An education law analysis of "the learner's best interests"

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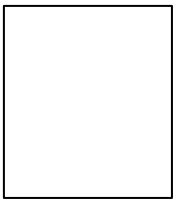

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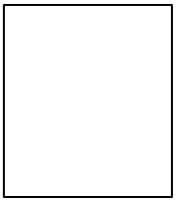

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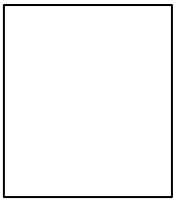

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Abstract

The South African Constitution recognises the paramount importance of the best interests of the child. The problem is, however, that most educators at school are unfortunately not knowledgeable enough concerning the rights of the child, as well as concerning their own obligations in this regard. The objective of the article is therefore to analyse and evaluate specific educational and juridical aspects in furtherance of the best interests of learners. The literature survey and accompanying legal comparative study identified the legal determinants of the educator-learner relationship and the educator's duty of care as two important areas of concern to education law and policy.

Introduction

The South African Constitution (SA, 1996b; hereafter referred to as the Constitution) defines 'child' as anybody under the age of 18 and the South African Schools Act 84 of 1996 (SA, 1996a; hereafter referred to as the Schools Act) defines 'learner' as a person receiving or obliged to receive education. In this article the term 'learner' will therefore indicate persons attending public schools.

Concerning age there is a discrepancy: the age limit in the Constitution specifies that persons younger than 18 years are regarded as children, while the Schools Act fails to define the term 'minor'. If the legal parameters of 7-21 years of age are accepted as the definition, then three years of the learner's life as a minor are not protected by the special additional protection afforded children in s 28 of the Constitution. This would imply that the best interests of learners are not of paramount importance during these three years.

Although the Constitution has been widely applauded for pledging to uphold the paramount importance of the best interests of the child (s 28(2)), it is still a controversial topic, because it has not yet provided a reliable and determinate standard (Bray, 2000:65). In the absence thereof, educators need to explore all avenues opened up by the Constitution (and the Schools Act) to consolidate a firm foundation for accountable education.

While educators could assume in the past that the family constituted a "… safe haven for children", today the law needs to protect children (and thus learners) from all forms of abuse, even from their own parents (Bosman and Van Zyl, 1997, 49).The inclusion of children's rights in the Constitution was meant to remedy their plight, but its provisions fail to rebuild the family structure (Robinson, 1995, 106-107) which was referred to in 1983 as "… probably the most fundamental problem which will face any democratic government coming to power in the future" (Duncan, as quoted by Robinson, 1995, 106). At the moment this deficiency seems to increase the 'educator's duty of care' in order to facilitate learners' best interests.

The urgency of the matter is illustrated by the following incident (De Lange, 2001, 1), serving as due warning that not all educators are currently safeguarding the best interests of their learners:

> Rugby players of a Middelburg secondary school were allowed to travel by bus without the supervision of their educators who were travelling on a different bus. Unfortunately some of the first team members abused the opportunity to 'induct' the juniors with a beating. Charges of crimen injuria and assault were laid against the relevant seniors, but some parents were more concerned about the absence of the educators.

Yet another educational matter (Van der Fort, 2001, 7) reflects badly on contemporary South African educators:

> Although national legislation clearly prohibits corporal punishment at school, three Cape Flats primary school educators were each fined R4000 after being found guilty of administering such punishment at school. The educators admitted guilt. However, they were upset about the fact that 'hundreds of other educators' were not being accused of the same misconduct.

In this way it becomes clear that even dedicated educators can default, thereby harming learners' best interests. The problem posed is whether this occurs …

- through sheer carelessness;
- insensitivity to common law principles and statutory provisions; or
- ignorance of their legal position?

One cause for concern in the complicated South African educator-learner relationship is the perceived imbalance between the emphasised *individual rights and freedoms* of the various parties concerned and the seeming neglect of obligations to be fulfilled. Such a perception can lead to irregularities. It is therefore imperative that South African educators be fully conversant with learners' fundamental rights and obligations, as well as with their own obligations to the learners, in order to ensure the protection of learners' best interests. Placing these issues in juxtaposition in this study should prioritise the issue in a compelling, practical way.

Lastly, insight into disciplinary action at various schools in the Vaal Triangle has highlighted the issue of failure to comply fully with the 'legal determinants' for the educator-learner relationship, such as prescriptions for administrative actions, with the emphasis on 'natural justice'. After a brief analysis of these determinants, the educator's duty of care will receive due attention in this article.

The overall objective of this article is therefore to analyse specific educational and juridical aspects critically in furtherance of the best interest of learners in the administration of justice. This could serve to promote an accountable, responsive and open educator-learner relationship.

To this end certain legal aspects concerning learners must first of all be analysed and evaluated.

The legal rights of learners

Although, as will become evident hereafter, learners have been afforded a wide range of fundamental rights, it must be conceded at the very beginning that they are not always allowed to exercise them.

Regarding their fundamental rights, the age and level of maturity of learners could lead to the limitation of their independent right to *exercise* them. These aspects are reminiscent of the *Grundrechtsmündigkeit* (the ability of a person to exercise his fundamental rights independently) and *sufficiently mature* or *sufficiently intelligent* principles of Germany and the United States of America (Robinson, 1995, 109-110). Educators must therefore take note that being vested with fundamental rights does not necessarily imply that learners have the independent right to exercise them. Fact is, an educator had better take *all* learner rights into consideration and not focus on the probability of their not being able to exercise them.

Educators must also take cognisance of the fact that *vertical application* (when the Constitution is seen as primarily a fundamental law which restricts the State and subjects its actions to judicial review (Cheadle and Davis, 1997, 31)) and *horizontal application* (the application of the fundamental rights as between individuals (Davis, Chaskalson and De Waal, 1994, 75)) apply to s 28 of the Constitution which protects the rights of children. Both State (public) and private relationships are affected by this duality, as stipulated in s 8(1) and (2) of the Constitution.

S 4(1) of the Schools Act confers on the Head of Department the power to exempt learners entirely, partially or conditionally from compulsory school attendance if it should prove to be in their (not anyone else's) best interest, but according to Beckmann, Foster and Smith (1997, 8), the Schools Act does not specify any circumstances other than home schooling in which non-attendance may be considered to be in such best interest.

Language rights

Public schools are to admit learners and serve their educational needs *without unfair discrimination* in any way whatsoever (Beckmann *et al*., 1997, 8), but although nothing is clearly documented about learners' rights to receive education in the language(s) of their choice where it is reasonably practicable, it is *implied* by the fact that the Schools Act is subject to the Constitution. This poses a formidable challenge to a country with the linguistic diversity of South Africa (Van der Vyver, 1997, 312). The Constitution itself does not define a policy on language in education and no attempt is made to give an indication either of how education authorities will ensure preferred language medium instruction or of what is considered to be *reasonably practicable* (Beckmann, Klopper, Maree, Prinsloo and Roos, 1995, 48), The example Canada has set with regards to mother-tongue instruction and the duties of the State should be investigated urgently: the *where-reasonably-practicable* provision in the Constitution is very similar to the *where-numbers-warrant* provision in the Canadian Charter. The Canadian Supreme Court held that a sliding scale of the responsibility of the province to provide education in the minority language medium of instruction was to be established. The scale had to be based on the number of *parents* who qualify per province (*Mahé et al. v R. in Right of Alberta et al. [1987])*.

The wide discretion given to the State concerning the allocation of linguistically scarce sources implies that the substance of its decision on the matter of language rights can possibly be challenged or contested on constitutional grounds only on the basis of its not having applied its mind *bona fide* to the matter (Van der Vyver, 1997, 312). On the one hand, a solution could be for the community simply to establish a private educational institution (Van der Vyver, 1997, 312-313). On the other hand, Beckmann *et al*. (1995, 50-51) feel that if the South African Constitutional Court were to apply a similar sliding scale as Canada, it would seem that the future days of single-medium educational institutions might be numbered.

Learners are, however, awarded the right to instruction in *sign language* due to the fact that s 6(4) of the Schools Act gives it the status of an official language for the purposes of learning at a public school.

Religious rights

Concerning religion, learners and staff members are entitled to have free access to religious observances of their faith at a public school (Beckmann *et al*. 1997, 10). They also have the guarantee that attendance of these religious observances is on a free and voluntary basis (*cf.* s 15 of the Constitution).

It will be interesting to observe the outcome of Education Minister Kader Asmal's attempt to establish *multi-religion instruction* in South African schools, as this would surely deny learners' rights of choice and identity. Not only Christians, but Muslims too are opposed to this apparent infringement of the Constitution.

Protection in administrative action

Pertinent to learners' daily interests, Beckmann *et al*. (1997, 10) note that the provision of s 8(5) of the Schools Act is in keeping with the guarantee of the Constitution (s 33(1)) that everyone has the right to lawful, reasonable and procedurally fair 'administrative action'. This includes two basic principles (Beckmann *et al*., 1997, 10-11) worded in the duty of:

- affording the person in question the opportunity to present his case, commonly referred to as the *audi alteram partem* principles; and
- remaining objective in listening to both sides of the case and not being biased when reaching a decision.

However, Beckmann *et al*. (1997, 10-11) correctly point out that the Schools Act does not specify:

- a definition of serious misconduct to justify expulsion;
- the specific disciplinary proceedings to be followed; or
- provisions of due process to ensure the protection of rights and interests of all parties concerned.

According to the same authors it appears that learners and their parents do not have the right to appeal against their *suspension*. This is probably due to the fact that suspension is a temporary, correctional measure. While s 9(4) of the Schools Act awards learners or their parents the right to appeal against their *expulsion*, no mention is made of appealing against their being suspended. Yet the Constitution enshrines learners' right to fair administrative action and stipulates the paramount importance of their best interests.

Protection against cruel, inhuman or degrading punishment

As illustrated in the introduction, learners are no longer subject to corporal punishment at school, as the latter is prohibited by s 10(1) and 10(2) of the Schools Act. Anyone contravening this prohibition would be guilty of an offence and, on conviction, liable to the penalty that could be imposed for assault.

However, as pointed out in the introduction, rights and obligations should be counter-balanced, therefore the latter need to be examined.

Legal obligations of learners

According to Bondesio (1995, 41), submission to authority, discipline and punishment must be expected from children who have been placed under the control and custody of parents or guardians. This applies equally to being placed under the control and custody of educators *in loco parentis*, as is also maintained in England and Wales, and Canada.

School attendance

Concerning compliance with compulsory school attendance requirements, Beckmann *et al*. (1997, state that "…it is a learner's right, if not obligation, to attend school…", but no right is conferred on learners to start their school career before they reach the compulsory school-going age. Here special mention should be made of *Doreen Harris v The Minister of Education (2001)* concerning General Notice 647 of 2000, denying her daughter access to King David

Primary School on the grounds of her becoming 7 *after* 31 December 2001. Counsel for the applicant argued that it was "… a violation of the rights of the girl and other similarly situated children under s 28(2) of the Constitution to have their best interests treated as being of paramount importance in all matters concerning them".

The court's subsequent finding was that the notice was:

- *ultra vires* the powers of the respondent in terms of the National Education Policy Act 27 of 1996;
- an unconstitutional violation of her rights; and
- an unconstitutional violation of s 125 of the Constitution.

Unfortunately the Schools Act does not specify the *maximum age* at which the right to attend school terminates. It would, however, be in the best interest of all learners if the *maximum age of admission* to schools were officially specified in the Schools Act.

Obedience to school code of conduct

There is no doubt that educators must take action if learners fail to obey disciplinary rules (Bondesio, 1995). They may mete out punishment and whenever the general welfare of the school becomes threatened by a continued breach of reasonable rules (Neethling, Potgieter and Visser, 1992, 2), it might even lead to learners' suspension (s 9 of the Schools Act). This does not, however, exempt them from compulsory school attendance: alternative arrangements must be made to place them at another school (s 9(5) of the Schools Act).

It is therefore quite clear that both the legal rights and legal obligations of learners serve to promote their best interests. So does the legal foundation for the relationship between learners and educators

Legal determinants for the educator-learner relationship

The sources of administrative law (the Constitution, legislation, common law and case law) play intricate roles in determining whether an administrative body (such as an educator) has acted in a lawful or unlawful way.

Competency of school governing bodies

The *quasi-judicial* competence of an administrative body, such as the governing body of a school, refers to its competency to investigate a possible breach of a code of conduct, hold disciplinary hearings, come to conclusions and make official decisions (Baxter, 1991, 220-221). All of these need to be done in accordance with a lawful administrative process of control.

Prescriptions for administrative actions

First of all, administrative acts performed at school must comply with general prescriptives of the law: legal empowerment, lawfully constituted authority, compliance with circumstantial and procedural prerequisites, reasonableness, fairness and liability equal to that of private persons in the case of action taken without legal authority (Baxter, 1991, 78). The *bona fides* of the author of an administrative act cannot change an invalid act into a valid one: corporal punishment can, for example, never be condoned.

The court interferes in administrative decisions only if there is evidence, *inter alia*, of *ultra vires, prejudice* or *mala fides.* An illustration of court action regarding *mala fides* is found in *P v Board of Governors of St Michael's Diocesan College Balgowan 1961*. The principal of the school expelled the learner because he had breached a rule prohibiting the drinking of liquor. The parents filed a complaint against the principal on the count of, *inter alia,* mala fides. The court ruled that the principal did not act in bad faith on suspending and eventually expelling the learner. It was stipulated clearly that the court would censure such a decision if there were evidence of *mala fides*.

Fair hearing

Natural justice, which is of primary concern in life, concerns itself with the fact that persons who are affected by an administrative act, such as learners, are entitled to fair, unprejudiced hearings conducted in flexible ways (Oosthuizen, 1998, 45). The principles of *audi alteram partem iudex* and *in propria causa* (as mentioned before) must be upheld. It is through them that educators accept accountability for their actions. Unfortunately it would seem that there is urgent need of improvement in this respect. In *Van Coller v Administrator, Transvaal 1960* a high school principal's transfer was annulled as he was not granted the opportunity to state his side of the matter.

At the same time it can be concluded that both s 33 of the Constitution and the Promotion of Administrative Justice Act 2000 actually determine that all schools have to comply with the provision of administrative justice.

Legal foundation for educators' responsibility

Based on their *in loco parentis*-position, South African educators (as their counterparts in England and Wales, Partington (1990, 111)) exercise both delegated and original authority over learners at school (Oosthuizen, 1998, 48-49), and bear legal responsibility regarding their caring supervision and their right to maintain discipline (Oosthuizen and Bondesio, 1995, 67).

Educators may be blamed for *negligence* only if the damage caused was reasonably foreseeable and preventable. The test of the *reasonable person* is applied here in order to determine what the law expects of educators (Botha, 1998, 78):

- Would a reasonable person have acted in the same way?
- Could the damage have been foreseen?
- Could the damage have been prevented?

These three questions, that would establish reasonableness, call to mind the incident of first team rugby players who were left unsupervised on a bus (as mentioned in the introduction). It serves as an example of educators possibly being blamed of negligence, simply because of not foreseeing and preventing learners' abusive behaviour. Thus the best interests of the junior learners were not of paramount importance in this instance.

Final accountability

In the final instance the Department of Education is held accountable for any unlawful acts of its staff. It is worded as *vicarious liability* and four aspects need to be present to establish this (Botha, 1998, 84):

- an unlawful act
- performed during the execution of the employer's duties,
- falling within the limits of the employer's competencies, and
- occurring while an employer-employee relationship exists.

The logical outcome of these legal determinants in the educator-learner relationship is the educator's *duty of care* to protect the best interests of learners.

The educator's duty of care

At the moment the deficiency in the Constitution concerning parents' obligations seems to increase educators' duty of care in order to facilitate the best interests of their learners. This is an obligation based on a legal foundation.

Legal foundation

A practical source of educational duties is common law, which, especially through the law of delict, regulates the degree of care to be exercised in conduct which is potentially detrimental to others (Visser, 1997). While it is the function of private law to demarcate and counterbalance individual interests, the *law of delict* is concerned with determining in which circumstances a person could be held liable for the damage caused to someone else (Neethling *et al*., 1992, 3).

Educators as persons *in loco parentis* are vested with special status that empowers them to act authoritatively in terms of the law. Not only do they have both delegated and original authority over learners on the school grounds and during the normal school session, but (in terms of common law) they are also granted authority over the learners during extra-mural activities on or away from the school grounds (Oosthuizen, 1994, 209). There are two co-extensive pillars to the *in loco parentis* role that educators play (Maithufi, 1997, 260-261): the duty of care (which implies looking after the physical and mental well-being of learners) and the right to maintain order at school (which implies educators' right to discipline learners).

Specific obligations

It is important to remember that 'duty of care' does not refer to a general obligation: it is an obligation towards specific persons or specific groups of persons in the care of a specific educator (Neethling *et al*., 1992, 140). Such an educator has a duty to protect the learners from coming to harm, since the duty of care can be a legal obligation.

The law expects of educators to act like *diligens paterfamiliae* and *reasonable persons* in the education situation at all times. Dealing with children affords a higher degree of care than is normally the case when dealing with adults, so their conduct as professional persons will be subject to more stringent tests (Beckmann, 1995, 53).

Based on educators' knowledge of their subject and the nature of learners, their skills, their familiarity with the dangers to which learners are exposed, their guarding against negligent acts, and the knowledge of the legal provisions which govern their profession, reasonable educators are able to function safely within the parameters of the law.

Yet the report of the three Cape Flats educators who were recently found guilty of having transgressed the Schools Act (as mentioned before), clearly underlines the urgent need for educators to be reminded of their obligations. In order to meet the demands of current legal

developments, educators should keep abreast of the changing legal requirements and execute their duties professionally and with the necessary forethought and care.

Possible transgressions

However, the possibility is always there that learners may suffer material or psychological damage because of wrongful acts or negligence on the part of educators. So the principles *liability for damages* and *prevention of damages* influence the contents and scope of educators' legal duties to a large extent.

Examples of such *torts* would be liability for the injury or death of learners while under school supervision, for depriving learners of their constitutional rights or for malpractice (La Morte, 1990, 381). Suffering damage / loss to property (e.g. a school bag) is called *patrimonial loss*, while harm to their person (e.g. his physical integrity, reputation or privacy) is called *non-patrimonial loss*. Wrongdoers are said to be *delictually liable*.

Determining damage

Private law determines the types of damage that may be recovered because of administrative acts. They are the actions *actio legia Aquiliae* (pecuniary loss and bodily injuries) e.g. damage to a school bus because of a principal's negligence, and *actio iniuriarum* (infringement of personality rights) e.g. an educator slandering a learner, for which the plaintiff could be awarded a sum of money as solace (Neethling *et al*., 1992, 8-10). Both of these actions need to be proved by the presence of unlawful conduct (e.g. administrative acts which are *wrongful* and *unlawful*, as when a legal duty of care is breached without justification), fault (e.g. intent or negligence) damage (e.g. trauma) and causation. On the other hand, there may be grounds of justification such as self-defence, necessity, statutory authority, disciplinary power, provocation or consent.

It is also feasible that *learners* may be partly or wholly responsible for the harm they have suffered (Botha, 1998, 82). Each educator and school should nevertheless take sufficient legal measures to exclude personal liability, such as indemnification, waiver or insurance against liability.

It is therefore certain that the educator's duty of care must not be taken lightly.

Conclusion

South Africa is on the road to providing sound legal foundations to safeguard the best interests of learners. Efforts are being made to establish a reliable and determinate standard in this regard. An accountable and responsive educator-learner relationship will certainly be promoted once all educators are dedicated to fulfilling specific educational and juridical requirements in furtherance of the best interests of learners in the administration of justice. To this end, making Education Law a compulsory subject for all studies in education might be a positive step.

References

Baxter, L. 1991. *Administrative law.* Cape Town: Juta.

Beckmann, JL. 1995. The duty of care of the teacher. In *The teaching profession: legal requirements,*

Bondesio, MJ, Beckmann, JL, Oosthuizen, IJ, Prinsloo, JG and Van Wyk, JG. Pretoria: Van der Walt, 47-72.

Beckmann, JL, Foster, WF and Smith, WJ. 1997. *Analysis of the South African Schools Act, 1996*. Montreal-Johannesburg: CSAENP.

Beckmann, JL, Klopper, JC, Maree, LM, Prinsloo, JG and Roos, CM. 1995. *Schools and the Constitution*. Pretoria: Via Afrika.

Beckmann, JL and Prinsloo, JG. 1995. The importance of the law in education. In *The teaching profession: legal requirements*, Bondesio, MJ, Beckmann, JL, Oosthuizen, IJ, Prinsloo, JG and Van Wyk, JG. Pretoria: Van der Walt, 3-18.

Bondesio, MJ. 1995. The teacher and the pupil (child). In *The teaching profession: legal requirements*, Bondesio, MJ, Beckmann, JL, Oosthuizen, IJ, Prinsloo, JG and Van Wyk, JG. Pretoria: Van der Walt, 17-46.

Botha, P. 1998. The educator as caring supervisor. In *Aspects of educational law*, Oosthuizen, IJ. (*ed*). Pretoria: Van Schaik, 71-85.

Bray, W. 2000. *Foundations of law and education law*. Pretoria: CELP.

Cheadle, H and Davis, D. 1997. Application. In *Fundamental rights in the Constitution: commentary and cases*, Davis, D, Cheadle, H and Haysom, N. Kenwyn: Juta, 29-50.

Davis, D, Chaskalson, M and De Waal, J. 1994. Democracy and constitutionalism: the role of constitutional interpretation. In *Rights and constitutionalism*, Van Wyk, D., Dugard, J, De Villiers, B and Davis, D. (eds). Kenwyn: Juta, 1-130.

De Lange, R. 2001. Jong spelers 'wreed ingelyf'. *Beeld*, April 18, 1.

La Morte, MW. 1990. *School law cases and concepts*. 3rd ed. New Jersey: Prentice Hall.

Maithufi, IP. 1997. Children, young persons and school law. In *The law of children and young persons in South Africa*, Robinson, JA. (ed.). Durban: Butterworths, 235-263.

Neethling, J, Potgieter, JM and Visser, PJ. 1992. *Deliktereg.* 2de uitg. Durban: Butterworths.

Oosthuizen, IJ. 1994. Die skopus en konteks van die *in loco parentis*-posisie van die onderwyser. *South African Journal of Education*, **14**(4), 209-213.

Oosthuizen, IJ. 1998. Common law. In *Aspects of educational law*, Oosthuizen. IJ. (ed). Pretoria: Van Schaik, 43-50.

Partington, J. 1990. England and Wales. In *Comparative school law*, Birch, IK, Richter, I. (eds). Oxford: Pergamon, 85-118.

Robinson, JA. 1995. An overview of the provisions of the South African bill of rights with specific reference to its impact on families and children affected by the policy of apartheid. *Obiter*, **16**(1), 99-114.

Republic of South Africa. 1996a. *South African Schools Act No. 84 of 1996.* Pretoria: Government Printer.

Republic of South Africa. 1996b. *Constitution of the Republic of South Africa, Act 108 of 1996.* As adopted on 8 May 1996; amended on 11 October 1996 by the Constitutional Assembly. Pretoria: Government Printer.

Van der Fort, S. 2001. Lyfstraf kos onderwysers baie geld. *Rapport,* April 8, 7.

Van der Vyver, JD. 1997. Constitutional problems of children and young persons. In *The law of children and young persons in South Africa,* Robinson, JA. (ed.). Durban: Butterworths, 265-320.

Visser, PJ. 1997. *The rights and duties of pupils (learners): some basic South African principles.* Article presented at a conference of European Education Law Association (EELA), Dublin 1996.

Case law

Doreen Harris v The Minister of Education 2001 Case 30218/2000 TPD

Mahé et al. v. R. in Right of Alberta et al. [1987] 6 W.W.R. 331, 42 D.L.R. (4th) 514 (Alta. C.A.), rev'd [1990] 3 W.W.R. 97, 72 Alta. L.R. (2d) 257 (S.C.C.)

P v Board of Governors of St Michael's Diocesan College of Balgowan 1961 4 SA 440 (N)

Van Coller v Administrator, Transvaal 1960 1 SA 110 (T)