

Specialist International Comparative Conference on Equal Educational Opportunities: 50th Anniversary of Brown v Board of Education and 10th Anniversary of South Africa's New Democracy

Krugersdorp 22-24 April 2004

Discipline: impact on access to equal educational opportunities

Rika Joubert (UP), Elda de Waal (PU for CHE), JP Rossouw (PU for CHE)

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, it 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" (Mabeba & 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. According to Squelch (2000) many principals and educators find it increasingly difficult to maintain discipline in schools in the wake of new 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 punishment for the offenders. Moreover, it is important for learners and parents to know the consequences of inappropriate behaviour or misconduct.

Currently, one of the most prominent factors that influence the learning environment in South African schools, is the conduct of learners. Andrews and Taylor (1998:1) point out that students who misbehave tend to perform poorly in school and tend to be absent frequently from school. In recent South African research related to school discipline, Moloi (2002:2) mentions that learners have lost a culture of respect and trust towards their educators. 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 (1999)* and the Human Rights Watch (2001)* show that instead of facilitating the healthy development of children and providing them with equal opportunities for education, schools are too often 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 at South African schools, this paper will focus on the following aspects:

- 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; SA 1996a) and a number of statutes of which the South African Schools Act, Act 84 of 1996 (hereafter Schools Act; SA, 1996b) has the biggest impact on school discipline and equal access to education. The *Bill of Fundamental Rights* (chapter 2 of the Constitution), as well as the Schools Act, has created a new human rights culture in schools. Both of these documents represent the culmination, in the field of education, of the political transformation that the country has undergone since 1994. It is clear that the supreme law of this country contains specific protections against behaviour that would 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 constitutional provisions 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 anti-discriminatory 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. Section 12 and 24 of the Bill of Fundamental 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, such as human dignity, equality and freedom, are even more important.

The South African Schools Act, Act 84 of 1996

The Schools Act stipulates in section 8(1) and 8(2) that the School Governing Body is responsible for adopting a Code of Conduct for learners through a consultative 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 such a Code of Conduct. Section 8(5) and 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 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 serious role in establishing a disciplined school that guarantees learner safety and provides equal access to education opportunities. To confirm this serious 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.

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 for the School Governing Bodies to fulfil their functions as stipulated in the Schools Act.

United Nations Convention on the Rights of the Child (UN, 1989)

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 on the Rights of the Child establishes that *all* children enjoy the right to an 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 above-mentioned legal principles becomes very 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 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) for her 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 submerge her dignity and self-esteem. The court referred to the official guidelines for adopting a learner Code of Conduct¹ 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 concerning school uniforms and learners' hairstyles, our courts might well borrow the USA "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 S.C.T. 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.

However, in terms of the "substantial disruption test", restricting hairstyles and 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 non-conformity will result in disorderly and disruptive behaviour in the school. For instance, in the USA 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 compelled conformity to

¹ 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".

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

Impact on access to equal educational opportunities

The phrase “freedom of expression” is not limited to the verbalization 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 was a Grade 9 learner at Vryburg High School. He appeared before the School 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 implications of this judgement was that Babeile could not be expelled as requested by the school (see

section 9 of the Schools Act). The judgement was based mainly of the fact that Babeile's parents were not notified, and that the Disciplinary Committee did not apply the rules of natural justice.

Babeile's case 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. Vryburg High School v Babeile 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 Cape 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.

Impact on access to equal educational opportunities

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 balancing duties that the founding values of human dignity, equality and freedom place upon everyone.

- A lack of establishing levels of unacceptable 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 for 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 such as 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 was not conducted according to the due process principle in section 8(5) of the Schools Act (SA, 1996a).

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 very clear policies stating that pregnant girls may not be expelled by SGBs, however, various newspaper reports show that the governing bodies refuse to allow pregnant girls to attend their schools because it 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 country-wide, denying some learners access to educational opportunities.

In a recent article, *“Pregnant pupil expelled”* (Anon, 2004:?), a nineteen year-old-girl was asked to leave school. The School Governing Body decided that she was setting a bad example to other learners.

In 2001 another article, *“Teen moms denied an education”* (Anon, 2001:?), reported on five different learners who were sent to special schools for pregnant girls and who were later on refused re-admittance to their previous schools.

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”*, Anon, 2001:?).

Moreover, government grants paid to needy teenage mothers aggravate the problem. The Commission on Gender Equality (CGE, jaar: ?) blames the Government for seemingly encouraging teenage pregnancies: child support grants are paid out to these mothers who do not afford to maintain their babies.

Although the Department of Education published guidelines in 1998 for the consideration of School Governing Bodies in adopting a Code of Conduct for learners (BRONVERWYSING? section 11), 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 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 (Anon, 2003:?) reports that orphans are turned away from schools because of unpaid school fees and lack of school uniforms. The Actuarial Society of South Africa estimates that there are about 280 000 maternal orphans – children who have lost their mothers (Anon, 2002:?).

In so-doing, the ignorance of school officials leads to illegally denying learners access to educational opportunities.

Empirical study

The qualitative research extended to the following major research project.

Coping strategies to ensure a positive disciplinary climate

As indicated previously, learner misconduct in South African public schools creates such a negative learning climate in many schools that access to quality education cannot be ensured to those learners who want to focus on their studies.

This necessitated a major research project that was 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 part of the paper will be devoted to an exposition on 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 to England and Australia. Contributions from educationists from Canada and Africa were also obtained through interviews.

The project on learner discipline consisted of quantitative as well as qualitative research, and both methods were utilised in a South African phase and an international phase. This paper 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 of most aspects related 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 pre-graduate 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. Although some schools still tend to utilise a punitive approach, many have adopted positive, proactive disciplinary methods.

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 drawing up 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. Because the existence of a Code of Conduct obviously does not guarantee proper conduct, respondents also suggested many other preventative measures.

The daily school programme or activities are effectively structured so that learners know what to expect and feel secure. A strict class routine is a very effective proactive method in especially the lower primary classes.

The direct involvement of different role-players is one measure that has proved effective. One example 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 a younger learner with behavioural problems successfully.

From this research it becomes clear that parents hold, to a great extent, 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 their 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 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 their 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 wider 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 Fundamental Rights and the founding values (human dignity, equality and freedom) enshrined in the Constitution represent not only ideals and goals to be pursued, but also norms against which the quality of life of all South Africans and access to rights fundamental to their existence can be measured. It is easy for the rights in the Bill of Fundamental Rights to become paper rights and a wide and disparate range of role players all have an essential role to play in affording South Africans not only access to human rights, but also seeing to it that these rights are implemented properly.

In a disciplined school every learner, educator, member of the School Governing Body and parent should take careful notice of the obligations that the founding norms and values, the rights and the duties in the Bill of Fundamental Rights place upon everyone.

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

With an increasing emphasis on the protection of basic human rights and on 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 the last resort that schools should use to discipline learners.

REFERENCES

ANDREWS, S.P. & TAYLOR, P.B. 1998. Evaluation of an alternative discipline program. *High School Journal*, 81(4):209, April / May.

Danielle Antonie v Governing Body, The Settlers High School & Head Western Cape Education Department (2002) (4) (SA 738)

- MABEBA, M.Z. & PRINSLOO, E. 2000. Perceptions of discipline and ensuing discipline problems in secondary education. *SA Journal of Education*, 20(1):34-41, Febr.
- MAITHUFI, I.P. 1997. Children, young persons and school law. (In Robinson, J.A. 1997. The law of children and young persons in South Africa. Durban: Butterworths.
- MAREE, K. 2000. What cannot be endured must be cured: untying the Gordian knot of violence in South African Schools. *Acta Criminologica*, 13(3):1-13.
- MOLOI, P.I.M. 2002. The role of the parents in discipline as an aspect of school safety. Johannesburg : RAU. (M.Ed. mini-dissertation.)
- Richards v Thurston*, 424 F 2d 1281 (1st Gr. 1970
- SA, see South Africa
- South Africa. 1996a. 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.
- South Africa. 1996b. South African Schools Act No. 84 of 1996. Government Gazette, Vol. 378 No 17678. (18 December 1996). Pretoria: Government Printer.
- South Africa 1999. South African Human Rights Commission.....
- South Africa. 2001. Human Rights Watch.....
- Squelch, JM. 2000. Discipline. Pretoria: CELP.
- Tinker v Des Moines Independent Community School* (1969) 393 US 503, 89 S.C.T. 733
- VAN WYK, N. 2001. Perceptions and practices of discipline in urban black schools in South Africa. *SA Journal of Education*. 21(3):195-201, August.