

## How safe are South African schools?

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After 1994, South Africa passed several pieces of legislation protecting the rights and safety of learners in South African schools. These Acts are all (to a larger or smaller extent) concerned with protecting the physical and psychological integrity of learners in schools. Some shocking reports have indicated that children's rights are neither promoted nor protected in certain schools. The purpose in this study was to determine the relevant legal framework and the current situation with regard to school safety.

### Introduction

After 1994, when South Africa stepped out of isolation and adopted a new, democratic constitution guaranteeing the right to human dignity, equality and freedom, to basic education and to an environment that is not harmful to the health or well-being of all citizens, it followed the example of most other democracies by passing new legislation or using current legislation to protect the rights and safety of learners. Provision is made for protecting the rights of children and the safety of learners in the Child Care Act, 1983 (Act 74 of 1983); the Domestic Violence Act, 1998 (Act 116 of 1998); the South African Schools Act, 1996 (Act 84 of 1996), and the Occupational Health and Safety Act, 1993 (Act 85 of 1993). These Acts are all (to a smaller or larger extent) concerned with protecting the physical and psychological integrity of learners in South African schools.

South Africa is a signatory to the United Nations' Convention on the Rights of the Child, 1989, which compels the country to pass laws and take social, educational and administrative measures to "protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".

The African Charter on the Rights and Welfare of the Child commits its member states to these same measures and adds that they must take steps to ensure that a child "who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child". South Africa also ratified this regional convention.

### Rationale

The following shocking reports in local newspapers are, however, in stark contradiction to South Africa's ratification of the above Charter. From the headlines it seems if children's rights are neither promoted nor protected in certain schools:

**Horror school shooting with police service pistol of 14-year old at a Pretoria private school.** Places of Safety. (Sowetan, 23 May 2003).

**Schools sliding into anarchy** ... drugs, firearms and other dangerous weapons and rapes, robberies and corruption are plaguing schools like cancer ... (Daily News, Bissety, Krisendra, 20 June 2003).

**Ominous message in school rape case.** On 15 November 2002 a shocking case was reported in which a 13-year-old boy stands accused with five Grade 3 learners — aged between eight and ten — of raping an eight-year-old girl in a classroom (The Herald, 16 November 2002).

**Sexual abuse:** ... schools unable to cope. (City Press, Mboyane, Sphiwe, 7 July 2002).

**Randy teachers expelled** ... 133 cases of misconduct involving teachers in North West. The culprits included school principals who have been dismissed for fraud, misappropriation of school funds and sexual harassing of girls. Thirteen teachers were expelled for having sexual relationships with pupils ... (Sowetan, Mfoloe, Matshube, 25 March 2003).

**Corporal punishment: right versus might.** The recent torture of a Mpumalanga schoolboy by a teacher who suspected he had stolen her handbag has again catapulted the issue into the spotlight. The "unruly" 13-year-old was repeatedly burnt with cigarettes, and had molten plastic dripped over his genitals and naked body. (Star, 21 July 2002).

**Campaign targeting sexual violence to be launched at schools.** One in three children will be sexually abused before they turn 18. This stark statistic was provided in Pretoria yesterday when the Department of Education announced a campaign aimed at eradicating gender-based violence. (Star, Govender, Peroshni, 29 May 2002).

### Research question

Schools are supposed to be safe places where effective teaching and learning can take place in an environment that is safe for learners, educators, and non-educators. However, if one considers the incidence of murder, violence, rape, sexual abuse and assault in schools reported by the media, the obvious question that comes to mind is: How safe are South African schools?

### Research aims

The purpose in this study was to

- determine the legal framework of safety in South African schools;
- examine the current situation with regard to school safety; and
- determine the right of learners to a safe school environment and the obligations of educators and governors to protect those rights.

### Legal framework for safe schools

A safe school may be defined as one that is free of danger and where there is an absence of possible harm; a place in which non-educators, educators and learners may work, teach and learn without fear of ridicule, intimidation, harassment, humiliation, or violence. A safe school is therefore a healthy school in that it is physically and psychologically safe. Indicators of safe schools include the presence of certain physical features such as secure walls, fencing and gates; buildings that are in a good state of repair; and well-maintained school grounds. Safe schools are further characterised by good discipline, a culture conducive to teaching and learning, professional educator conduct, good governance and management practices, and an absence (or low level) of crime and violence (Squelch, 2001:137-149).

The legal rules dealing with safety in schools are derived from the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), as well as from national legislation, South African case law, and common law.

### The South African Constitution and Bill of Rights

Chapter 2 of the Constitution of South Africa, 1996 (Act 108 of 1996) (the Bill of Rights) contains various rights that are applicable to a safe school environment, that is, one that is conducive to effective teaching and learning. Figure 1 provides a summary of the legal framework for safe schools in South Africa that has been set up in an attempt to ensure a safe school environment. It is defined by human rights, national legislation, common law and school policy, all of which apply when

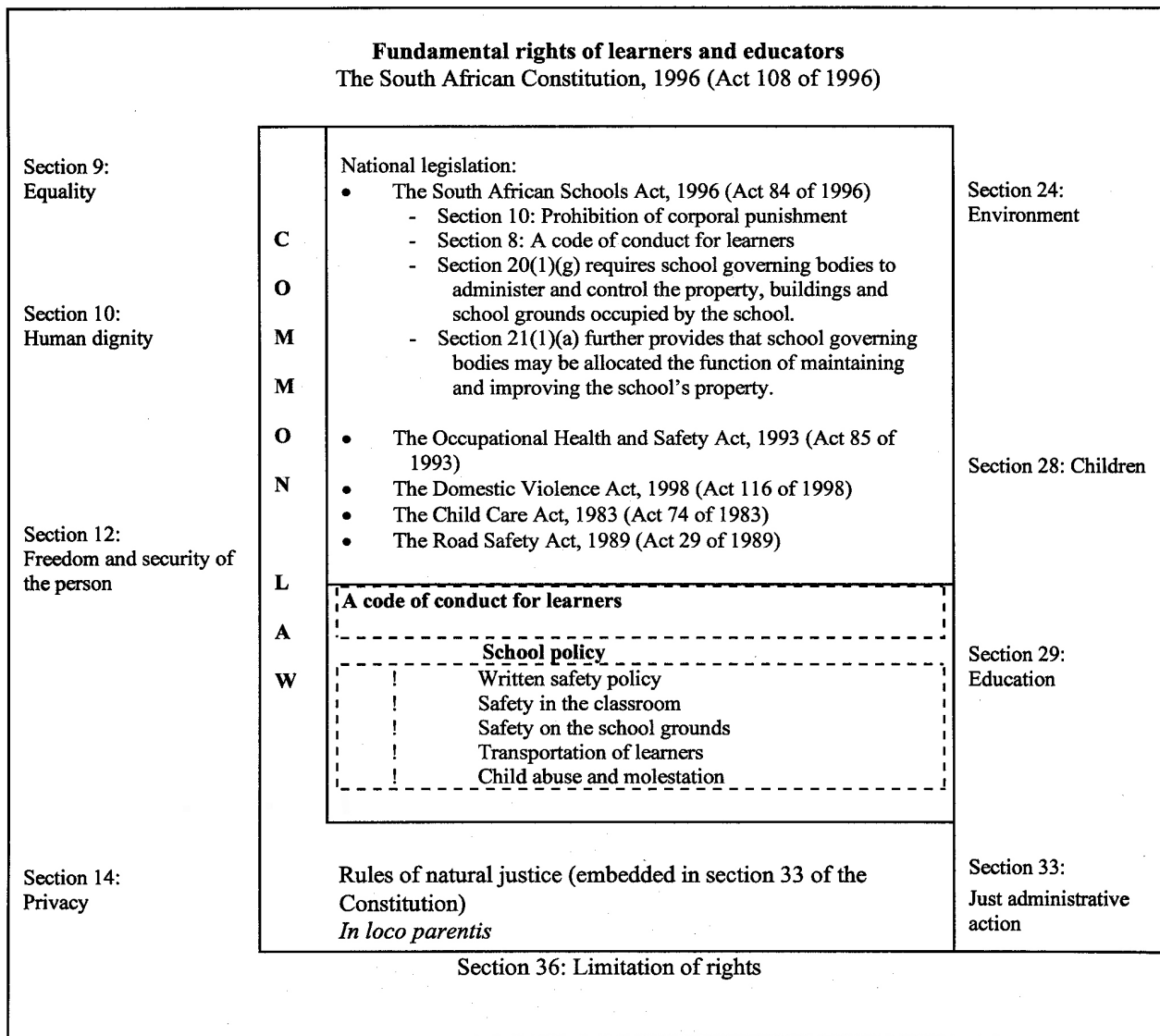


Figure 1 The legal framework for school safety in South Africa (adapted from Joubert & Prinsloo, 2001:96)

the fundamental rights of the groups and individuals concerned are to be protected.

The purpose of any school is to ensure effective teaching and learning and therefore the right to education (section 29 of the Constitution) is very important. In practice this also means that, in terms of section 9 of the Constitution (the equality clause), everyone has the right to equal access to education and the right not to be unfairly discriminated against on any of the grounds listed in the equality clause. South African educators have an important duty towards the safety and the protection of learners, not only in terms of the Constitution and other legislation, but also in terms of their *in loco parentis* status (i.e. the educator "acting as parent"). All these duties include responsibilities for the physical and psychological well-being of the learner (Bray, 2000:66). The *in loco parentis* status of educators furthermore forces schools to foresee the potential dangers to which learners may be exposed at schools and to act pro-actively by taking steps in the form of safety measures or policy to protect learners from harm. In the *Minister of Education and Another v Wynkwardt* 2004(3) SA 577, Mr Wynkwardt had instituted action on behalf of his son, R, who had allegedly been seriously injured when he fell off an unused, locked gate at his school. The trial Court found that the school was negligent, whereupon the Department of Education and the school

appealed against the decision. The question for consideration was whether the Minister of Education and the school were liable for the injuries sustained by R. Judge Desai, however, found:

- The degree of supervision required depends on the risks to which the learners are exposed.
- The degree of supervision to be exercised in a particular case would depend upon a great variety of circumstances. It appears from the authorities referred to herein that a learner of R's age (Grade 3) needs not to be kept under continuous supervision on the school grounds unless there is some hazardous feature present.
- To guard against the possibility of a single learner slipping away, climbing over a gate or fence and suffering injuries would require that each learner should be kept under continuous supervision.
- It would not be reasonable to expect the school to have taken such steps in this instance. In the result, the appeal succeeds with costs.

In a safe school environment every learner should at least have the right to human dignity (section 10 of the Constitution), the right to freedom and security of the person (section 12 of the Constitution) and the right to privacy (section 14 of the Constitution). In other words, the dignity of learners should be respected and protected, they should be

free from any form of violence and never be treated or punished in a cruel or inhuman or degrading way, and their right to privacy should be respected.

The following provisions of the South African Schools Act, 1996 (Act 84 of 1996) are good examples of how national legislation is fulfilling its constitutional duty to ensure a safe school environment:

- Corporal punishment is prohibited in terms of section 10 of the South African Schools Act.
- Section 8(1) places an obligation on school governing bodies to draw up a code of conduct for learners after consultation with learners, parents and educators.
- In terms of section 8(2), the code of conduct must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.
- Section 8(4) places a legal obligation on learners to comply with the code of conduct of the school they attend.
- In terms of section 8(5) a code of conduct must make provision for due process (legal process) to safeguard the interests of the learner and any other party involved in disciplinary proceedings. This implies that the disciplinary committee must take certain procedural steps in accordance with the rules of natural justice (e.g. the *audi alterem partem* rule or "listen to the other side") before taking action against a learner (Joubert & Prinsloo, 2000: 179). A learner is furthermore entitled to a fair and unbiased hearing.

The *rules of natural justice* are also embedded in section 33 of the Constitution — everyone has the right to administrative action that is lawful, reasonable and procedurally fair. This means that a learner's right to education may only be limited in terms of a law of general application (i.e. in terms of the code of conduct of the school attended by the learner) and the disciplinary actions must comply with the requirements of substantive and procedural fairness (i.e. the action must be taken for a valid (lawful) reason and the procedures taken must be reasonable, lawful and fair).

The purpose of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) is to ensure a safe and healthy work environment. Certain provisions of the Act are also applicable to schools so as to ensure the physical safety of learners while they are using electrical or other dangerous equipment in workshops or craft centres, or while they find themselves in potentially dangerous situations in the school buildings or on the school grounds where learners, educators or even parents could be injured.

The purpose of the Child Care Act, 1983 (Act 74 of 1983), on the other hand, is to fulfil its constitutional duty, namely to protect the right of every child as defined in section 28 of the Constitution. The provisions of this Act and those of the Domestic Violence Act, 1998 (Act 116 of 1998), place a legal obligation on educators to report any form of maltreatment, neglect, abuse or degradation of children to social welfare or the child protection unit of the police.

In addition, in terms of the Road Safety Act, 1989 (Act 29 of 1989) educators have an obligation to ensure that learners are transported safely.

It is furthermore important to remember that no right is absolute and, under certain circumstances, a right may be limited in terms of section 36 of the Constitution. In practice this means that when an individual learner is infringing on the right to a safe school environment of all the other learners at a school (e.g. selling drugs to younger learners), such an individual's right to education may be limited. The rights that follow will be discussed briefly in order to demonstrate the relationship between the fundamental right in question and school safety.

### Section 9: The equality principle

Section 9, known as the equality principle, is a key provision of the Bill of Rights and underlies many other rights entrenched in the Constitution. The right to equality protects the equal worth of people and any law or conduct that violates people's equal worth is prohibited by

section 9. The provision recognises that people may be treated differently for very valid reasons and therefore does not prohibit all discrimination (differentiation) — only unfair discrimination (Malherbe & Beckmann, 2003:35).

Unfair discrimination has been analysed and defined by the Constitutional Court as "treating persons differently in a way which impairs their fundamental dignity as human beings who are inherently equal in dignity". Thus unfair discrimination is regarded as unequal treatment that impairs human dignity or affects a person in a comparably serious manner (Prinsloo v Van der Linde 1997 (6) BCLR 759 (CC)).

The equality principle impacts in different ways on education and relates directly to equal access to education and educational facilities. Apart from racial, gender, disability and other forms of discrimination, age limitations and sexual harassment are also contentious educational issues that relate to the equality principle (Malherbe & Beckmann, 2003:35-37).

The following research study gives an example of how the unequal treatment of girls in many South African schools has a negative impact on their right to human dignity and education. A study conducted by the Medical Research Council (2001) on the sexual harassment of girls in South African schools showed that many young girls aged 15 and below have been coerced or persuaded to have sex against their will. Of the women who said that they had been raped as a child, 32.8% said that they were raped by their educators (Human Rights Watch, 2001).

Another research study by Human Rights Watch, which looked directly at the incidence of sexual violence against girls in South African schools, found that many girls experience violence in schools. They are raped, sexually abused, sexually harassed and assaulted at school by male learners and educators. The report noted that,

although girls in South Africa have better access to school than their counterparts in other sub-Saharan African states, they are confronted with levels of sexual violence and sexual harassment in schools that impede their access to education on equal terms with male students.

The high incidence of sexual harassment against girl learners compared with boys may be attributed to the patriarchal attitudes in most societies.

To stop this practice of male educators demanding sex with schoolgirls, the National Department of Education amended the Employment of Educators Act, 1998 (Act 76 of 1998). The amendment requires provincial departments of education to dismiss any educator found guilty of having a sexual relationship with a learner, irrespective of the willingness of the learner or the age of the learner. In addition, the South African Council for Educators Act, 2000 (Act 31 of 2000) was enacted to ensure that when an educator is dismissed on the basis of sexually abusing a learner, he or she would be deregistered as an educator and may not be appointed again as such by any education provider (private providers included).

### Section 10: Human dignity

The right guaranteed by section 10, namely to have one's inherent dignity as a human being respected and protected, is another fundamental right that underlies many if not all other rights. The exercising of other rights comprises various manifestations of human dignity and, as such, human dignity is the cornerstone for protecting such other rights. Often, when another right is violated, the violation also constitutes an infringement of human dignity (Malherbe & Beckmann, 2003: 37).

Human dignity is quite obviously a critical and extremely fragile component of the multifarious relationships that make up the educational environment, especially because so many minors or otherwise vulnerable and defenceless people are involved. Violations of human dignity may occur during disciplinary action; in the daily interaction between educators and learners, which is an inherently unequal relationship; during initiation programmes or ceremonies for newcomers to an institution; during informal interactions on the playground where

bullying is an ever-present threat nowadays, and in any other relationship in which the temptation to treat people with contempt is present (Malherbe & Beckmann, 2003:37).

In a case involving an independent school (*Dowling v Diocesan College (Dowling v Diocesan College and Others 1999 (3) SA 847 (CPD))*), the parents of a boy who had been bullied and badly beaten and humiliated by two prefects won their case to institute legal proceedings against the school board. According to the findings of this case, schools have an obligation to protect the human dignity of their learners. The judge found that the assaults had been carried out by duly appointed prefects, within the scope of their duties as prefects.

Thus, schools are held liable for the actions of their prefects.

#### Section 12: Freedom and security of the person

Everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, not to be detained without trial, to be free from all forms of violence, not to be tortured, and not to be treated or punished in a cruel, inhuman or degrading way. This right is closely related to human dignity and any infringement of one's bodily or psychological integrity will invariably affect one's dignity (Malherbe & Beckmann, 2003:38).

One aspect of the right that pertains to education is the impact that the prohibition of cruel, inhuman and degrading punishment has had on corporal punishment and other forms of punishment in schools. Corporal punishment was outlawed as a form of punishment for learners by section 10 of the South African Schools Act.

Although the South African Schools Act clearly prohibits corporal punishment in schools, three Cape Flats primary school educators were fined R4 000 each after being found guilty of administering corporal punishment. In spite of admitting guilt, the educators were upset about the fact that "hundreds of other educators" were not being accused of the same misconduct (Rapport, 8 April 2001).

The Education 2000 Plus project later found that in most of the 27 schools across the country where the survey had been conducted, educators still resort to corporal punishment despite the latter being a banned practice (Tleane, 2002:6). A system of purposive sampling was used to select schools. The criteria used for selection included location (urban, rural, township, inner city, informal settlements and suburban), whilst information for the case studies was gathered through interviews with various stakeholders. For each school, respondents included educators, learners and the school principal.

From Table 1 it is clear that even dedicated educators may default, thereby infringing on their learners' right to freedom and security of the person.

**Table 1** Percentage of schools practising or not practising corporal punishment according to learners, principals and educators

|            | Practising | Not practising |
|------------|------------|----------------|
| Learners   | 81.5%      | 18.5%          |
| Educators  | 74.0%      | 26.0%          |
| Principals | 74.0%      | 26.0%          |

Others forms of punishment or correction employed by schools should be examined equally carefully to ensure that they are not cruel, inhuman or degrading. It could be argued that any form of discipline contains some element of humiliation or degradation, but certainly not all disciplinary measures go so far that they cannot be justified in terms of section 36 of the Constitution. Forms of community service, such as cleaning of classrooms and picking up litter, are disciplinary measures that may be justified under normal circumstances. Disciplinary measures that limit the learner's right to education, such as suspensions or expulsions, must, of course, always be administered with care (Malherbe & Beckmann, 2003:37-39).

#### Section 14: The right to privacy

Section 14 provides that everyone has the right to privacy, which includes the right not to have their person, property or home searched,

their possessions seized, or the privacy of their communications infringed. This right mainly protects access to information about an individual's personal matters and is closely related to the common law right to privacy, which forms part of a person's *dignitas*. An invasion of someone's personal privacy or a disclosure of private facts about a person would violate the right to privacy (Malherbe & Beckmann, 2003:39-40). Disclosure of a learner's HIV status is a good example of an invasion of someone's privacy.

In the school situation, section 14 may give the impression that educators may not search learners' possessions (e.g. for a dangerous weapon) and that possessions or people may not be searched (e.g. schoolbags for drugs). This is not so, although in order to carry out searches educators will have to have reasonable suspicion that an individual is in possession of a dangerous substance or weapon. According to Rossow and Stefkovich (1995:21-41), there are two variables that must be considered under the reasonableness standard, i.e. the thing (dangerous weapons or drugs) that the searcher is seeking and the sufficiency of the information or the informant that led the searcher to believe a search was necessary. A right may be limited only in terms of the law of general application (the code of conduct for learners or national legislation). Furthermore, there should be an appropriate balance between the limitation of the right and the purpose for which the right is being limited. In other words, the purpose of the limitation should be to search for a dangerous object or illegal substance that could endanger the safety of other learners or the security of the school environment.

Rossow and Stefkovich (1995:21-41) further state that other variables to be considered in ensuring a reasonable standard are those included in a reasonable scope. A search will be permissible in scope when the measures adopted are reasonable in relation to the objectives of the search and not excessively intrusive in view of the age and sex of the learner and the nature of the infraction. Searches should be made in the privacy of an office by a person of the same sex in the presence of another person of the same sex. The right to human dignity of the person being searched must always be protected.

Malherbe and Beckmann, (2003:26-26) state that in all such cases the general rule should apply, namely that any limitation of the right to privacy should be justified by a rational educational purpose. On this basis, courts could be expected to be more lenient towards education authorities, and limitations that would be unconstitutional in another environment could be justified. An example is personal searches for drugs, firearms, or other contraband. In the case of ordinary police searches the police normally require a search warrant, unless the person searched gives consent or there are reasonable grounds to believe that a warrant would have been issued had there been time to apply for one. In the educational environment, however, it can be expected that much more leeway will be tolerated as long as reasonable pedagogical considerations can be advanced, such as the protection of the educational process or the rights of other learners.

Parents may expect a school to take special care of their children, not only in terms of their education, but also in protecting them from harm during those hours when they are under the authority and care of the school. Owing to the high incidence of drug abuse in South African cities, school principals have been reported in recent newspapers to have asked police to make use of surprise and preventive general searches at schools to ensure a safe school environment.

When limiting an individual's or a group's right to privacy, the purpose of the limitation is very important. In the case above the right to privacy of one individual or a small number of individuals is infringed upon, but this is done in order to maintain the right of many more learners to a safe school environment in which effective teaching and learning can take place.

#### Section 24: The right to a safe environment

In terms of section 24 of the Constitution, everyone has the right to an environment that is not harmful to his or her health and well-being. This means that learners have a constitutional right to receive education in a safe school environment. Paragraph 4.6 of the Guidelines for the consideration of governing bodies in adopting a code of conduct

for learners (Department of Education, 1998) states that "... learners have a right to a clean and safe environment that is conducive to education". Security of property, well cared for facilities, school furniture and equipment, clean toilets, water and a green environment, absence of harassment when attending classes and writing tests and examinations, all create an atmosphere that is conducive to education and training.

#### *Educators' duty of care*

According to Oosthuizen (1998:209) educators in a school have a legal duty in terms of the common law principle, *in loco parentis*, to ensure the safety of learners in their care. Educators as persons *in loco parentis* are vested with special status that empowers them to act authoritatively in terms of the law. Not only do they have both delegated powers (delegated by the principal of the school to act on his or her behalf) and original powers (powers originating in the common law) of authority over learners on the school grounds and during the normal school session, but (in terms of the common law) they are also granted authority over the learners during extramural activities on or away from the school grounds.

According to Maithufi (1997:260-261) there are two coextensive pillars of the *in loco parentis* role that educators play: the duty of care (which implies looking after the physical and mental well-being of learners) and the duty to maintain order at a school (which implies educators' duty to discipline learners).

It is important to remember that "duty of care" does not refer to a general obligation: it is an obligation towards specific people or groups of people in the care of a specific educator (Neethling, Potgieter & Visser, 1992:140). Such an educator has a duty to protect the learners from harm since the duty of care is a legal obligation. The law expects educators to act as *diligens paterfamiliae* and "reasonable persons" at all times in educational situations. The duty of care of an educator is therefore compared to the degree of care that a diligent father of a family would serve towards his family. Dealing with children demands a greater degree of care than is normally the case when dealing with adults, hence educators' conduct as professional people will be subject to more stringent tests. Based on educators' knowledge of their subject and the nature of learners, their skills, their familiarity with the dangers to which learners are exposed, their guarding against negligent acts, and the knowledge of the legal provisions that govern their profession, reasonable educators are more able to function safely within the parameters of the law (Beckmann, 1995:53). The following case law is a good example of what is meant by a high degree of care.

In *Knouws v Administrator*, Cape 1981(1) SA 544 (C), the plaintiff in the matter instituted an action for the payment of damages arising out of injuries that her 8-year-old daughter sustained when she fell on a lawnmower while she and another school girl were playing in the grounds of the school that they attended. The accident occurred just before school started in the morning, and it appears that the plaintiff's daughter and her friend were racing each other past the lawnmower when the friend pushed her to prevent her from overtaking her. As a result, the plaintiff's daughter stumbled and put her hand on the lawnmower to keep her balance and, in so doing, sustained the injuries in question. The evidence led in court revealed, among other things, that the supervisor at the school, who was supposed to be supervising the children at the time, was not present when the accident occurred. The defendant in the matter however denied any negligence on the part of the school staff. In holding the school liable, the court found among others the following:

- Children are unpredictable, impulsive and curious, and often become too engrossed in their games to notice danger. These characteristics should be well known to the principal of a primary school.
- In the given situation a reasonable person would have foreseen the reasonable possibility of danger to the learners. However, the only step taken by the principal to avoid the danger of possible

injury or damage was the presence of the terrain supervisor and he was not present when the accident occurred.

#### *Duties of school governing bodies in creating safe schools*

Learners have a constitutional right to receive education in a safe school environment (section 24 of the Constitution) (Boshoff, 2000) and school governing bodies of public schools have a major responsibility to ensure that the learners' right to a safe school environment is realised. A primary role of school governing bodies is to develop school policy, which includes policies dealing with safety and school discipline. Section 8(1) of the South African Schools Act requires school governing bodies to adopt a code of conduct for learners after consultation with learners, parents and educators of the school. In terms of section 8(2), the primary aim of the code of conduct is to establish a disciplined and purposeful school environment, dedicated to improving and maintaining the quality of the learning process. A code of conduct based on human rights principles contains school rules, regulations, sanctions and disciplinary procedures (the rules of natural justice). This should include rules for dealing with school safety and security, and the consequences of breaching such safety and security.

With regard to discipline, the school governing body also has a duty to ensure that the code of conduct includes policies and procedures that are appropriate for dealing with matters such as drug peddling, sexual harassment and other forms of abuse, bullying and the possession of dangerous weapons, and that these policies are implemented and revised on an ongoing basis. Sexual abuse of learners and inappropriate relationships between educators and learners are a major concern (Squelch, 2001:142).

Another important function of school governing bodies is to maintain school buildings and school grounds. Section 20(1)(g) of the South African Schools Act requires school governing bodies of all public schools to administer and control the property, buildings and grounds occupied by the school. This entails, *inter alia*, keeping school buildings in good repair, keeping school grounds free of dangerous objects and maintaining equipment in good working order (e.g. playground equipment and fire hydrants). Section 21(1)(a) further provides that school governing bodies may be allocated the function of maintaining and improving the school's property, as well as the buildings and grounds occupied by the school. Failure to control and maintain these facilities so as to keep them safe for use by learners and educators could lead to liability.

#### *Section 28: Children's rights*

Section 28(1) provides that every child (according to the Constitution somebody under the age of 18 years) has the right to a name and a nationality from birth; to family or parental care or appropriate alternative care when removed from the family; to basic nutrition, shelter, basic health care services and social services; and to protection from **maltreatment, neglect, abuse or degradation**.

The common law principle that a child's best interests are of paramount importance in every matter concerning the child has been included in section 28(2) as a basic constitutional right. Every educational authority and every individual educator should be able to show that any decision affecting a child has been taken with this purpose in mind (Malherbe & Beckmann, 2003:47).

Section 28 obliges the school to respect, protect and fulfil these children's rights in the educational context. Schools and educators, as representatives of the state as well as of the community, have the responsibility to report and even intervene whenever they become aware of a child's rights under section 28 being violated, for example, if a child is being maltreated, neglected or abused at home. The school would usually be able to point out that the child's situation affects his or her education, but the school's duty in this regard should not be restricted to those cases in which its educational functions or responsibilities are affected. This duty has been recognised by section 42(1) of the Child Care Act, which provides that various professional workers, including medical and social workers and teachers, have a

duty to report cases of child abuse that come to their attention in their official capacity.

Section 4 of the Domestic Violence Act, 1998 (Act 116 of 1998) adds educators to the list with the following words:

Any person who examines, treats, attends to, advises, instructs or cares for any child in circumstances which ought to give rise to reasonable suspicion that such child has been ill-treated, or suffers from any injury the probable cause of which was deliberate, shall immediately report such circumstances –

- a) to a police official; or
- b) to a commissioner of child welfare or a social worker referred to in section 1 of the Child Care Act, 1983 (Act 74 of 1983).

The Teacher (29 February 2004) reported Luke Lamprecht, manager of the Teddy Bear Clinic in Johannesburg, as having said that whilst schools are happy to report suspected cases of abuse that occur outside of the school environment, "when it happens inside the schools it's a whole other story, there's a big cover-up". The allegations made by the manager of the Teddy Bear Clinic are very serious, since educators are legally obliged in terms of the Child Care Act and the Domestic Violence Act to report any form of child abuse to Welfare or to the Child Protecting Unit of the SAPS.

The human rights contained in the Bill of Rights in the Constitution have, to a large degree, put South Africa on the road to providing a legal framework for ensuring schools that are free of danger and possible harm and in which educators and learners can work, teach and learn without fear. It is, however, clear from all the mentioned examples of bullying, assault, school violence, sexual harassment, rape and even murder on school premises, that all schools are not safe places conducive to effective teaching and learning.

## Conclusion

Safe schools are *sine qua non* for effective teaching and learning. Safe schools are schools that are physically and psychologically safe and that allow educators, learners and non-educators to work without fearing for their lives (Squelch, 2001:149). Although the creation of safe schools is the shared responsibility of the whole school community, this article has concentrated on the duties of educators and the governing bodies.

Educators have a duty to uphold, protect and promote the right of learners to effective education, equal educational opportunities, human dignity, freedom of security of the person, a safe school environment, privacy and just administrative justice to ensure a safe school environment. Educators in a school furthermore have a legal duty in terms of the common law principle, *in loco parentis*, to ensure the safety of learners in their care. There are two coextensive pillars to the *in loco parentis* role that educators play: the duty of care (which implies looking after the physical and mental well-being of learners) and the duty to maintain order at a school (which implies educators' duty to discipline learners) (Maithufi, 1997:260-261).

To change the situation in South African schools, every educator should be committed to professional and ethical conduct, to the acceptance of accountability to protect learners' rights and to ensure a safe school environment.

Governing bodies also have a legal duty to ensure that schools are safe for learners by *inter alia* adopting a code of conduct for learners and related policies, and maintaining school property, as prescribed by the Schools Act. The code of conduct is essential for setting out the expectations and standards of learner behaviour. It also puts the necessary procedures in place for dealing with threats to safety and security

and for protecting learners and personnel against physical and psychological danger such as assault, bullying, sexual harassment and drugs. Maintaining school property is also essential for ensuring that buildings and facilities are safe and that access to school property is appropriately controlled to prevent unwelcome visitors.

However, for school governing bodies to fulfil their duties they need the necessary resources, skills and training (Squelch, 2001:149).

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