</sup> is proposed to determine whether behaviour constitutes a boundary violation and sexual grooming behaviour. Step 1: Is there evidence of inappropriate behaviour – that is, inappropriate in terms of the professional code and or law regulating educators' employment? Step 2: If there is evidence of inappropriate behaviour, is there a reasonable explanation that would render the behaviour appropriate? Step 3: If there isn't a reasonable explanation that would render the behaviour appropriate, a boundary violation is established, and the next question is whether there is evidence of a pattern of this behaviour? Step 4: If there is evidence of a pattern, does this pattern signify sexual grooming behaviour, that is, behaviour intended to encourage or persuade a child to perform a sexual

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profession in Australasia, which refers to Australia, New Zealand, and the neighbouring islands (see ATRA date unknown <https://www.atra.edu.au/>).

<sup>49</sup> Graham *et al Teachers' Professional Boundary Transgressions* 5, 34.

<sup>50</sup> Queensland College for Educators *Professional Boundaries* 4.

<sup>51</sup> Bennett and O'Donohue 2014 *JCSA* 971.

<sup>52</sup> New South Wales Ombudsman for the Protection of Children 2013 <https://www.childabuseroyalcommission.gov.au/sites/default/files/OMB.0015.001.0140.pdf>.

<sup>53</sup> Bennett and O'Donohue 2014 *JCSA* 971.

<sup>54</sup> New South Wales Ombudsman for the Protection of Children 2013 <https://www.childabuseroyalcommission.gov.au/sites/default/files/OMB.0015.001.0140.pdf>.

act and or behaviour intended to diminish or reduce any resistance or unwillingness on the part of the child to engage in a sexual act? It is obvious that the pattern of behaviour would reveal evidence of the educator's intention.<sup>55</sup>

## **4 Sexual grooming behaviour as professional boundary violations**

To determine whether the pattern signifies the intention to sexually groom, the pattern could be analysed in connection to the violation of professional relationship boundaries, which protect learners from: abuse of power and trust, inappropriate communication, educators exceeding their tasks and roles, educators invading learners' personal space and privacy, and educators physically abusing learners. It should be noted that, while distinguishing between different forms of boundary violations can help in identifying a pattern, grooming behaviour will almost certainly include the violation of several different forms of boundaries.

### **4.1 Professional power and trust boundaries**

All boundary violations, irrespective of the profession, can be equated with an abuse of power and exploitation.<sup>56</sup> According to Hook and Devereux,<sup>57</sup> sexual boundary violations are characterised by the misuse of power to exploit some aspect of a person's sexuality for personal gain. The description of a breach of educators' professional boundaries by the Australasian Teacher Regulatory Authorities<sup>58</sup> as the exploitation of the power imbalance inherent to an educator-learner relationship also emphasises the abuse of power and exploitation as characteristics of professional boundary violations. The fact that sexual grooming is already exploitative<sup>59</sup> reinforces the argument that grooming behaviour will constitute a violation of the professional power boundaries.

In *Mugridge v S*<sup>60</sup> Shongwe JJA and Erasmus AJA, while emphasising the important role that the power imbalance plays in the sexual grooming of children, mentioned that adults abuse the child's propensity to trust adults and to do as adults told them to do. Govindjee AJ also emphasised the fact that the educator has leveraged his power and the esteem of his position as

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<sup>55</sup> Victoria Family and Community Development Committee 2013 <https://apo.org.au/node/36348> 466.

<sup>56</sup> Hook and Devereux 2018 *BJPsych Advances* 374; Peterson 1992, cited in Wurtele 2012 *Children and Youth Services Review* 2450.

<sup>57</sup> Hook and Devereux 2018 *BJPsych Advances* 374.

<sup>58</sup> ATRA *Managing Professional Boundaries* 3.

<sup>59</sup> Shakeshaft 2013 *Kappan* 10, 12.

<sup>60</sup> *Mugridge v S* (657/12) [2013] ZASCA 43 (28 March 2013) paras 43, 45.

educator to groom the learner in *Le Roux v State*.<sup>61</sup> This position of authority and the power imbalance between educators and learners are ever-present and based on several factors such as their position as educators (which relates to their unique position of trust, care, authority and influence over their learners), their age, their experience, financial power and physical power.<sup>62</sup>

A professional boundary violation presupposes the creation of an abusive relationship because the educator, by overstepping boundaries, shifts the focus from the learners' welfare to his or her own needs and that is done at the expense of the learners.<sup>63</sup> Conduct that constitutes boundary violations thus do not have legitimate educational purposes. This is confirmed by the Canadian\_Centre for Child Protection's<sup>64</sup> description of boundary violations as entailing educators breaching the intent of the relationship and exploiting their legitimate access to learners to meet their personal needs, rather than those of the learners. Mudau AJ indeed emphasised in *Strydom v S* that the educator had abused his position of authority and trust for his own ulterior motives and selfish interests.<sup>65</sup> Examples of power-related grooming behaviour constituting professional boundary transgressions include the abuse of power by threatening the learner with poor or failing grades or denying him or her a position in a team or by making promises such as ensuring a learner will pass an examination or progress to the next grade<sup>66</sup>

When caught, educators who groom tend to minimise the power imbalance in the relationship by arguing that the learner had either consented to the behaviour or was a willing participant in it. In the *Rasekhula* arbitration<sup>67</sup> the arbitrator rejected the educator's argument that the learner was not an innocent party but a willing participant, implying that they were equals and that the learner had consented. The arbitrator made specific mention of the learner's comment that "she feared that if she did not give the employee her contact number, the employee would drop her marks or fail her" and stated that the learner's part in the relationship did not absolve the educator from his own wrongdoing. Consent is vitiated if the learner believes the educator

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<sup>61</sup> *Le Roux v State* (A & R 25/2018) [2021] ZAECGHC 57 (13 May 2021) (hereafter *Le Roux case*) para 33.

<sup>62</sup> ATRA *Managing Professional Boundaries* 3; *Dauids* arbitration paras 48, 63; *Rasekhula* arbitration para 15.

<sup>63</sup> ATRA *Managing Professional Boundaries* 3; Newman 2007, cited in Wurtele 2012 *Children and Youth Services Review* 2450.

<sup>64</sup> Canadian Centre for Child Protection *Child Sexual Abuse by K-12 School Personnel* 29.

<sup>65</sup> *Strydom* case para 8.

<sup>66</sup> Queensland College of Teachers *Professional Boundaries* 5; Limpopo Department of Education and Mathekga ELRC200-21/22LP (12 November 2021) (hereafter *Mathekga* arbitration) paras 4, 8, 21.

<sup>67</sup> *Rasekhula* arbitration paras 13,16.

has the power to cause her or him harm on refusal to cooperate.<sup>68</sup> Compliance does not equate to consent.<sup>69</sup> Not even putative consent can be claimed in exoneration because the manipulative and exploitative nature of sexual grooming will negate any claim of a *bona fide* belief on the part of the appellant that the victim had consented to the sexual relationship.<sup>70</sup> The definition of consent in the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*<sup>71</sup> as "voluntary and uncoerced agreement" supports the above argument. Furthermore, sex crimes against children inherently constitute a *boni mores* breach, which voids the consent defence.<sup>72</sup> This is especially true when it occurs inside the trust relationship between educator and learner and where the learner is younger than sixteen.<sup>73</sup> It remains the educators' professional obligation to ensure that the relationship remains professional.<sup>74</sup>

Another defence mechanism educators who groomed and are caught use is to link the reasons for having overstepped the professional boundary to their professional roles. For example, in the *Ncakeni* arbitration<sup>75</sup> the educator claimed that he visited the learner after hours to chat with her parents about extra lessons to help her with her learning problem. The arbitrator argued that the educator's singling out the specific learner as requiring individual attention on the grounds that she frequently complained during class, that she had not grasped the work and had not submitted her assignment was a ploy intended to justify his seeing her individually. In reality, just one learner had submitted the assignment, and the educator had not reviewed the learner's results or consulted with her class teachers first to establish whether she had a learning problem.

#### **4.2 Professional communication boundaries**

Communication, which takes place in the form of "voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof", plays an enormous role in sexual grooming.<sup>76</sup> The violation of communication boundaries can be linked to the obtaining and giving of inappropriate information and/or to the actual grooming.

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<sup>68</sup> Minnie *The Grooming Process and the Defence of Consent* 23; Snyman *Criminal Law* 365.

<sup>69</sup> *Le Roux* case para 9; Snyman *Criminal Law* 126, 365.

<sup>70</sup> Minnie *The Grooming Process and the Defence of Consent* 9, 79; Snyman *Criminal Law* 126-127.

<sup>71</sup> Section 1(2) of the *Sexual Offences Act*.

<sup>72</sup> Minnie *The Grooming Process and the Defence of Consent* 9, 79.

<sup>73</sup> Minnie *The Grooming Process and the Defence of Consent* 10; Snyman *Criminal Law* 98, 126-127.

<sup>74</sup> Christopher "Specific Concerns for Teachers, School Counselors, and Administrators" 29.

<sup>75</sup> *Ncakeni* arbitration para 76.

<sup>76</sup> Section 1 of the *Electronic Communications Act* 36 of 2005.

Information is valuable for groomers,<sup>77</sup> since they need that to develop a bond with the victim and to win trust, establish exclusivity, ensure secrecy, lower defences and resistance, and prevent detection.<sup>78</sup> The educator may wish to solicit any information that indicates a need or vulnerability the learner may have, that establishes where the child lives, whether there is adult supervision when the child is at home, whether the child has the means to communicate privately and whether the child is alone. The obtaining and sharing of inappropriate information to ensure secrecy and establish exclusivity are discussed under section 4.5.

Inappropriate language and communication are used as a grooming tactic to normalise the inappropriate relationship and to desensitise the child to sexual activity. Some indicators of professional communication boundary violations are communication that is personalised, sexual in nature, role-inappropriate, geared at isolating the learner, or unpleasant and sarcastic in nature. These indicators of inappropriateness may exist separately or concurrently.

Role-inappropriate communication includes terms of endearment, pet names, confessions of love or romantic feelings, and compliments or comments on the learner's beauty. Examples include calling a learner "buddy", "mate", "pal" or "friend", "baby", "honey", "angel", "babe", "princess", "girlfriend", "sexy", "cute", "pretty", "sooo hot" or "gorgeous", or derogatory sexual terms such as "chick", "bitch", "pussy" (used to belittle boys) "boobies" or "slut".<sup>79</sup> In *SADTU obo Jacobs and Western Cape Education Department*<sup>80</sup> the educator used pet names such as "girlfriend" and "sweetie pie" when communicating with the learner, and in *Gauteng Department of Education and S Rasekhula*<sup>81</sup> "my size" and "Motho waka" (my girlfriend). The educator in *Limpopo Department of Education and Mathekgā*<sup>82</sup> saved his phone number on the learner's phone under "bae" meaning "girlfriend" and used terms of endearment such as "babe" when addressing the learner. The WhatsApp communication in the *SADTU obo*

<sup>77</sup> USA Department of Education *Educator Sexual Misconduct* 32.

<sup>78</sup> Black *et al* 2015 *Child Abuse Neglect* 141; Courtois and Alpert "MIND F\*CK" 242.

<sup>79</sup> ATRA *Managing Professional Boundaries* 5; Egan, Hoskinson and Shewan "Perverved Justice" 6; Kinzel *Groomers* 49, 145-146; Lorenzo-Dus and Kinzel 2019 *Journal of Corpora and Discourse Studies* 29; Morgan 2016 <https://www.headteacher-update.com/best-practice-article/safeguarding-maintaining-professional-boundaries/147893/>; *Ncakeni* arbitration paras 17, 63, 104; *Satani and Western Cape Department of Education* PSES232-13.14WC (7 June 2017) (hereafter *Satani* arbitration) para 36; Shakeshaft and Cohan *In Loco Parentis* 6, 9-10; Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 13; *Victorian Institute of Teaching and Dore Case* 060 (15 April 2008) paras 4-5.

<sup>80</sup> *SADTU obo Jacobs and Western Cape Department of Education* PSES651-15/16WC (29 July 2016) paras 13, 18, 24.

<sup>81</sup> *Rasekhula* arbitration para 6.

<sup>82</sup> *Mathekgā* arbitration paras 7-8.

*July* arbitration<sup>83</sup> included I Love You and kissing emoticons and comments such as "Mhhh....can I join plz?" (In response to the learner's reply that she was "Lib" – lying in bed), "Mwaaaa", "Nakanjani...and can't wait to hold u in mu arms looking at yr eyes and kissing you", illustrates how the educator violated the communication boundary.

As Tanner and Brake<sup>84</sup> argue, groomers tend to start with seemingly innocent behaviour. Sexualised language, for example, can start with innocent references to a colour and move on to the potential victim's clothes<sup>85</sup> before becoming sexualised. The groomer may ask what the child's favourite colour is and then use that colour in conversations on a regular basis and increasingly link it to the adult world and sex. For instance, if a girl likes pink the groomer will link it to being feminine, suggesting the girl is a woman. Tanner and Blake<sup>86</sup> identify engaging the child as if he or she were an adult as a recognised grooming technique. The groomer will then gradually use the colour in a more personalised manner, such as asking if the child has any pink pyjamas, bras or panties, whether she has her pink clothing on, and indicating he wants to take the pyjamas off or see her in her pink bra or panty, which is followed by a request for a selfie in the said clothing.<sup>87</sup>

Gradual grooming through communication is evident in the  *Davids* arbitration case, where the educator persuaded the learner to send him photos and Tik-Tok videos demonstrating the progression from complete refusal to the learner wearing a two-piece swimming suit, to her exposing her underbelly, and finally to her exposing her breasts.<sup>88</sup>

Elliot<sup>89</sup> pinpoints exposing the child to pornography, sending or requesting sexual images and encouraging the child to engage in fantasy re-enactment as common grooming tactics. According to Badenhorst,<sup>90</sup> groomers will utilise child pornography to persuade children that posing for nude images is appropriate, explaining that such photos exist in books and that anything undesirable would not be published. They also use peer pressure to desensitise children by presenting images of other children and insinuating that those children are more beautiful, courageous and popular, and that by following in their footsteps the child can become like those children.<sup>91</sup> Sexualised communication is sometimes made part of a "game", such as

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<sup>83</sup> *SADTU obo July* arbitration para 37.

<sup>84</sup> Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 2.

<sup>85</sup> Bennett and O'Donohue 2014 *JCSA* 967.

<sup>86</sup> Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 11.

<sup>87</sup> Kinzel *Groomers* 162, 271.

<sup>88</sup> *Davids* arbitration paras 31, 37, 38, 39, 43.

<sup>89</sup> Elliott 2017 *TVA* 85.

<sup>90</sup> Badenhorst *Grooming Process in Child Pornography* 18.

<sup>91</sup> Ost 2004 *JSWFL* 154.

mutual masturbation or the flashing of breasts or sexual organs,<sup>92</sup> thus misrepresenting accepted moral values and creating the illusion that what is requested is socially acceptable.<sup>93</sup> Phrases such as "everyone does it" and "others enjoy it" are commonly used to normalise sex to the child.<sup>94</sup> One of the survivors of the Horace Mann Bronx School ordeal, explains how the educator went about normalising sex for him by telling him that "There's a tradition of the disciples of Plato sleeping with him. I think we should sleep together."<sup>95</sup>

Kinzel,<sup>96</sup> who conducted a study on the language used by online child sexual groomers, indicates that groomers use language to desensitise by using child-like descriptions of sex organs in the beginning but then progress to more vulgar sexualised words. In *Chetty v S*<sup>97</sup> and *S v RC*<sup>98</sup> the educators used grooming discourse with sexual content (talking about internet pornography, oral sex, describing sexual acts) to groom the child, and in both instances the court held that it was indicative of the intent to diminish the child's resistance to sexual activity.

A common grooming tactic is making sexually suggestive or obscene jokes, gestures, remarks and innuendos.<sup>99</sup> One of the tactics educator groomers use is to either ask questions about the competency of or make jokes about the victim's current sexual partner's performance. Shakeshaft and Cohan<sup>100</sup> refer to questions such as "What's the matter? Isn't your boyfriend giving you enough? Can't he get it up?"

As part of his grooming tactics, the educator in *Limpopo Department of Education and Mathekga*<sup>101</sup> exploited the learner's need to get her report, to solicit sex from her. Demonstrating the sex act, he told her, "If you and me can do like this, then I will give you your report." The Deputy Chief Education

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<sup>92</sup> Webster *et al* 2012 [https://www.academia.edu/23987615/European\\_Online\\_Grooming\\_Project\\_Final\\_Report](https://www.academia.edu/23987615/European_Online_Grooming_Project_Final_Report) 56; *K v S* [2003] JOL 10720 (SCA).

<sup>93</sup> Gámez-Guadix *et al* 2018 *Journal of Adolescence* 12; Sigro 1982, cited in Bennett and O'Donohue 2014 *JCSA* 960.

<sup>94</sup> Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 2.

<sup>95</sup> Cotliar *People Magazine* 67.

<sup>96</sup> Kinzel *Groomers* 170, 175, 190, 198, 273, 285.

<sup>97</sup> *Chetty v S* (AR 377/2014) [2015] ZAKZPHC 41 (21 August 2015) (hereafter *Chetty* case) paras 2, 19.

<sup>98</sup> *S v RC* 2016 1 SACR 34 (KZP) paras 17-19.

<sup>99</sup> Bennett and O'Donohue 2014 *JCSA* 969; Morgan 2016 <https://www.headteacher-update.com/best-practice-article/safeguarding-maintaining-professional-boundaries/147893/>; Shakeshaft and Cohan *In Loco Parentis* 9-10; *Van den Heever and Northern Cape Department of Education* ELRC716-19/20NC (31 July 2022) (hereafter *Van den Heever* arbitration) para 23; Webster *et al* 2012 [https://www.academia.edu/23987615/European\\_Online\\_Grooming\\_Project\\_Final\\_Report](https://www.academia.edu/23987615/European_Online_Grooming_Project_Final_Report) 56.

<sup>100</sup> Shakeshaft and Cohan *In Loco Parentis* 19.

<sup>101</sup> *Mathekga* arbitration para 26.

Specialist, Ms Labuschagne, commented during the arbitration hearing *SADTU obo Ramphal V and Gauteng Department of Education*<sup>102</sup> that her investigation brought to the fore that the educator had groomed the learners *inter alia* by using sexual innuendo to test boundaries. In this case, the learner described how when she was eating a lollipop, the educator asked the boy next to her whether she was sucking it nicely and then commented that he wished it was his dick. The learner reported that the educator regularly referred to his big dick. Also, in *Ncakeni* arbitration<sup>103</sup> the educator tested the boundaries with sexual innuendo when he told the learner "Seeing that you are cleaning, I am on my way so you can clean me up too." Another educator was dismissed for sexualised communication such as telling the learner "that he desired her lips because they looked like her vagina."<sup>104</sup> The educator in *Gauteng Department of Education and Rasekhula*<sup>105</sup> sent the learner text messages with a photo of his private parts, other explicit sexual photos and the sex positions he indicated they should try.

What is interesting is the use of "want", "wanna" or expressed wishes in groomers' communication.<sup>106</sup> For example, in the *David's* arbitration<sup>107</sup> the educator responded every time after requesting and receiving a TikTok video with "I wanna see more than that" and "But I wanna see more of what you're [sic] hiding." Also in the *SADTU obo July* arbitration<sup>108</sup> the educator expressed his intentions by stating, "I wanted to kiss you then yaz". The educator in *Limpopo Department of Education and Mathekga*<sup>109</sup> coaxed the learner to wash as he wished her to do, stating "Please take a bath and bath it". He also informed the learner "I want three rounds from you", "I want a woman on top tomorrow". Lornzo-Dus and Kinzel identify a similar coaching instruction in their analysis of chat logs where after telling the girl to go and shower and wash her private parts the groomer stated "Daddy wants it nice and smooth".

Like all other manipulators, groomers can also use sarcastic, negative, belittling or vulgar remarks about a learner's appearance, sexual orientation or gender to break down the victim so that he or she can swoop in as a

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<sup>102</sup> *SADTU obo Ramphal and the Gauteng Department of Education* PSES442–17/18GP (2 July 2019) paras 4, 2, 4.8, 4.11.

<sup>103</sup> *Ncakeni* arbitration para 20.

<sup>104</sup> *Mokotjo and Free State Department of Education* ELRC18-21/22FS (22 September 2021) (hereafter *Mokotjo* arbitration) para 18.

<sup>105</sup> *Rasekhula* arbitration para 8.

<sup>106</sup> Kinzel *Groomers* 170, 175, 190, 198, 285; Lorenzo-Dus and Kinzel 2019 *Journal of Corpora and Discourse Studies* 29.

<sup>107</sup> *David's* arbitration paras 40 and 41. Also see *Waterson and Gauteng Department of Education* PSES345-12/13 (19 November 2013) (hereafter *Waterson* arbitration) para 3.3.2.

<sup>108</sup> *SADTU obo July* arbitration para 37.

<sup>109</sup> *Mathekga* arbitration paras 14, 79.



saviour.<sup>110</sup> Christopher<sup>111</sup> mentions that educators who want to groom use sarcastic comments to equalise the relationship and create an unprofessional environment. This grooming tactic relies on emotional coercion.<sup>112</sup>

### 4.3 Professional task and role boundaries

Sexual grooming has a prominent relationship dimension and as already indicated professional boundaries created by professionals' defined tasks and roles shape professional relationships.<sup>113</sup> *Australia ACT Ombudsman Practice Guide No 2 and the Procedure: Protection of Children (Victorian Legislative Requirements)*<sup>114</sup> identifies as constituting boundary violations, extending a relationship with a child beyond what would be expected or normal for the caregiving role, being overly personal or intimate, and singling out or privileging a specific child(ren). ATRA<sup>115</sup> mentions that sometimes it is not a case of extending a relationship but of creating a dual relationship where the educator-learner roles are blurred and fluent. The educator takes on the role of caregiver, counsellor, friend, peer, confidant, substitute parent and boy- or girlfriend, and uses this role to make the learner emotionally dependent on him or her.<sup>116</sup> It is not only the groomer that takes on a different role, but the groomer also creates a dual role for the victim. Terms of endearment, pet names and references to the learner as his or her boy- or girlfriend (see section 4.2 above) are examples of the groomer's allocating a dual role to the learner. Educator sexual predators are in a unique position where they can exploit the professional, authoritative relationship they have with their learners, who are vulnerable in these relationships.<sup>117</sup> Robins<sup>118</sup> warned

A child's desire to comply with the requests of an adult he or she trusts and by whom he or she wishes to be accepted is another inhibitor of disclosure. The genuine affection a child may have for the teacher, especially one who promotes the 'special relationship' and who has spent a great deal of time in the grooming phase, should not be underestimated.

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<sup>110</sup> Morgan 2016 <https://www.headteacher-update.com/best-practice-article/safeguarding-maintaining-professional-boundaries/147893/>; Shakeshaft and Cohan *In Loco Parentis* 9-10.

<sup>111</sup> Christopher "Specific Concerns for Teachers, School Counselors, and Administrators" 30.

<sup>112</sup> Bennett and O'Donohue 2014 *JCSA* 966.

<sup>113</sup> McElvaney 2019 *JCSA* 608-609, 621-623.

<sup>114</sup> Australia ACT Ombudsman 2018 [https://www.ombudsman.act.gov.au/\\_\\_data/assets/pdf\\_file/0009/81000/No.-2-Identifying-Reportable-Conduct.pdf](https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0009/81000/No.-2-Identifying-Reportable-Conduct.pdf) 8-9.

<sup>115</sup> ATRA *Managing Professional Boundaries* 3.

<sup>116</sup> ATRA *Managing Professional Boundaries* 4; McElvaney 2019 *JCSA* 609.

<sup>117</sup> Erooga, Allnock and Telford *Towards Safer Organisations II* 23.

<sup>118</sup> Robins 2000 <https://wayback.archive-it.org/16312/20210402200200/http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/robins/ch3.php>.

The relationship is experienced as "unique, secretive, special, exclusive" to such an extent that the child victim would not like to lose it.<sup>119</sup> Because groomers adopt different roles usually linked to some or other need that the learner has, McElvaney<sup>120</sup> refers to the bonding between the groomer and the child as traumatic bonding. Even if the learner does not want the abuse-part of the relationship, he or she will not want to lose the part that makes his or her life easier.

Most groomers, including educators who groom, intentionally blur the lines between the grooming behaviour and their professional tasks and roles. For example, in *Chetty v S*<sup>121</sup> the educator alleged that the learner enquired about sex terms and that is why he, as her educator, explained various sex terms to her in detail. The court rejected his contention indicating that it was not the duty of a male educator to explain life issues to a 13-year-old girl and he could neither claim to have been tasked nor to be qualified to do so. In *Limpopo Department of Education and Mathekga*<sup>122</sup> the educator saved his number on the learner's phone under the guise that she would need his number so that she could send him a previous report card, which he indicated he needed in order to be able to help her. During his arbitration hearing the educator in *Waterson and Gauteng Department of Education*<sup>123</sup> argued that his request for the learner's phone number was related to his plan to arrange to take her (and other learners) for a lunch to motivate them.

A favourite ploy of educators who groom is to misconstrue their role and tasks in relation to their *in loco parentis* status.<sup>124</sup> Arbitrator Hawyres commented that the educator's insistence in *Gauteng Department of Higher Education and Mlangeni*<sup>125</sup> on being called "Daddy" was probably a grooming tactic with the goal of misconstruing educator authority under *in loco parentis* as being like parental authority. The misrepresentation of the *in loco parentis* role is also evident from the explanation of the educator in the *Diholo* arbitration<sup>126</sup> that his actions were "fatherly". He defended his actions by arguing that he treated the learner in the same manner that he would his own daughter.

The misuse of educators' *in loco parentis* position is also evident from a case heard by the Victorian Institute of Teaching where the educator faced

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<sup>119</sup> Gámez-Guadix *et al* 2018 *Journal of Adolescence* 12.

<sup>120</sup> McElvaney 2019 *JCSA* 615.

<sup>121</sup> *Chetty* case para 19.

<sup>122</sup> *Mathekga* arbitration para 7, 73.

<sup>123</sup> *Waterson* arbitration para 3.

<sup>124</sup> *In loco parentis* is a Common Law principle which literally translates to "in the place of the parent". See Coetzee 2015 *PELJ* 2125-2127.

<sup>125</sup> *Gauteng Department of Higher Education and Mlangeni* ELRC52-23/24GP (9 July 2023) paras 48-49.

<sup>126</sup> *Diholo* arbitration para 26.

several allegations relating to failure to uphold professional standards. He had *inter alia* made suggestive remarks, inappropriately touched learners, hugged learners, had inappropriate personal conversations with them, arranged "sleep overs" for female learners on school grounds where he was the sole chaperone, and had provided them with alcohol. The educator argued that his *in loco parentis* status obliged him to adopt the role of a parent and gave him an automatic right to engage with learners in a "fatherly" way, including seeing and socialising with learners outside of normal school hours to support them.<sup>127</sup> This case was taken on review and the Victorian Civil and Administrative Tribunal's<sup>128</sup> conclusions provide an eloquent summary of educators' *in loco parentis* status:

However, this does not mean that a teacher must literally act as a parent of a student. Indeed, he or she must not do so. The teacher must maintain a professional detachment from a student. His role cannot be that of a parent. Further, he cannot be the "best friend" of adolescent girls (or boys, for that matter).

Equating educator-learner relationships with parent-child relationships to explain why educators may kiss and hug learners and tell them they love them negates educators' professionalism.

Another tactic regularly used by groomers is to act as the "cool educator" or friend that gives learners alcohol, cigarettes and drugs and shows them pornography and X-rated films.<sup>129</sup> As is discussed later, these actions are not only intended to break down learners' resistance but also to obtain leverage to be used to prevent disclosure.

#### **4.4 Professional boundaries protecting learners against physical abuse**

The ultimate violation of the role boundary is engaging in sexual relationships with learners.<sup>130</sup> According to Weber<sup>131</sup> the initiation of physical contact will start with non-sexual touching and then progress to "accidental" sexual touching and culminate in intentional sexual touching. Conte, Wolf and Smith<sup>132</sup> make the observation that the progression from non-sexual touching to intentional sexual touching is not only aimed at desensitising the child to sexual touching but also at creating a sense of complicity.

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<sup>127</sup> Victorian Institute of Teaching and Davidson Case 005 (27 October 2004) para 14.

<sup>128</sup> Davidson v Victorian Institute of Teaching (Occupational and Business Regulation) [2007] VCAT 920 (30 May 2007) para 149.

<sup>129</sup> CEOP *Out of Mind, Out of Sight* 58; Elliott 2017 TVA 91; Wolf, Linn and Pruitt 2018 *Journal of Sexual Aggression* 222.

<sup>130</sup> ATRA *Managing Professional Boundaries* 5; Canadian Centre for Child Protection *Child Sexual Abuse by K-12 School Personnel* 29.

<sup>131</sup> Weber date unknown <https://diospringfield.org/wp-content/uploads/YPParent-Resoucre-1.pdf> 3.

<sup>132</sup> Conte, Wolf and Smith 1989 *Child Abuse and Neglect* 300.

Various violations of physical boundaries came to the fore in Shakeshaft and Cohan's<sup>133</sup> study, where they interviewed 225 superintendents and analysed 10 case studies, though their study did not focus on sexual grooming as such. These violations included "pinching, fondling, laying hands on students, tickling, placing hands on genital area, holding children upside down, touching breasts, caressing, feeling, and drawing circles on a girl's chest." Other physical boundary violations included kissing, having learners sit on the educator's lap, fellatio, touching breasts, buttocks or groins, hugging, massaging, wrestling, giving piggyback rides, masturbating and oral sex.<sup>134</sup> The educator in *Le Roux v State*<sup>135</sup> violated the physical boundaries by putting his tongue in the learner's ear, hugging her, placing his head on her breast, kissing her in the neck and touching her inner thighs.

Transgressing physical boundaries inevitably includes the violation of the boundaries protecting learners' personal space and privacy.

#### **4.5 Boundaries protecting learners' personal space and privacy**

An educator who arranges to communicate with a learner without a legitimate educational purpose by asking for a learner's number, giving a learner airtime or a cell phone, or befriending a learner on social media<sup>136</sup> commits a boundary violation. Actual inappropriate communication need thus not take place for personal-professional boundaries to be violated. An educator oversteps professional boundaries when he or she creates a personal, emotional bond with one specific learner, which is indeed a grooming tactic used to make the intended victim feel special.<sup>137</sup> It is a process similar to that when an adult woos or courts another adult<sup>138</sup> and includes showing favouritism, engaging with the child (in particular) by listening to him or her and being there for the child, giving the child gifts and taking the child to places outside the school milieu.<sup>139</sup> In *Queensland College of Teachers v JNS* the Queensland Civil and Administrative Tribunal found that the educator had formed a personal rather than a professional relationship with the learner, as was evidenced by the educator's showing

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<sup>133</sup> Shakeshaft and Cohan *In Loco Parentis* 20, 28.

<sup>134</sup> *K v S* [2003] JOL 10720 (SCA) para 8; Minnie *The Grooming Process and the Defence of Consent* 52; Winters, Jeglic and Kaylor 2020 *JCSA* 862; Wurtele 2012 *Children and Youth Services Review* 2450.

<sup>135</sup> *Le Roux* case para 32.

<sup>136</sup> See for example, *Davids* arbitration para 23; *Mathekga* arbitration para 7; *Satani* arbitration para 12; *Mokotjo* arbitration para 18; *Ncakeni* arbitration para 20; *Rasekhula* arbitration para 7; *SADTU obo July* arbitration para 17; *Waterson* arbitration para 3.4.

<sup>137</sup> O'Leary, Koh and Dare *Grooming and Child Sexual Abuse* 8, 10; Palmer *Role of Organisational Culture in Child Sexual Abuse* 25.

<sup>138</sup> Howitt 1995, cited in Bennett and O'Donohue 2014 *JCSA* 960-961.

<sup>139</sup> ATRA *Managing Professional Boundaries* 4; Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 11.

favouritism to the learner, socialising and exchanging gifts and personal emails with the learner, and creating intimacy with the learner by sitting alone together with the learner.<sup>140</sup>

Favourite gifts to give include cheap jewellery, clothes and cell phones, topping up cell phones, webcams, cigarettes, alcohol, music CDs, cookies, food, money and even accommodation and bursaries.<sup>141</sup> Groomers like to give cell phones as gifts because by so doing they create an open line of communication between themselves and the child and enable the child to stay away from home or school (or wherever else they are supposed to be) for longer periods of time.<sup>142</sup>

Educators who groom learners will further violate the personal-professional boundary when they fail to separate home- and work-life, share overly personal information or enquire about the personal life of the learner. A good example of oversharing can be found in *Chetty v S*,<sup>143</sup> where the educator shared information about his relationship with another teacher, commented on them not having had sex, but stated that he had seen her naked and had fingered her. Another typical grooming tactic is to comment on his or her unhappiness with his or her current relationship and or marriage.<sup>144</sup> An inappropriate enquiry about a learner's personal life includes an enquiry on whether the learner goes out at night, has boyfriends and/or is sexually active or a virgin.<sup>145</sup>

Educators who invite learners to visit them at home violate the personal-professional boundary.<sup>146</sup> The sports coach in the case of *Strydom v S*,<sup>147</sup> for example, invited the boys to his home to watch movies or for a braai. The educator in *Free State Department of Education and Mofokeng*<sup>148</sup> took the learner to houses he owned and guesthouses.

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<sup>140</sup> *Queensland College of Teachers v JNS* [2018] QCAT 228 paras 19, 29, 30, 33.

<sup>141</sup> CEOP *Out of Mind, Out of Sight* 17, 58-59; *Gauteng Department of Education and Modiba PSES720-19/20GP* (24 February 2020) paras 15, 19, 21; *Strydom* case para 8; Webster *et al* 2012 [https://www.academia.edu/23987615/European\\_Online\\_Grooming\\_Project\\_Final\\_Report](https://www.academia.edu/23987615/European_Online_Grooming_Project_Final_Report) 10.

<sup>142</sup> CEOP *Out of Mind, Out of Sight* 15, 27.

<sup>143</sup> *Chetty* case para 17.

<sup>144</sup> *Ncakeni* arbitration para 21.

<sup>145</sup> *Diholo* arbitration paras 8, 41; *Mathekga* arbitration paras 4, 23; *Mokotjo* arbitration para 5; *Satani* arbitration paras 12, 36; *Van den Heever* arbitration para 18.

<sup>146</sup> *ATRA Managing Professional Boundaries* 6.

<sup>147</sup> *Strydom* case para 3.

<sup>148</sup> *Free State Department of Education and Mofokeng* ELRC276-20/21FS (27 October 2021) (hereafter *Mofokeng* arbitration) paras 13, 40.

Educators that groom violate the personal-professional boundary when creating a "collusive" secrecy.<sup>149</sup> According to Tanner and Blake<sup>150</sup> drawing the child into the secret is a major avenue for creating a bond and a special relationship. It should be a warning sign if an educator asks a learner to keep a secret, irrespective of the type of secret.<sup>151</sup> Grooming techniques used to ensure secrecy include creating a belief of complicity, obtaining leverage, using threats, using the child's longing to belong and abusing the power relationship by convincing the child that no one will believe him or her rather than the educator.<sup>152</sup> Many groomers repeatedly tell the child to keep whatever happened a secret,<sup>153</sup> in which case a pattern may be discernible, as was evident in the insistent reminders in the *SADTU obo July* arbitration: "Delete plz after viewing", "Ok ke dear...jst hope you keep Roxy in the dark nhe", " Who's phone is this? Ok pls dnt forget to delete bbs nhe".<sup>154</sup>

Some groomers use what Weber<sup>155</sup> refers to as "emotional seduction" by constantly reminding the learner that if the learner talks, the educator will get into trouble and lose his or her job – thus making the child responsible for his or her fate.<sup>156</sup> Smallbone and Wortley<sup>157</sup> identify this as the preferred method amongst groomers of avoiding disclosure. In a study conducted by Egan, Hoskinson and Shewan<sup>158</sup> where adults pretended to be children communicating with groomers in chat rooms, phrases commonly used by the groomers included "yea but you tell anyone or something gets out i go to jail", "shut down yahoo to erase all this", "just between me and u right", "so u can keep it a secret right?"

Creating complicity plays an important role in how groomers orchestrate matters so that victims participate in their own abuse, while the groomers obtain leverage.<sup>159</sup> Where the secrecy is initially used to create a bond, it is later used to argue complicity. For example, complicity is created by luring

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<sup>149</sup> Minnie *The Grooming Process and the Defence of Consent* 49; USA Department of Education *Educator Sexual Misconduct* 32.

<sup>150</sup> Tanner and Brake 2013 <http://kbsolutions.com/Grooming.pdf> 11.

<sup>151</sup> New South Wales Ombudsman for the Protection of Children 2013 <https://www.childabuseroyalcommission.gov.au/sites/default/files/OMB.0015.001.0140.pdf>.

<sup>152</sup> CEOP *Out of Mind, Out of Sight* 26, 36, 51, 60; Pollack and MacIver 2015 *ABA Child Law Practice* 1; USA Department of Education *Educator Sexual Misconduct* 33; Wolf, Linn and Pruitt 2018 *Journal of Sexual Aggression* 220.

<sup>153</sup> *Mokotjo* arbitration para 18; Wolf, Linn and Pruitt 2018 *Journal of Sexual Aggression* 219.

<sup>154</sup> *SADTU obo July* arbitration para 37.

<sup>155</sup> Weber date unknown <https://diospringfield.org/wp-content/uploads/YPParent-Resoucre-1.pdf> 1.

<sup>156</sup> *Mofokeng* arbitration para 16; *Sheldon-Lahey* case para 14.

<sup>157</sup> Smallbone and Wortley 2001, cited in Minnie *The Grooming Process and the Defence of Consent* 55.

<sup>158</sup> Egan, Hoskinson and Shewan "Perverved Justice" 10.

<sup>159</sup> Courtois and Alpert "MIND F\*CK" 241.

the learner into becoming sexually active, taking and sharing nude selfies, drinking alcohol, using drugs, smoking, and lying to his or her parents. The knowledge of these activities is then used as leverage and the groomer will impress it on the learner that should he or she disclose, his or her own criminal behaviour will land him or her in serious trouble.<sup>160</sup> An educator in one of the case studies described in the Shakeshaft and Cohan study<sup>161</sup> explained that he used oral sex to gain leverage over boy learners. As he commented

I have yet to meet a boy who disliked being blown. By giving him pleasure, you increase the chance he will keep your secret to himself in our homophobic and pedophobic culture.

The fear of the public exposure of compromising photos or videos keeps victims from exposing the abuse and ensures their continued participation.<sup>162</sup> Leverage is of course also obtained when a *quid pro quo* was used as part of the grooming; something that happens regularly when educators are the groomers.<sup>163</sup> This may relate to the fact the educators that groom are specific in choosing troubled and needy children such as those that have difficult relationships with their parents, those who lack confidence, and those who are already involved in risky behaviour. Learners who have their needs fulfilled will be less likely to disclose, and the "bad" girl or boy is less believable as a witness.<sup>164</sup>

## 5 Concluding comments

Sexual grooming behaviour and professional relationship boundary violations are inextricably linked. Professional boundaries violated by grooming behaviour are in particular the boundaries that provide protection to learners against an abuse of power and trust, inappropriate communication, educators exceeding their tasks and roles, educators physically abusing learners, and educators invading learners' personal space and privacy. It is also clear that one grooming behaviour might constitute the violation of multiple boundaries at the same time because these boundaries are separate yet co-dependent.

Following a combination of Bennett and O'Donohue's suggested process, the guidelines of the New South Wales Ombudsman for the Protection of Children, and the Victoria Family and Community Development Committee, the author proposes a four-step test to first distinguish between boundary violations that can be accepted as normal and those for which there is no reasonable explanation, and second between the aforementioned and

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<sup>160</sup> CEOP *Out of Mind, Out of Sight* 24, 26.

<sup>161</sup> *NAMBLA Bulletin* 1993 cited in Shakeshaft and Cohan *In Loco Parentis* 28.

<sup>162</sup> Minnie *The Grooming Process and the Defence of Consent* 49.

<sup>163</sup> *Mathekgá* arbitration para 81; Shakeshaft and Cohan *In Loco Parentis* 9.

<sup>164</sup> Shakeshaft and Cohan *In Loco Parentis* 27, 29.

grooming behaviour. To constitute sexual grooming behaviour there must be a pattern of intentional inappropriate behaviour aimed at urging or persuading a learner to commit a sexual act and/or decreasing or reducing any resistance or refusal on the part of the child to engage in a sexual act.

The author claims that by acting when there is evidence of a professional boundary violation, further development towards sexual grooming can be prevented. She suggests that a sanction such as compulsory training on professional behaviour and boundary violations be created for such transgressions.

Since none of the forms of serious misconduct cover sexual grooming sufficiently, the author suggests that section 17(1)(f) that seems to be intended to address the problem of educators' professional boundary violations and sexual grooming be rephrased by either specifically describing the acts that an educator may not cause a learner to do, or that the section be replaced in its totality. Thus either:

17. Serious misconduct.—(1) An educator must be dismissed if he or she is found guilty of—
  - (f) causing a learner to
    - (i) enter into a sexual relationship with him or her
    - (ii) possess or use an intoxicating, illegal or stupefying substance
    - (iii) commit theft, bribery, fraud or an act of corruption

Or section 17(1)(f) should be rephrased as

17. Serious misconduct.—(1) An educator must be dismissed if he or she is found guilty of—
  - (f) committing a professional boundary violation with the intention to sexually groom a learner.

Even if the above suggestions are not adopted, perhaps because it is thought that section 18(1)(dd) can be used to adequately deal with sexual grooming, the author is still of the opinion that section 17(1)(f) requires rephrasing so as to clearly illustrate the purpose for which it was inserted into the main Act. As already said, the need for this sub-section is not clear as it is not explained in the Memorandum on the Objects of the Education Laws Amendment Bill, 2000. The wording is ambiguous and makes no sense.

It is further suggested that SACE should develop Professional Boundary Guidelines for Educators similar to the Queensland College of Educators' Guidelines and that SACE should include a specific workshop on sexual grooming and professional boundaries in its training portfolio, including a topic on the difference between educators' professional relationships with



learners and parent-child relationships. Educators should understand what it means to act *in loco parentis* and that this status does not override their status as professionals. It should further be emphasised that professional boundary violations occur not only in instances where physical contact boundaries are transgressed.

Parents and learners need to be made aware of the possibility that educators who transgress professional boundaries may be in the process of sexually grooming learners. They must be warned to be on the lookout for patterns of unacceptable conduct and requested to report such to the principals of their children's schools.

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## List of Abbreviations

ATRA	Australasian Teacher Regulatory Authorities
ASBJ	American School Board Journal
CARSA	Child Abuse Research South Africa
CEOP	Child Exploitation and Online Protection Centre
ELRC	Education Labour Relations Council
JCSA	Journal of Child Sexual Abuse
JIV	Journal of Interpersonal Violence
JSWFL	Journal of Social Welfare and Family Law
PELJ	Potchefstroom Electronic Law Journal
SACE	South African Council for Educators
SADTU	South African Democratic Teachers Union
TVA	Trauma, Violence & Abuse
USA	United States of America