

Elda de Waal

Random drug-testing: the duty to act against learners who use drugs

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This article explores educators' duty in terms of running their own schools. It weighs the importance of a drug-using learner's right to privacy against that of the school community's security on the issue of random drug-testing. A comparison is drawn between the American and the South African situation. The point of departure is a pro-active stance on the sportsfield, leading to assistance in resistance training, the identification of the need for professional help, and the creation of a drug-free school environment. The ultimate issue is the random drug-testing of all learners.

Lukraak dwelmtoetsing: die plig tot optrede teen die leerder wat dwelms gebruik

Hierdie artikel ondersoek die opvoeders se plig om hul skole te bestuur. Dit balanseer die belangrikheid van die leerders wat dwelms gebruik se reg op privaatheid met die geborgenheid van die skoolgemeenskap met betrekking tot ewekansige dwelmtoetsing. Die Amerikaanse en Suid-Afrikaanse situasies word vergelyk. Die uitgangspunt bevorder 'n pro-aktiewe instelling op die sportveld wat lei tot hulp in weerstandopleiding, die uitkenning van die behoefte aan professionele hulp en die skep van 'n dwelmvry skoolomgewing. Die uiteindelige strydpunt is lukraak dwelmtoetsing.

In his commentary on the South African Bill of Rights, the researcher Charles Dlamini (1994: 593) included the far-reaching statement that teaching entails the right to run educational institutions. This touched an open nerve in South African education. Central to the current agitation among stakeholders is the polemical issue of school discipline as a determinant of security in the educational environment. On the one hand, the learner's fundamental rights must be protected; on the other, school rules are valueless if they are not consistently enforced, as if educators do not have the right to run educational institutions.

Upholding discipline and order is one facet of running a school (Steyn *et al* 2003: xi). Therefore educators should be afforded the opportunity to enforce school rules in order to promote a climate conducive to a secure educational environment in the broadest sense of the word, equipping their learners to become knowledgeable citizens who will behave in a morally responsible way, ensuring security, safety, freedom from care, and *Geborgenheit* for all concerned.

The learner's need for such a sense of security is of paramount importance. His/her physical and spiritual wellbeing should be nurtured with the same care which the *diligens paterfamilias*, the caring head of a family, would take (Judge De Villiers in *Transvaal Provincial Administration v Coley*),¹ because security is indeed the basic prerequisite for the successful education and development of the child (Vaughan 1975: 1).

Undisciplined conduct degenerating into an environment which is too insecure to nurture education may result in an experience of insecurity (Oosthuizen 2004: 2). The current increase in drug abuse is a disturbing phenomenon causing a reprehensible escalation of insecurity at some schools (Dept of Education 2002). Curbing such abuse by firm discipline is thus a major issue: not only is the recovery of security a prerequisite for meaningful education, but education itself means recovering the experience of security (Oosthuizen 2004: 2).

It is therefore correct to pinpoint discipline as a vital determinant for security in the educational environment. To create this indispensable disciplined environment of security, educators may plan reactively or pro-actively. However, taking the much-trodden path of reaction

1 *Transvaal Provincial Administration v Coley* 1925 AD 24.

invariably leads to what Kader Asmal (2001: 4) has called “old-style authoritarian discipline”, culminating in censure, humiliation, rebuke, punishment and retribution. Moreover, educators report that they are uncertain about administering any form of punishment for fear of unwittingly infringing on learners’ rights (Rossouw 2003: 424-5).

This is a vital current issue. Human rights are being overemphasised at a time when the postmodern human being of the twenty-first century tends to regard him/herself as autonomous: free from the compulsion of any overriding religious principle, order or discipline. This has made it well-nigh impossible to bring home the consequences of indisciplined behaviour to transgressors. They do not realise that although they definitely have freedom of choice, they do not have freedom, or indemnity, from the consequences of their choices (De Klerk & Rens 2003: 360). This has culminated in tragic instances among adults such as the case of Hezekiel Sepeng, a celebrated South African long-distance athlete, who was eventually banned from international participation for using a forbidden substance.

The only sensible path to follow therefore appears to be a pro-active one. This comes into consideration when an offence such as drug abuse is prevalent, frequently culminating in crimes which undermine the very notion of security/safety/freedom from care/*Geborgenheit* at South African schools. Reality confirms this. In an article entitled “My son, the monster”, Benghiat (2006: 17) reports that, according to the most recent statistics from the Department of Correctional Services, 2 200 convicted and trial-awaiting prisoners are under eighteen.

Van der Walt (2003: 357) points out that, while postmodern learners refuse to be subjected to the compulsion of norms and religious principles, it might be more effective to offer them the notion of a value system to help them determine what is of special value to them in any given situation, as values are not necessarily imbedded in any ideology or religion. This is vital, too, as education cannot be separated from values (De Klerk & Rens 2003: 357). In this regard, Ms Naledi Pandor, Minister of Education, has strongly emphasised the need for parents to imbed their children in a positive value system (Joubert 2006: 2).

Moreover, the *Manifesto on values, education and democracy* (Ministry of Education 2001; hereafter *Manifesto*) cites Nelson Mandela as reminding South Africans in his opening address at the *Saamtrek* conference not to

take for granted the values enshrined in the Constitution of the Republic of South Africa Act 108 of 1996 (RSA 1996a; hereafter Constitution), but that we must assist the younger generation in making values “a part of themselves, in their innermost being”. The introduction to the *Manifesto* (Ministry of Education 2001: 8) also asserts that, if values are to be taught in such a way that they will be lived by young South Africans, it will not be by imposition, but by generating discussion and debate.

Various current dilemmas in the area of school discipline relate to matters of law and education policy. In some cases there is sufficient legal guidance to permit a firm stance to be taken on a specific issue, as on corporal punishment. In other instances, at best, different views can be debated and the decision on the best course of action must be left to the authorities.

Despite learners’ rights to privacy, to education and to their best interests being upheld as of paramount importance, section 3.3 of the *Guidelines for consideration of governing bodies in adopting a code of conduct for learners* (Dept of Education 1998; hereafter *Guidelines for code of conduct*) empowers a school’s Governing Body to maintain school discipline. Moreover, parents have the right to secure schools for their children, and educators have the right to uphold authority, while the limitation clause, section 36 of the Constitution (RSA 1996a), holds the guarantee that no person’s rights may be taken as absolute.

Pro-active random drug-testing must be considered against this background. The issue is far more urgent than is generally realised, because society is inclined to glamorise performance-enhancing substances (Duke 2002: 221), ignoring the accompanying dangers of addiction, aggression and violence which threaten the very existence of the secure environment. Young people watch movies and television shows in which their peers experiment with drugs in order to achieve heightened awareness and to cope with stress and anxiety. They read of admired athletes who take performance-enhancing drugs (Duke 2002: 222).

According to Shaheed Shaik, the principal of Stonefountain College in the Western Cape, schools must realise that learners who procure or traffic in illegal drugs are prepared to kill for them. Such learners create unbearable situations in classrooms, stealing from other learners and being incapable of sitting still for even brief periods (Rademeyer 2006b: 1).

The horror of drug abuse among the youth of South Africa has been identified by our policy-makers. At present, three legal documents are directly relevant:

- The *Guidelines for the code of conduct* (Dept of Education 1998) specify, *inter alia*, as follows:

Section 1.4: The Code of Conduct must inform the learners of the way in which they should conduct themselves at school in preparation for their conduct and safety in civil society. It must set a standard of moral behaviour for learners to equip them with the expertise, knowledge and skills they would be expected to evince as worthy and responsible citizens. It must promote the civic responsibilities of the school and it must develop leadership. The main focus of the Code of Conduct must be positive discipline; it must not be punitive and punishment-oriented but facilitate constructive learning.

Section 3.8: The principal or an educator, upon reasonable suspicion (sufficient information), has the legal authority to conduct a search of any learner or property in possession of the learner for [...] drugs [...] brought onto the school property ...

- Section 4 of the *Regulations for safety measures at public schools* (Dept of Education 2001b) declares, *inter alia*, as follows:

- 4 (1) All public schools are hereby declared drug-free [...] zones.
- (2) No person may - [...] (d) possess illegal drugs on public school premises; (e) enter public school premises while under the influence of any illegal drugs or alcohol.

- The *National policy on the management of drug abuse by learners in public and independent schools and further education and training institutions* (Dept of Education 2002; hereafter *National policy on drug abuse*) states, *inter alia*, as follows:

Section 13. The possession, use or distribution of illegal drugs, and the inappropriate possession, use or distribution of legal drugs [...] is prohibited in South African schools and this message should be delivered clearly and consistently within our school communities.

Section 14. It is the Ministry's intention that all South African schools should become [...] illicit drug-free zones.

Section 19. By its very nature, drug testing is an invasion of privacy and may infringe the constitutional and personal rights of learners. It therefore should not be the first point of intervention.

Section 20. Random drug testing is prohibited [...] Drug testing should be used when there is reasonable suspicion that a child is using drugs.

Testing must be implemented [...] in an environment that is committed to safeguarding personal rights relating to privacy ... according to school policy [...] The results of the testing cannot be made public but can be shared with the child's parent or guardian.

The use of narcotic or unauthorised drugs, alcohol or intoxicants of any kind is included among the offences that may lead to suspension. Moreover, section 14 of the *Guidelines for the code of conduct* (Dept of Education 1998) stipulates that offences against the law must be investigated by the police (Dept of Education 1998). Yet, as can be seen from the above *Guidelines for the code of conduct* (Dept of Education 1998), random drug-testing at schools is currently prohibited in South Africa, although it is legal in the USA. No wonder that the South African National Council on Alcoholism and Drug Dependence is concerned that this approach will make it more difficult to weed out the drug problems at schools (Ho 222: 4), or that concerned educators and parents remain mystified as to why the law has not yet condoned the testing of learners' drug-use.

In fact, however, St Magdalena's Health Care has already responded to parental concern by testing learners for drug-use at school. According to Raubenheimer (1994: 2), 60% of the learners tested were using drugs, with cannabis being the most common. Three 18-year-old learners from Brakpan and Benoni were recently arrested for the possession of cannabis (Fitzpatrick 2006: 6), underscoring the fact that the matter merits urgent attention.

Moreover, it was reported a few years ago (Moodie *et al* 2004:6) that one of South Africa's top rugby-playing schools, Durban High School, would start conducting urine tests for drugs in June 2004. Although the plan could have led to players being banned from a team if they tested positive, learners welcomed it. As the then acting principal stated, it is important for learners to learn both the value of fair play on the sportsfield and the dangers of recreational drugs.

These incidents put into perspective the right of educators to exercise authority by actually running their schools again. The issue that now requires consideration, however, is that of possible infringement of the learners' right to privacy, and whether a limitation on that right is justified in this regard. In this context, Pillay (2000: 72) warns that the young people of South Africa are in danger of ending up as drug addicts, violent criminals and anti-social individuals, rather than becoming assets to the nation and the its economy.

1. Problem statement

Section 4 of the *National policy on drug abuse* (Dept of Education 2002) describes the problem beyond any possibility of contradiction:

Studies on drug usage in the country point to an increase in drug abuse across all communities, irrespective of wealth, although usage rates and drugs of choice vary between communities, based on access and cost. Evidence indicates that school communities are particularly vulnerable and drug use by learners is on the increase in both rural and urban schools, including primary schools. These reports also indicate a high correlation between drug abuse and other high-risk behaviour typical of countercultures such as violence, sexual violence, gangsterism and theft ...

Quoting, *inter alia*, a learner's right to privacy, section 10 of the *National policy on drug abuse* (Dept of Education 2002) continues:

... These rights can, however, not be misused to protect illegal and destructive behaviour, which undermines the learning process.

2. Objectives

This study accepts the challenge of Russo *et al* (2003: 551) by attempting to persuade educational leaders to reduce their level of concern about learners' privacy and to permit drug-testing.

It attempts to strike a legal balance between a drug-using learner's right to privacy and the security of the greater school community. The possibility of using random drug-testing of learners on the sports-field as a strategy aimed at maintaining a safe, secure school environment will be examined from a legal perspective. It is hoped that this study will serve as a point of departure for further discussion and debate.

3. Methodology

A literature study will inform the study, as its structure relies on section 39(1)(c) of the Constitution (RSA 1996a) which stipulates that, when interpreting chapter 2, also known as the Bill of Rights, foreign law may be considered. Accordingly, the aim is to present a comparative USA/South African perspective.

4. International analysis

Towards the end of the 1970s, courts in the USA began to shift their position on matters pertaining to school discipline. The former emphasis solely on learners' rights was balanced against the authority of educators (Duke 2002: 9). *Ingraham v Wright*² initiated this move. Two high school learners in Florida were caned for disciplinary reasons. They filed suit against the school administrators, claiming that their corporal punishment had violated the constitutional injunction against cruel and unusual punishment. The verdict of the US Supreme Court was that the caning, although excessive, did not violate the Eighth Amendment. The authority of the educators was therefore rated higher than the learners' rights.

In 1978, the USA published the study *Violent schools — Safe schools* (Dept of Health, Education and Welfare 1978), the most systematic investigation of school safety ever conducted in the country (Duke 2002: 8). This report identified the spread of drug-use among the youth as one of the country's greatest safety concerns. One of the conclusions was that relatively safe schools deal with issues of order, discipline and safety in a systematic way. Such schools exhibit firm, but fair, consistent enforcement of discipline, engaging the learners and the school community in efforts to reduce violence.

The report *A nation at risk* (National Commission on Excellence in Education 1984) linked education to the prosperity, security and civility of the nation. At the same time it reminded educators and the general public that schools were charged with a moral as well as an intellectual mission. This report specified a definite relationship between learning and the order maintained at school. It also recommended that the burden for maintaining discipline should not be placed so strongly on educators, but that fair codes of conduct should be enforced consistently at schools.

This culminated in the conclusion of McCarthy *et al* (1998: 196) that educators not only have the authority, but also the duty to maintain discipline at public schools. Schools therefore have considerable latitude in establishing and enforcing codes of conduct for their activities. This makes it imperative that potential legal pitfalls be taken into consideration, as may be seen from the following court cases, which set a new benchmark.

2 *Ingraham v Wright* 430 US 651 (1977).

4.1 Random drug-testing as search and seizure

In *Skinner v Railway Labor Executives Association*,³ the Supreme Court held that urinalysis, the most frequently used means of drug-testing, may be classified as a search under the Fourth Amendment, which protects the right of the people to security against unreasonable search and seizure.

The Supreme Court upheld the drug-testing of railroad employees who were involved in certain types of accidents, emphasising the highly regulated nature of the industry and the need to ensure the safety of the public. The narrow circumstance justifying the testing programme was that the test subjects were a selected group of railroad employees who were all intimately involved in public safety. This minimised the potential for otherwise reprehensible arbitrariness.

In 1995 the Supreme Court reviewed and upheld a school district's drug policy in *Vernonia School District 47J v Acton*,⁴ authorising random urinalysis drug-testing of learners participating in athletics programmes because the impact on privacy interests was negligible. It was found that learners have a lesser expectation of privacy than ordinary people because they undergo physical examinations before being allowed to play in a team and dress in open locker room areas. Moreover, the urinalysis was not overly intrusive. Although the urinalysis may reveal significant information about someone's body, the Court stressed that the information was disclosed to a limited number of individuals and that it was not reported to law enforcement authorities.

It is therefore necessary to scrutinise Americans' legitimate expectations of privacy.

4.2 Learners' legitimate expectations of privacy

It is of great importance to realise that *Skinner v Railway Labor Executives Association* clearly implies that there is a narrow circumstance at school in that groups of learners choose to be involved in competitive extra-curricular activities and thereby implicitly consent to having their privacy invaded.

3 *Skinner v Railway Labor Executives Association* 489 US 602 (1989).

4 *Vernonia School District 47J v Acton* 115 S Ct 2386 (1995).

Moreover, with reference to *Vernonia School District v Acton*, the Supreme Court concluded that learners taking part in athletics had a voluntarily decreased expectation of privacy, based on the communal undressing and the highly regulated nature of athletics.

In the second instance, the Court concluded that the nature and the immediacy of the district's concern over the sharp increase in learners' drug-use, especially among athletes, established a need to conduct the random urinalysis-testing.

In the third instance, the Court concluded that deterring drug-use among learners was as important as concerns related to drug-importation and drug-use among the railroad employees in *Skinner v Railway Labor Executives Association*.

In the fourth instance, the Court concluded that the necessity for the state to act was magnified by the fact that the evil of drug-use was being visited upon learners for whom the state had undertaken a special responsibility of care and direction.

Moreover, in *Board of Education of Independent School District No 92 of Pottawatomie v Earls*,⁵ the Supreme Court, having considered the nature of learners' alleged privacy interest, indicated that public school learners have limited privacy interests due to the need of officials to maintain discipline and safety. Furthermore, learners who participate in extra-curricular activities subject themselves voluntarily to intrusions on their privacy.

In the final instance, the Court emphasised the narrowness of their decision: this search was directed narrowly at learners who were voluntarily participating in athletics.

There can be no doubt that juridical ruling in the USA has been in favour of random drug-testing, emphasising the importance of educators' authority in running their institutions. The situation in South Africa will now be considered.

5 *Board of Education of Independent School District No 92 of Pottawatomie v Earls* 536 US 822 (2002).

5. The South African debate

Internationally, there has been a quantum leap from considering public education as a privilege in the early twentieth century, to the active protection of learners' rights in the late 1960s and early 1970s (McCarthy *et al* 1998: xii). However, on the other hand, judicial developments have not eroded educators' rights. If justified by a legitimate educational interest, reasonable disciplinary regulations, even those impairing learners' protected rights, are upheld. The learners' best interests thus merit attention.

5.1 The best interests of the learner

Section 28(2) of the Constitution (RSA 1996a) emphasises the best interests of the child:

A child's best interests are of paramount importance in every matter concerning the child.

However, the concept of the best interests of the child (learner) has become controversial for two reasons. On the one hand, it has failed to provide a reliable or determinate standard in the past; on the other, it creates the danger of social engineering by allowing the caring professions or social services to determine what is in the best interests of the learner (Currie 1998: 347).

Article 3 of the United Nations Convention on the Rights of the Child (UN 1989) gives useful content to this concept:

3(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

3(2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being taking into consideration the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3(3) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

It thus becomes clear from the United Nations' legal stipulations concerning the best interests of children (learners) that people who take care of learners are responsible for ensuring their well-being. At the same time, learners are responsible for adhering to specific standards that ensure their safety and health (both vulnerable to being harmed by the use of drugs). Moreover, a study by De Wet (2003) revealed that crime is indeed a problem at South African schools. This has been confirmed by media reports entitled "Sex, drugs and roll call at Cape schools" (Anon 2002: 5) and "Kids do sex, porn at school" (Bisetty 2002: 3).

The doctrine of the best interests of the learner should thus not be seen as an absolute right. This may be seen from an exposition of learners' rights to privacy.

5.2 The constitutional right to privacy

In South Africa, the right to privacy is grounded in section 14 of the Constitution (RSA 1996a):

14. Everyone has the right to privacy, which includes the right not to have -
 - (a) their person or home searched;
 - (b) their property searched;
 - (c) their possessions seized; or
 - (d) the privacy of their communications infringed.

Although, at first glance, it seems to be a cut-and-dried fact that random drug-testing of learners on the sportsfield would entail an unlawful infringement of their right to privacy, section 7(3) of the Constitution (Dept of Education 1996a) reminds the reader that this right is subject to the limitations referred to in section 36, generally known as the limitation clause.

Section 36(1) stipulates that the rights in section 2 of the Constitution are not absolute, but may be limited in certain circumstances. The factors to be considered are the following:

- (a) The nature of the right,
- (b) The importance of the purpose of the limitation,
- (c) The nature and extent of the limitation under consideration,
- (d) The relation between the limitation considered and its purpose, and
- (e) The consideration of less restrictive means for achieving the purpose.

In terms of section 36 and based on examples taken from the USA jurisprudence referred to in this discourse, it seems obvious that the nature of the learner's right to privacy, the importance of the purpose of drug-testing, the nature and extent of the drug-testing, and the relation between the drug-testing and its purpose lead to the deduction that the purpose cannot be achieved by any other means.

A pro-active plan should therefore be initiated on the sportsfield, setting the tone for the whole school since student athletes enjoy positions of enhanced prestige and status in the student community (*Todd v Rush County Schools*).⁶

The purpose of the action is that learners on the sportsfield should be exposed to random drug-testing, teaching them the value of self-discipline, and of adhering to worthwhile values and moral judgements of fair play on the sportsfield. Moreover, if need be, they should be assisted in resistance training and any need for professional help should be identified, rescuing offenders instead of expelling them. All in all, a drug-free school environment should be created, with learners becoming aware of the dangers of recreational drugs as well, taking them to higher levels of moral judgement (Dept of Education 2001: 10).

Subordinating the right against searches and seizures to the right to privacy requires of an applicant to show that a search or seizure is an infringement of privacy (De Waal 1998: 211). Moreover, the protection against searches and seizures is triggered only when the right to privacy is invaded.

A two-step analysis must be done to draw a conclusion on the constitutionality of an invasion of privacy (De Waal 1998: 212): the scope of the right must be assessed to determine whether law or conduct has infringed on the right. If there has been an infringement, the question remains as to whether it was justifiable under the limitation clause (section 36) of the Constitution.

5.2.1 Learners' legitimate expectations of privacy

According to De Waal (1998: 212), to claim an infringement, a learner must have a subjective expectation of privacy which society recognises

6 *Todd v Rush County Schools* 133 F 3rd 984 (7th Cir 1998), cert denied, 525 US 824 (1999).

as objectively reasonable. The former implies that learners cannot complain about an infringement of privacy if they have consented explicitly or implicitly to having their privacy invaded. The latter calls for an assessment of which expectations of privacy society would regard as objectively reasonable.

As pointed out by De Waal (1998: 219), an unlawful search and seizure will impair the right to privacy if a reasonable expectation of privacy existed in respect of the searched area and the seized item.

However, the above-mentioned Vernonia verdict has proved that learners on the sportsfield have actually consented to having their privacy invaded.

5.2.2 Searches and seizures

Section 39(1) of the Constitution (RSA 1996a) imported a requirement of objective reasonableness into the limitation of learners' rights, such as would be the case with conducting searches and seizures at schools. This implies that, at school level, officials may seize an item only if, on reasonable grounds, they appear to have evidence of a contravention of any provision of the relevant Act which accords with section 3.8 of the *Guidelines for the code of conduct* (Dept of Education 1998).

If educators were to advocate random drug-testing in a case of well-grounded suspicion of drug-use among learners on the sportsfield, it would seem that section 36(1) of the Constitution (RSA 1996a) would not prevent this testing. However, sportsmen and women are often defaulted for drug abuse relating to attempts at enhancing their performances. In actual fact, sportsmen and women are therefore under suspicion most of the time. It would therefore certainly not be out of line to institute random drug-testing among a school's learners on the sportsfield to pre-empt this dangerous situation.

6. A possible plan of action

In order to promote a secure educational environment, the following recommendations could be made:

- Drug-testing should be addressed with District Offices and Provincial Departments of Education in order to garner information such as the number of learners who have been disciplined for drug abuse.

- Conflicts of interests should be avoided — for instance, existing practices and policies should be reviewed before a new policy is created.
- A pilot programme with flexible administrative action should be created.
- A committee should be established to develop a draft policy with a clear, justifiable rationale and adequate guidelines to protect the rights of learners.
- The policy should be reviewed annually in order to ensure that it complies with new developments in the law and to re-examine basic beliefs about how a school should operate.
- The cost of implementing a drug-testing policy should be investigated.
- Community support for the proposed policy should be gained.
- The Code of Conduct which a School Governing Body must adopt and which is seen as a valid legal document to be adhered to by all learners at the school, should specify the school's policy regarding abstinence from alcohol and drug use. Care must be taken to do this in consultation with learners, parents and educators to ensure shared decision-making.
- Learner discipline should at all times be emphasised as being prospective, rather than retrospective, focusing on guidance, enabling and disciplining, rather than punishing.
- As stipulated in the Preamble to the Constitution (RSA 1996a), the potential of each person should be liberated at school by imparting not only knowledge and skills, but also the values that will make learners responsible citizens and critical individuals, as envisaged by the new OBE Curriculum.

7. Conclusion

There is no uncertainty about the escalation of drug abuse, nor of its disastrous impact on school discipline as a determining facet of safety/security/freedom from care/*Geborgenheit*.

In order to counteract the postmodern rejection of religious principles and norms, it would be expedient to resort to pro-active measures in order to reaffirm school discipline.

In order to investigate the possible invasion of privacy, which could potentially infringe on the constitutional and personal rights of learners, this article has explored the strategy of using drug-testing of learners on the sportsfield from a legal perspective. The American Supreme Court has already indicated that public school learners have limited privacy interests, due to the need of officials to maintain discipline and safety. It has moreover become clear that drug-testing would be justified if South African learners consented to having their privacy invaded. Therefore all that is legally required is a formal agreement to drug-testing on a learner's entry into a school.

This would transfer the emphasis from testing only for performance-enhancing drugs in athletes — which would discriminate against them — to hard recreational drugs, such as dagga, heroine, mandrax, ecstasy and tic in all learners, which would bring equity into the equation.

It is vital that a new policy, and probably further legislation, be developed by the authorities on law and the legislators.

The Minister of Education, Ms Naledi Pandor has publicly announced (Joubert 2006: 2, Merton 2006: 16, Rademeyer 2006: 5) that she is considering random drug-testing at schools, and that those who usually oppose such measures on the presumption that they infringe privacy, should realise that such searches are essential for school discipline (Joubert 2006: 2).

It is an indubitable fact that if the centre of school discipline no longer holds steadfast, things will continue to fall apart.

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