

## Discipline: Impact on access to equal educational opportunities

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## Abstract

*Complying with the founding values (human dignity, equality and freedom) of the South African Constitution is one of the most important challenges of creating and maintaining a safe, disciplined environment where effective teaching and learning can take place. All school principals, educators and school governing bodies – bearing in mind the diversity of South African societies and the vast differences between rural, township and urban schools – have to fulfil their functions as stipulated in the South African Schools Act of 1996.*

*This article focuses on the legal structure within which schools must operate to guarantee equal educational opportunities and create a positive disciplined school where learners and educators not only know what is expected, but also feel secure. Examples from South African case law and newspaper reports indicate that many school principals and their school governing bodies do not acknowledge the supremacy of the Constitution. These officials seem to be ignorant of basic procedures regarding, amongst other things, the suspension and expulsion of learners.*

*This article also considers the effect of different disciplinary actions as reflected by a qualitative study. Coping strategies aimed at ensuring a positive disciplinary climate, resulting in an enhanced culture of teaching and learning, are discussed.*

## Introduction and background

Discipline at school has two very important goals, namely to ensure the safety of staff and learners, and to create an environment conducive to learning and teaching. If certain learners are too scared to attend school because they constantly feel threatened or the behaviour of learners in a school disrupts the normal teaching and learning process, this has a serious impact on learners' access to equal educational opportunities.

Disciplinary problems can be defined as "disruptive behaviour that significantly affects fundamental rights to feel safe, to be treated with respect and to learn" (Mabebe & Prinsloo, 2000, 34.) Although it is a serious problem in this country, disciplinary problems are, as can be expected, not limited to the South African public school system. Van Wyk (2001, 196) points out that the prevalence and gravity of disciplinary problems in schools is a universal concern.

In South Africa principals, educators and school governing bodies face one of the most important challenges in trying to create and maintain a safe, disciplined environment. In terms of the South African Schools Act, Act 84 of 1996 (hereafter Schools Act) the governing body of public schools must adopt a code of conduct for the learners, and may suspend learners after a fair hearing. Section 10 of the Schools Act also prohibits the administering of corporal punishment. According to Squelch (2000, 4) many principals and educators find it increasingly difficult to maintain discipline in schools in the wake of this legislation and regulations that regulate discipline and punishment.

The concepts "discipline" and "punishment" have different meanings although they are sometimes used interchangeably. *Discipline* is about positive behaviour management aimed at promoting appropriate behaviour and developing self-discipline and self-control in learners (Squelch, 2000, 2). *Punishment*, on the other hand, is a facet of discipline that involves actions taken in response to inappropriate behaviour in order to correct or modify behaviour and to restore harmonious relations. It is usually tied to a process of supporting the norms of the majority of learners, parents and educators who determine these norms and values in a school or community. Thus when learners conduct themselves in a way unacceptable to the majority at a school, the majority expects offenders to be punished. Moreover, it is important for learners and parents to know what the consequences of inappropriate behaviour or misconduct are.

Currently, one of the most prominent factors that influence the learning environment in South African schools is the conduct of learners. Andrews and Taylor (1998, 209) point out that

students who misbehave tend to perform poorly in school and tend to be absent frequently. In recent South African research related to school discipline, Moloï (2002, 2) mentions that learners have lost the culture of respect and trust of their educators. Educators are threatened, sworn at, ignored and abused on a daily basis. Fellow learners' safety, security and success in education are often adversely affected by disruptive behaviour or other forms of misconduct by learners.

Findings of the South African Human Rights Commission (Vally & Dalamba, 1999) show that instead of facilitating the healthy development of children and providing them with equal opportunities for education, schools too often are at sites of intolerance and discrimination. In some cases, school officials fail to protect students from harassment or attacks by classmates. In other incidents they themselves participate in harassment or violence against particular young people due to their gender, race, ethnicity, religion, nationality, sexual orientation, social group or other status.

Having discussed the background to discipline in South African schools, this article will focus on the following:

- The legal structure within which schools must operate to guarantee equal educational opportunities.
- The impact of different education scenarios on learners' access to equal educational opportunities, as found in South African case law.
- The effect of different disciplinary issues as reflected by a qualitative study: media reports and a major research project.
- Coping strategies to ensure a positive disciplinary climate, resulting in an enhanced culture of teaching and learning.

## **The legal framework for discipline at school**

South African law has created a new legal context and it is important for principals and educators to know the law relating to school discipline and punishment, and to be familiar with legal concepts, principles and procedures so that they can continue building and maintaining effective schools.

### **The Constitution of the Republic of South Africa, Act 108 of 1996**

Schools operate under the supreme Constitution of the Republic of South Africa, Act 108 of 1996 (hereafter the Constitution) and a number of statutes of which the Schools Act has the biggest impact on school discipline and affords equal access to education. The Bill of Rights (Chapter 2 of the Constitution), as well as the Schools Act, has introduced a new human rights culture in schools. Both these documents reflect the culmination in the field of education, of the political transformation the country has undergone since 1994. It is clear that the supreme law of this country contains specific protection against behaviour that could threaten a person's dignity, safety and fundamental rights.

The provisions of the Constitution that deal directly with education form the cornerstone of all education law. The most prominent of these is section 29 that guarantees the right to basic as well as further education for everyone, which the state, through reasonable measures, must make progressively available and accessible. The provision in section 29 relating to effective access to educational institutions is closely related to the equality provision of section 9 of the Constitution (Maithufi, 1997, 240). The antidiscriminatory provision found in section 9(3) prohibits unfair discrimination on the grounds of, amongst others, race, gender, pregnancy, sexual orientation, religion, culture and language.

One of the goals of discipline is to provide a safe environment for all learners and educators. Sections 12 and 24 of the Bill of Rights are very clear about everyone's right to be free of all forms of violence in a safe environment and section 28(d) stipulates that every child has the

right to be protected from maltreatment, neglect, abuse or degradation. The founding values of the Constitution, namely human dignity, equality and freedom, are even more important when exercising learner discipline in schools.

## The South African Schools Act 84 of 1996

The Schools Act stipulates in section 8(1) and (2) that the school governing body is responsible for adopting a code of conduct for learners through a consultative process. Learners, parents and educators should form part of the consultation process. The code of conduct should be aimed at establishing a disciplined environment that is conducive to effective teaching and learning. Thus the focus is on positive discipline, self-discipline and inculcating a standard of behaviour that is recognised and accepted by civil society.

In terms of section 8(4) of the Schools Act, learners are obliged to comply with the code of conduct. Section 8(5) makes provision for due process, including a fair hearing before a learner may be suspended by the school governing body or expelled by the provincial head of department. Section 9 prescribes two kinds of suspension: either as a correctional measure for a period of up to a week or, pending a decision from the Department of Education, as to whether the learner is to be expelled from the school.

It is clear from the above section in the Schools Act that school governing bodies play a leading role in establishing a disciplined school that guarantees learner safety and provides equal access to education opportunities. To confirm this role, section 19 of the Schools Act determines that provinces, from the funds appropriated for this purpose, must provide introductory and continuous training to all newly elected school governing bodies, in order to promote their effectiveness.

Unfortunately research carried out in the Gauteng Province (Bush, 2004) clearly indicates that very little progress has been made with this proposed training of school governing bodies after seven years. Since the establishment of school governing bodies in 1997 the Department of Education has complied with its legal obligation to provide introductory training for school governing bodies, but this has been done on a one-size-fits-all basis with the main purpose of explaining the basic functions of school governing bodies. Very limited proof was found by Bush to indicate that any form of continuous or follow-up training for school governing bodies has taken place in the past seven years.

Bearing in mind the diversity of South African societies and the vast differences between rural, township and urban schools, one of the most serious challenges South African schools have to deal with is thus to capacitate to fulfil their functions as stipulated in the Schools Act.

## The United Nations Convention on the Rights of the Child

In terms of section 39 of the Constitution, international law must be considered when interpreting the South African Bill of Rights. It is therefore appropriate to have a brief look at the United Nations Convention on the Rights of the Child (UN, 1989) with regard to rights concerning equal access to education.

The above-mentioned Convention provides *all* children must enjoy the right to education.

Article 29 of the Convention specifies goals of education, including:

- the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- the development of respect for human rights and fundamental freedoms;
- the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living; and

- the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendships among all peoples, ethnic, national and religious groups and persons of indigenous origin.

It is clear from the above international document that access to equal educational opportunities is a universal concern.

## Case law

The practical application of the above-mentioned legal principles becomes clear from an analysis of relevant case law.

### Freedom of expression / human dignity

In *Danielle Antonie v Governing Body, The Settlers High School & Head Western Cape Education Department* (2002) (4) SA 738 a learner challenged the school governing body's decision to suspend her from school for five school days. Having converted to Rastafarianism, Danielle wore a dreadlock hairstyle and a black cap. The school governing body charged the fifteen-year-old Grade 10 learner with serious misconduct (and found her guilty) of defiance of the school code of conduct that required that "the hair must be tied up if below the collar". Even though the applicant was not in class when she filed suit, her lawyer argued that the suspension had brought about a blot on her name and a negative bearing on her permanent record. The court ruled in her favour and set the suspension aside, agreeing that the punishment could have had both a negative effect on her development and her future career, as well as infringed her dignity and self-esteem. The court referred to the official guidelines for adopting a learner code of conduct<sup>1</sup> as a footing for its judgement.

Apart from the question of human dignity, the court commented on the application of the right to freedom of expression, explaining that it is a constitutional right that has an effect on a school's code of conduct. The court decided that "freedom of expression" includes aspects such as the freedom of choosing clothing and hairstyles.

In deciding what limits are reasonable with regard to school uniforms and learners' hairstyles, our courts might well borrow the United States' (US) "substantial disruption test": school authorities must show that the disruption that is likely to emanate from the free expression, is substantial. A simple fear that disruption might occur is not sufficient (*Tinker v Des Moines Independent Community School* (1969) 393 US 503, 89 SCT 733). The test provides a means for balancing the individual's right to free expression against the collective rights of learners to an orderly school environment. In this regard educators will no doubt have considerable influence in deciding what constitutes an "orderly school environment" and what limits are reasonable when applying due process. However, in terms of the "substantial disruption test", restricting hairstyles and hair length may prove more difficult. Although hair rules are considered a necessary part of engendering a positive school image, self-discipline and ensuring a degree of conformity, it is difficult to demonstrate that non-conformity will result in disorderly and disruptive behaviour in the school. For instance, in the US the circuit courts of appeal have upheld the rights of learners to wear their hair as they please. In one case in which a school policy that prohibited "unusually long hair" was declared unconstitutional, the First Circuit Court of Appeals argued that there was "no inherent reason why decency, decorum, or good conduct" requires a boy to wear his hair short. Nor does

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<sup>1</sup> Section 4.3 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners promulgated in terms of the South African Schools Act (1996) determines that "every learner has inherent dignity and has the right to have his/her human dignity respected".

compelled conformity to conventional standards of appearance seem a justifiable part of the educational process (*Richards v Thurston*, 424 F 2d 1281 (1<sup>st</sup> Gr 1970)).

## Impact on access to equal educational opportunities

The phrase "freedom of expression" is not limited to the verbalisation of mere words, but includes such aspects such as the freedom of choosing clothing and hairstyles. This case might have grave implications both on the use of South African schools to prescribe uniforms and learners' rights concerning freedom of expression.

There are conflicting views on whether or not learners' hair length and styles deserve constitutional protection on the basis of freedom of expression. While there may be a need to adopt a more flexible and sensible approach to the issue of hair, schools may impose rules restricting hairstyles. However, Squelch (2000, 66-67) points out that the courts may well overturn school rules and regulations that are vague, unreasonable and not sufficiently connected to the needs and interests of the school.

## The right to due process

In *High School Vryburg and the Governing Body of High School Vryburg v The Department of Education of the North West Province* (CA 185/99), Andrew Babeile, a Grade 9 learner at Vryburg High School, appeared before the governing body on a charge of assault with the intent to do grievous bodily harm. It was alleged that on 17 February 1999, during a class break, Babeile had stabbed another learner with a pair of scissors. It was also alleged that the learner he stabbed had done nothing to provoke him. Babeile appeared in court on 19 February 1999 and was granted R500 bail. He returned to school on 22 February, but was told to go home because he had been suspended. He was back at school on 24 February after 800 members of the African National Congress (ANC) aligned Congress of South African Students (COSAS) threatened to march to the school to demand his reinstatement. The school governing body held a disciplinary hearing and Babeile was suspended again pending a decision from the Department of Education to expel him. A tussle occurred between the school governing body, the education department and pressure groups. Eventually, Judge Khumalo of the High Court examined the proceedings of the disciplinary hearing against Babeile and declared them null and void as there had been no fair hearing. He then ordered a hearing *de novo*. The implication of this judgement was that Babeile could not be expelled as requested by the school (section 9 of the Schools Act). The judgement was based mainly on the fact that Babeile's parents had not been notified, and that the disciplinary committee did not apply the rules of natural justice.

Babeile's case was then moved to a criminal court. In May 2002 he was sentenced to five years imprisonment for attempted murder, of which two years were suspended. The Vryburg High School case opened up a serious debate, mainly due to the fact that Babeile was black and the other learner white. When Babeile had served one year of his sentence, the ANC Youth League protested outside the High Court and demanded that he be allowed to return to school. Babeile appealed to the President for clemency and was granted this after he had served almost two years in prison.

The following typical problems that limit access to equal educational opportunities come to the fore when examining the Babeile case:

- A lack of setting clear expectations for all

Access to equal educational opportunities can only be achieved if every learner and educator at every school has a clear understanding of the corresponding duties that the rights of human dignity, equality and freedom place upon them.

- A lack of establishing levels of acceptable behaviour

It is not clear from the Babeile case whether Vryburg High School's Code of Conduct addressed the issue of unacceptable behaviour such as bullying, carrying or using objects, or the issue of diversity.

- A lack of communication of consequences of unacceptable behaviour

School rules, especially those related to acceptable behaviour and the consequences of breaking them, should be clearly specified and communicated to staff, learners and parents by means of a copy of the Code of Conduct, newsletters, and discussions during assemblies and in classes. Once the rules have been communicated, fair and consistent enforcement helps to maintain learners' respect for the school's disciplinary system.

- A lack of knowledge when implementing due process

Judge Khumalo of the High Court dismissed the application of Vryburg High School and its Governing Body because Babeile's disciplinary hearing had not been conducted according to the due process principle in section 8(5) of the Schools Act.

## Qualitative study

Apart from an overview of the legal structure and relevant case law, a qualitative study concerning discipline at school was conducted. This study was based on an analysis of media reports and qualitative data drawn from a major research project.

## Media reports

Education departments have clear policies stating that pregnant girls may not be expelled by school governing bodies. However, various newspaper reports show that governing bodies refuse to allow pregnant girls to attend their schools because that is what the communities expect from them. According to these newspapers, the departments of education reacted strongly against the decisions of the school governing bodies.

Newspaper reports indicate that the illegal suspension of pregnant learners is encountered countrywide, denying some learners access to educational opportunities. The following are examples taken from recent newspaper articles:

- *"Pregnant pupil expelled"* (George, 2004, 22) The school governing body decided that the pupil was setting a bad example to other learners.
- *"Teen moms denied an education"* (Krost, 2001, 4). This article reported on five different learners who were sent to special schools for pregnant girls and who were later on refused readmittance to their previous schools after delivering their babies.
- *The Star* (Kekana, 2002, 12) reported on girls expelled by school governing bodies and refused readmittance to their previous schools. *"Pregnant women can't be pupils too"*.
- In the same year educators blamed teenage pregnancies for absenteeism and poor discipline, and refused to teach until the parents had committed themselves to solving the problems (*"Fed up teachers send pupils home"*, Ndada, 2001, 12).

Moreover government grants paid to needy teenage mothers aggravate the problem. The Commission on Gender Equality (Anon, 2002, 5) blames the government for seemingly encouraging teenage pregnancies: child support grants are paid out to these mothers who cannot afford to support their babies.

Although the Department of Education published the notice guidelines for the consideration of school governing bodies in adopting a code of conduct for learners (National Department of Education, 1998), the above-mentioned newspaper reports indicate that many school principals and their school governing bodies do not acknowledge the supremacy of the

Constitution. These officials also seem to be ignorant of basic procedures regarding suspension and expulsion.

Another example of ignorant school officials relates to financial matters and school uniforms. *The Herald* (Matyu, 2003, 2) reports that orphans are turned away from schools because of unpaid school fees and lack of school uniforms. The same newspaper report referred to the Actuarial Society of South Africa that estimated that there were about 280 000 maternal orphans – children who had lost their mothers in 2003. Under the heading "Orphaned and excluded" *The Teacher* (Turkington, 2002, 13) reported that schools under pressure to finance themselves excluded learners who could not pay. This ignorance of school officials leads to illegally denying learners access to educational opportunities. There is a clear indication that school principals and school governing bodies do not acknowledge the supremacy of the Constitution and that some departmental officials are also ignorant of the basic disciplinary procedures that protect learners' equal educational opportunities.

## Empirical study

The qualitative research extended to a major research project conducted by researchers from the North-West University.

### *Coping strategies to ensure a positive disciplinary climate*

As indicated previously, learner misconduct in South African public schools creates a negative learning climate in many schools with the result that access to quality education cannot be ensured for those learners who want to focus on their studies. Contact with various schools and individual educators pointed out numerous less serious infringements of the codes of conduct: dishonesty, homework not done, continuous talking in class while an educator is explaining concepts and refusal to accept disciplinary measures. This ongoing disruptive behaviour of a number of learners per class hampers the education process to such an extent that effective learning and teaching cannot take place, despite the educators' diligent and conscientious efforts in this regard. Parallel to this, serious forms of misconduct such as vandalism, bullying, different forms of abuse of educators and fellow learners, drug abuse, violence and rape cause serious concern regarding school discipline. This conduct led to major research being conducted by a group of researchers from the Potchefstroom Campus of the North-West University. In addition to a questionnaire survey, a group of field workers interviewed principals, other educators and learners.

This section of the article is devoted to an exposition of some of the most important findings of the research project that, in the qualitative phase, took the researchers to the Eastern and Western Cape, the Free State, the North-West Province, as well as England and Australia. Contributions from educationists from Canada and Africa were also obtained through interviews.

The project on learner discipline consisted of quantitative and qualitative research, and both methods were utilised in a South African phase and an international phase. This article will report only on the outcomes of the qualitative data gathered in South Africa. One hundred and four schools, including schools from all provinces in South Africa, volunteered to take part in the project. A group of researchers visited fifteen of these schools. Interviews with educators and focus group sessions with learners provided a broad perspective on most matters relating to this theme. Informal observations and casual, unstructured discussions at some of the schools also served as an additional source of perspectives and insights. Most of the interviews and focus group sessions were conducted and later transcribed by well-trained undergraduate students in their final year of study. In one focus group session four educators from a diverse

combination of suburban and rural schools, also representing different cultures, provided extremely valuable insights for this study.

### *Preventative disciplinary methods*

Numerous disciplinary measures are currently implemented by the respondents. The purpose of this empirical study was not to gather accurate statistics regarding learner misconduct or the implementation of disciplinary methods. Interviews and other sources of qualitative data revealed, however, that about forty per cent of schools still tend to utilise a punitive approach. About sixty per cent have adopted positive, proactive disciplinary methods. In many schools a combination of these approaches is reported, while this also differ from one educator to the next in the same school.

The creation of a code of conduct for learners, as prescribed in section 8 of the Schools Act, is the most obvious preventative measure. Maree (2000, 8) suggests the drafting of written and workable school codes and rules as his first and foremost recommendation. This will ensure that learners know exactly what kind of conduct is expected of them. Because the existence of a code of conduct obviously does not guarantee proper conduct, respondents also suggested many other preventative measures, such as daily school programme or activities that are effectively structured so that learners know what to expect and feel secure and a strict class routine as an effective proactive method, especially in the lower primary classes. The direct involvement of different role-players is one measure that has proved to be effective. One example of this is the buddy system in which learners are paired off in order to take responsibility for each other. One school reported that positive, senior learners take responsibility for younger learners with behavioural problems successfully.

From this research it becomes clear that parents to a great extent hold the key to the establishment and upholding of school discipline. As a crucially important partner of the educator, the parent should set the basic principles of discipline in the upbringing of the child. Respondents report that learners who come from ill-disciplined families cause the most problems at school.

The development of ownership and pride amongst learners is one of the outstanding proactive measures. To succeed in this, school traditions and other elements that distinguish one school from its neighbour, should be utilised and developed to the utmost. As one principal put it: "Learners are encouraged to take immense pride in their appearance and manners, and we jealously guard the reputation that has been built up in the community." Within the school this principle should also be applied: the stronger sense of belonging in smaller groups may be utilised to preserve discipline. Class groups may develop their own codes of conduct (officially or unofficially) and may be rewarded or reprimanded in the group and as a group. This approach stands out as one of the most effective preventative measures because of the internal motivation in the group to act responsibly.

### *A value-driven approach*

The qualitative research has shown that a value-driven approach towards discipline can be utilised with great success. The development of learners' self-discipline stands out as the single most prominent ideal amongst educators. The lack of self-discipline manifests itself in poor class attendance, especially in the early morning, with learners only turning up after one or more periods have passed. As part of the ideal of self-discipline, the value of responsibility can be added, according to which learners are encouraged to act responsibly in their relationships and school activities.

The research project has shown that the absence of respect can be regarded as a crucial element in most disciplinary cases. This is the main reason for the deterioration of previously

well-disciplined individuals, schools and communities. Some learners and many educators mentioned that this deterioration stems from values at home where parents do not show respect towards people in authority in the broader community.

Finally, an extremely important element of any value-driven educational approach is that the learners should experience that the values are being demonstrated in the lives and attitudes of their educators and in the approach of the school towards, amongst others, discipline. Consistency is also very important. Learners at a specific school, for instance, complained that awards were regularly handed out for academic performance, but no acknowledgement was given for positive, disciplined behaviour.

## Conclusion

The Bill of Rights and the founding values enshrined in the Constitution (human dignity, equality and freedom) represent ideals and goals to be pursued, and set down norms against which the quality of life of all South Africans can be measured. A broad and disparate range of role players have an essential role to play in not only affording South Africans access to fundamental human rights, but also seeing to it that these rights are implemented.

In a disciplined school every learner, educator, and member of the school governing body and parent should take careful note of the obligations that the founding norms and values enshrined in the Bill of Rights place upon them.

While positive school rules are imperative for effective schools, it is also necessary to have both corrective and punitive discipline for those who break the rules and disrupt school activities. When may suspension or expulsion be deemed corrective discipline? Should this only be applied to learners who are guilty of extreme forms of misconduct such as physical violence? What about less serious offences such as vandalism, disrespect or verbal abuse?

With an increasing emphasis on the protection of fundamental human rights and the need to protect children against harsh and cruel treatment, attitudes towards discipline and punishment must change. Denying learners access to equal educational opportunities should be used by schools as the last resort to discipline learners.

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