AN EDUCATION-JURIDICAL PERSPECTIVE ON THE STATUS OF EDUCATORS

ELIZE KÜNG

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2015

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SURNAME and INITIALS: KÜNG, E

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D.Kocks

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Denise Kocks

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Residential address: Three Rivers retirement Village [Phase 3]
Bashee Street, Three Rivers

Postal address: P.O. Box 155
Vereeniging 1930

Tel: 016 423 5483

DEDICATION

In dedication to my mother, Miems Annnandale, how I wish you were here to share today with me.

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This work has taken a lot from several people. I would like to thank them from the bottom of my heart, for without them it would still only be a dream.

- To God, in all this time there have been many single rows of footprints. To Him, all the glory and all the praise – *Soli Deo Gloria*.
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ABSTRACT

The intent of this multi-strategy research study was to obtain an educational-juridical perspective on the status of educators in South Africa. Not only was the relationship between school community perceptions measured, but a comparative law method was also used in order to compare the status of educators in South Africa, Belgium (Flemish community) and England/Wales.

Chapter Two sets out to investigate the private and public law status of South African educators, by considering educators' entitlement to fundamental rights, obligation placed on educators with regard to the fundamental rights of learners and parents/caregivers, and relevant education specific, as well as general legislation. At the same time, current literature relating to the legal status of educators and factors contributing to perceptions concerning the status of educators were consulted.

In order to determine the extent to which the South African legal framework for the status of educators differs from those of Belgium and England/Wales, the researcher explored the private and public law status of educators in the two countries in Chapter Three. Hereafter, the legal status of educators in South Africa, Belgium and England/Wales was compared and contrasted in Chapter Five, aiming at finding possible contributions which the international perspective can offer to the South African situation.

A survey was conducted in order to determine perceptions of the South African school community concerning the status of educators. Questionnaires were filled out by sampled learners, educators and parents/caregivers at a variety of public schools. The researcher used the data in conjunction with the information obtained from the literature study to make sound recommendations to establish better relationships between role players in the South African school community.

The research study not only provides a better understanding of the precise nature of the legal status of South African educators, but also allows for recommendations to be made to advocate for change in the perceptions which learners, educators and parents/caregivers have concerning the status of educators. In this manner, educator confidence can be enhanced and greater job satisfaction created, leading to an improved teaching and learning climate.

OPSOMMING

Die doel van die multi-strategie navorsingstudie was om ’n opvoedkundig-juridiese perspektief op die status van opvoerders in Suid-Afrika te bekom. Nie alleen is die verhouding tussen skoolgemeenskap-perspektiewe gemeet nie, ’n regsvergelykende metode is gebruik om die status van opvoeders in Suid-Afrika, België (Vlaamse gemeenskap) en Engeland/Wallis te vergelyk.

Hoofstuk Twee stel ten doel om die private en publieke regstatus van Suid-Afrikaanse opvoeders te ondersoek, deur die opvoeders se aanspraak op fundamentele regte, verpligtinge geplaas op opvoeders wat verband hou met fundamentele regte van leerders en ouers/versorgers en relevante onderwys-spesifieke, sowel as algemene wetgewing te ondersoek. Terselfdertyd, is literatuur wat verband hou met die regstatus van opvoeders en faktore wat bydra tot persepsies aangaande die status van opvoeders gekonsulteer.

Ten einde die mate te bepaal waartoe die Suid-Afrikaanse regsraamwerk vir die status van opvoeders verskil van dié van België en Engeland/Wallis, het die navorser die private en publieke regstatus van opvoeders in die twee lande verken in Hoofstuk Drie. Hierna is die regstatus van opvoeders in Suid-Afrika, België en Engeland/Wallis in Hoofstuk Vyf vergelyk en gekontrasteer met die doel om moontlike bydraes wat die internasionale perspektief aan die Suid-Afrikaanse situasie kan bied, te beoordeel.

’n Opname-studie is onderneem om vas te stel wat die persepsies van die Suid-Afrikaans skoolgemeenskap aangaande die status van opvoeders is. Vraelyste is ingevul deur ’n steekproef leerders, opvoeders en ouers/versorgers by ’n verskeidenheid openbare skole. Die navorser het die data gebruik saam met die inligting bekom vanuit die literatuurstudie om aanbevelings te doen om beter verhoudings tussen rolspelers in die Suid-Afrikaanse skoolgemeenskap te bewerkstellig.

Die navorsingstudie verskaf nie net ’n beter begrip van die presiese aard van die regstatus van Suid-Afrikaanse opvoeders nie, maar laat ook toe dat aanbevelings om verandering in die persepsies van leerders, opvoeders en ouers/versorgers aan gaande die status van opvoeders bepleit word. Op hierdie wyse kan opvoeder-vertroue verbeter word en groter werksbevrediging geskep word wat lei tot 'n verbeterde onderrig- en leerklimaat.

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CHAPTER ONE
AN ORIENTATION TO THE STUDY

1.1 INTRODUCTION AND VALIDATION OF THE RESEARCH PROBLEM

Education at public schools comprises a complex network of human relationships, consisting mainly of principals, educators, the parent community and learners at school (Joubert, 2009a:75-76), structured legally by determining each participant's status in such relationships (Beckmann & Prinsloo, 1989:4). According to Wood (1995:1), education can be considered to be a social phenomenon involving relationships among various participants. One such a relationship is the legal relationship that parents/caregivers and educators share due to the position of authority of both parties concerning the formal teaching and general education of the child (De Waal, 2007:231). Furthermore, the relationship that exists between an educator and a learner is not merely a general, but also a specialized legal relationship (Kocks-De Waal, 2009:2).

Rossouw and De Waal (2004:284) state that South African educators are working under considerable stress in the new dispensation. This, however, does not seem to be limited to the South African education system. Van Wyk (in Olivier & Venter 2003:186) mentions that, according to research done worldwide, the indication is that educator stress is becoming endemic. The same author (Van Wyk, in Olivier & Venter, 2003:186) mentions studies from different parts of the world that indicate contributing factors such as a negative attitude, work demands, learner misbehaviour and negative feedback that lead to job dissatisfaction and job-related illnesses.

For instance, in 2005 the British Broadcasting Cooperation (BBC, 2005) reported that in England educators were getting disciplinary rights, indicating that these educators are to be given stronger legal rights in order to restrain and to punish badly behaved learners. This report states that the changes that are recommended strengthen the authority of schools, giving them confidence to take action, sending the message to parents/caregivers and learners that they also have a responsibility in dealing with the problem. The proposed changes should aid educators in tackling persistent low level disruption which is too often met with, *You can't do anything to*

me, Miss! and should put a stop to such behaviour (BBC, 2005). Many of these proposed changes were brought about by amendments contained in the Education Act 2011 aiming at giving teachers the power to discipline learners in order to establish an environment conducive to teaching and learning (UK, 2011a; Paton, 2011; *cf*. 3.3.4.5).

According to Hatwood-Futrell (2004), there are concerns all over the world about educator shortages, not because of a lack of interest, but due to the problem of retaining educators. UNESCO (2004) estimates that, by the year 2015, at least 15 million additional educators would be needed worldwide, in view of the declining status of educators and the growing flight from the profession. Hatwood-Futrell (2004) states that governments should recognise that just as learners have the right to learn, educators must also have the right to educate with dignity and security.

In April 2006 it was reported on the BBC News that England's newly-qualified educators are often left to *sink or swim* with the most poorly-behaved classes and do not receive the training they need to manage disruptive pupils (Smith, 2006). According to Smith (2006), a young educator in her second year of teaching informed the correspondent that learners in one of the *year nine* classes admitted coming to school drunk or high on drugs and that she had been physically assaulted when she asked two learners to move seats.

School violence is not a new occurrence; the oldest record the researcher found concerns the 1853 murder of a school principal from Louisville, Kentucky, USA in his schoolroom by a learner, only because the principal had disciplined the learner's brother the previous day (Hassenplug, 2004:5). Since 1853, many incidences of school violence have been reported. However, a chronological list of these incidences magnifies the increase in the number of cases across the decades (Klein, 2012:63; New York Times, 2012). Across the world, learners and educators find themselves in more violent, unsafe environments (Benbenishtyi & Astor, 2008:75).

The Universal Declaration of Human Rights (1948:Preamble) declares everyone as entitled to fundamental rights and invites all nations to strive to promote respect for them through education. One of these rights, focused on specifically in the last decade, is the rights of children. This focus followed from a global awareness of the plight of children world-wide. However, placing focus on rights only, without a counterbalancing focus on the norms and obligations attached to them, has led to

the rights of children becoming a two-pronged sword, where adults are increasingly becoming aware of a disregard for their rights by the youth of today (Malan, 2006:9).

The South African educator-learner relationship, due to its complicated nature, is a cause for concern, given the fact that both educators and learners are endowed with individual rights and freedoms, with the focus often falling empathetically on the latter only, neglecting to *prioritize the duties which everyone should be obligated to fulfil* (Kocks-De Waal, 2009:1). Rossouw (2003:413) mentions the development of an arrogance by youth towards parents/caregivers and educators, as well as an overemphasis on human rights, especially children's rights, as possible reasons for a decline in school discipline, leading to the serious hampering of the teaching and learning process. This does not seem to be a unique South African problem, but rather a worldwide one. As educators' days consist primarily of contact with young people, this problem has a tremendous effect on them.

Not only do learners appear to be unaware of the human rights of educators, but the rights of educators are also disregarded by parents/caregivers. To make matters worse, educators seem to be less aware of their own rights than they are of the rights of their learners.

1.1.1 Status of educators in general

UNESCO (2004) calls attention to the fact that the world is facing a severe and growing shortage of educators: it is well documented that the status of educators is declining and that there is a growing flight from the profession world-wide. According to the organization, there is a reluctance to become educators. Those in the profession are exposed to lamentable working conditions, and stressful classroom situations lead to, among other things, educator burnout. In a press release by Education International regarding the World Teachers Day of 2004 the organization *decries the lack of respect and appreciation for teachers* (Education International, 2004).

Concerns were already voiced in 1966. During the Special Intergovernmental Conference on the Status of Teachers (UNESCO, 1966) concern existed regarding the status of educators, and recommendations were made to ensure that educators enjoy the status equal to the essential role they have in educational advancement

and the importance of their contribution to the development of man in modern society.[1]

According to Vongalis (2004:488), the period between 1920 and 1990 saw the emergence and rise of the *modern* educator, an educator whose responsibilities extend beyond the classroom into the heart of any social and political changes. It is also during this modern era that educators' struggle for recognition of their expertise in educational matters and for greater self-determination of their profession emerged (Vongalis, 2004:488).

1.1.2 Educators in South Africa

As pointed out by Bray and Beckmann (2001:112), the employment relationship is a legal relationship between two parties: the employer and the employee. In the South African education system educators may be employed either by government or by the School Governing Body, according to the Employment of Educators Act 76 of 1998 (76 of 1998:sec.3(1)(a); hereafter Educators Act) and the South African Schools Act 84 of 1996 (84 of 1996:sec.20(4); hereafter SA Schools Act). It is compulsory for all educators to register with the South African Council for Educators (SACE) according to the South African Council for Educators Act 31 of 2000 (31 of 2000:sec. 21; hereafter SACE Act), which makes all educators subject to the the South African Council for Educators' Code of Professional Ethics, (SA, 2000d; hereafter referred to as SACE Code of Ethics).

In education, a difference exists between the juridical manifestation of general legal relationships, for example between school and parent/caregiver community, and the juridical manifestation of individual legal relationships, for example between educator and learner at school (Van Wyk, 1987:81), while numerous rights and duties actually evolve from these general and individual relationships (Bray, 1988:26-29). According to Malherbe (2004:1), the emphasis on respecting people's rights which followed the Apartheid era, led to the misconception that people are entitled to specific rights, while they have no obligations under the modern Constitution of the Republic of South Africa Act 108 of 1996 (1996; hereafter SA Constitution). In this regard, Bray (2000a:282) states that it must be kept in mind that the right of one person could

[1] Society in this instance refers to all people living together in a more or less ordered community (Soanes & Hawker, 2005:984)

impose a particular duty/obligation on another person. Moreover, Kocks-De Waal (2009:2) maintains that the rights of a learner impose a duty on the educator and *visa versa*, as specific rights and duties have their origin in the educator-learner relationship.

Venter (2005:1) sees the advent of a culture of human rights as one of the most exciting new things in South Africa, but points out that this has been accompanied by an abuse of such rights as the culture has namely led to many misconceptions. One sound example is given by Venter (2005:1) who mentions that parents/caregivers and learners alike seem to hold the view that the right to equality does not imply equality of value, but rather implies that educators and learners are equal in status. Newspaper articles and published letters (Rademeyer, 2005a:4; Rademeyer, 2005b:20) further emphasize these misconceptions. In one letter the question is asked – *Who sees the marks left on the soul of educators after some children have finished with them* (Botha, 2005:12)?

According to the then Department of Education (DoE) (2005:60), the educator workload has become a highly contentious issue worldwide, where research focused on educator workload is connected with educator stress and burnout. Greater demands are being made on educators and the changing roles of educators in the context of educational restructuring are factors linked to educator stress (DoE, 2005:60).

As pointed out by Olivier and Venter (2003:186), the South African educator has to deal with a lack of discipline at schools, unmotivated learners, the abolition of corporal punishment, redeployment, retrenchments, large learner-educator ratios and a frequently changed curriculum-approach. All of these aspects contribute to higher stress levels. Roos and Wolhuter (2004:2) mention research done that indicates learner discipline as constituting a problem at South African schools. It is of little value to have school rules if they are not imposed constantly, since that would imply that educators have no right to *run* schools (De Waal, 2007:229).

It is becoming apparent that educators are experiencing high levels of job-related stress (Olivier & Venter, 2003:186). Venter (2005:1) ascribes the job-related stress experienced by educators to aspects such as the insecurity concerning their jobs, the demands made upon them by a changed curriculum, ever increasing expectations placed upon them, as well as a feeling that the learning climate is being sabotaged by *rights gone mad* in their classrooms.

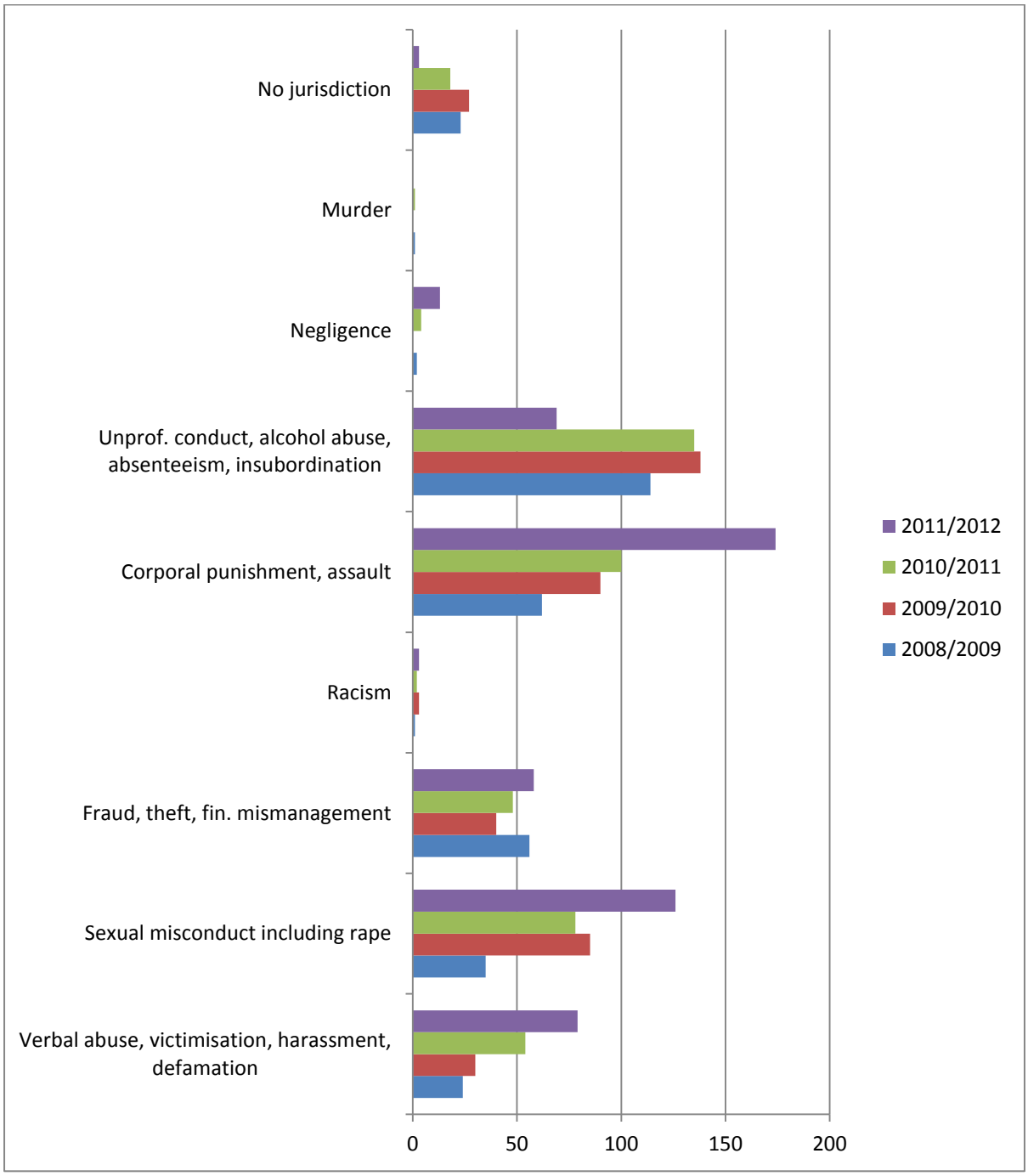
A factor contributing further to the afore-mentioned which relates directly to South African educators' ever increasing stress-filled work environments is school violence. In a study by Burton (2008), participating principals and educators reported that up to three in five secondary schools had experienced learner-on-educator verbal abuse; 25% of the participating secondary schools had reports of learner-on-educator physical violence; and 2.4% of those schools had received reports of learners sexually assaulting educators (Burton, 2008:xi).

According to Colditz (in Carstens, 2006:21), the Labour Relations Act 66 of 1995 (66 of 1995; hereafter Labour Act) led to the demotion of educators to *normal workers*, resulting in the fact that educators are considered not as professionals, but rather as government employees. This has led to a situation found currently in South Africa where educators are joining the national strike, disrupting examination and teaching (Carstens, 2006:21; Makwabe & Govender, 2006:4; Rademeyer, 2006:5) and several incidences such as striking educators assaulting learners and colleagues (Carstens, 2006:21; Makwabe & Govender, 2006:4; Viljoen, Jacobs & Otto, 2006:5) or forcing non-striking educators and learners to take part in protest action (Prinsloo & Beckmann, 2012:7). Deacon (2012:1) is of the opinion that the shortage of competent educators has led to a situation where the unions hold the government at ransom, with the threat of striking. Prinsloo and Beckmann (2012:5-7) provide proof from research of undue influence placed on management and non-union members by the major education trade union. Such actions cause severe disruption in the education system, infringe on educators rights and are not in the best interest of the learners.

Contributing to a decline in professional status, is the conduct of some educators leading to a loss of faith in the education profession by the society they serve. The summary of complaints received by the South African Council for Educators (SACE), found in the annual reports of the Ethics division,[2] and portrayed in Graph 1.1, the image created is not one of schools as safe havens conducive to teaching and learning. Graph 1.1 illustrates a breakdown of the complaints received by SACE over the last four years.

[2] Received from the Manager of SACE Legal Affairs and Ethics via E-mail.

Figure 1.1: Breakdown of complaints received by SACE from 2008-2012



(SACE, 2008/2009; 2009/2010; 2010/2011; 2011/2012)

The data portrayed in Graph 1.1 leave no doubt of a general negative trend moving upwards. The drastic rise in the number of complaints regarding verbal abuse, sexual misconduct and corporal punishment/assault and the high frequency of complaints exemplifying violent behaviour and conduct which contribute to creating unsafe schools (SACE, 2008/2009; 2009/2010; 2010/2011; 2011/2012) are disconcerting although all of the complaints may not in the final analysis prove to be guilty findings connect to incidents.

These negative aspects led to the situation where education as a profession is facing the predicament of losing its esteem and possibly being depicted in a similar way as the nursing profession in the cartoon below.

(Esterhuyse, 2007:12)

The above-mentioned makes it clear that an urgent need has arisen for a study aiming at establishing the nature of the professional and societal status of the educator, not only in South Africa, but also at international level.

In trying to find answers to the central problem of what the status of South African educators comprises (*cf.* 1.3.1), the researcher of this study identified the following five objectives to guide her research process:

- To investigate the legal status of South African educators
- To determine the perceptions of the South African school community concerning the status of educators
- To determine to what extent the South African legal framework for the status of educators differs from those of Belgium (Flemish community) and England/Wales (the UK)
- To identify factors that contribute towards the South African school community' perceptions concerning the status of educators

- To gauge the contribution that an international perspective on the legal status of educators can offer to the South African situation

1.2 PURPOSE STATEMENT

The intent of this concurrent multi-strategy study was to obtain an educational-juridical perspective on the status of educators in South Africa. In the study, questionnaires were used to measure the relationship between school-community perceptions and the legal status of educators. At the same time, an education-juridical perspective was explored using a comparative law method when studying relevant documents to compare the status of educators in South Africa, Belgium and England/Wales.

The motivation for combining both quantitative and qualitative data was to appreciate the research problem better by the convergence of both broad numeric trends and detailed views to advocate for changes in the perceptions of the South African school community concerning the status of educators (*cf*. 4.2.1).

1.2.1 Substantiation for selection of countries

In the South African context, one becomes aware of the fact that educators seem to experience their work situation negatively and perceive a lack of respect regarding their status. Furthermore, South African learners do not perform well in tests such as the TIMMS, and poor performance has been ascribed to educators and poor quality education (Chrisholm, 2004:20; Soudien, 2007:191). While such poor performance could also indicate a negative experience of educator status, this is not a unique South African phenomenon.

De Groof and Russo (2008:251) mention that there is an increasing worldwide tendency to hold educators publically accountable for learner performance. This tendency, seen in conjunction with previously mentioned aspects such as increased educator stress and burnout (*cf.* 1.1), an awareness of a decline in educator status and a growing flight from the profession (*cf.* 1.1), have created a need for an international focus on the status of educators with specific reference to their rights. The study of this topic is crucial, not only at national level, but also at international level from a comparative perspective. Therefore a comparative law study regarding the status of educators in South Africa, Belgium and England/Wales was done.

The selection included two countries in the northern hemisphere and one country in the southern hemisphere, in order to establish whether specific trends are characteristic of geographical areas. Belgium has a continental legal tradition and a civil law legal system, largely influenced by that of the French (Malliet, 2007; Bodleian Law library, 2003:1). The English legal tradition is based on judge-made law, which refers to laws that have been developed based on decisions made by judges according to common law principles, although almost every aspect of British law is governed by statute and judge-made law (Waldron, 1990:3). South African law is based on 17th century Roman-Dutch Law, yet also includes some English Law principles (Barratt & Snyman, 2005; Smit *et al*., 2008:189).

The constitutions of Belgium and South Africa acknowledge the right to a basic education. Belgium considers the right to a basic education to indicate the provision of free basic education, while this is not the case in South Africa. England/Wales acknowledge the right to a basic education in the Human Rights Act 1998, which is also considered to indicate free basic education.

1.3 RESEARCH QUESTIONS

1.3.1 Primary research question

How effectively is the status of educators mirrored by an education-juridical perspective?

1.3.2 Secondary research question

Against the background of 1.1.1 and 1.1.2 and in order to attend to this primary question, the following secondary research questions needed to be addressed:

- What is the educator's legal status in South Africa?
- Which perceptions does the South African school community hold regarding the status of their educators?
- To what extent does South Africa's legal framework regarding the status of educators differ from those of Belgium (Flemish community) and England/Wales?
- Which factors contribute towards the South African school community's perceptions concerning the status of educators?
- What contribution can an international perspective on the legal status of educators offer to the South African situation?

1.4 CONCEPTUAL FRAMEWORK

According to Dyer, Haase-Wittler and Washburn (2003:64), a conceptual framework is similar to a standard literature review as it lists the most important research conducted in a specific area, but goes beyond the simple literature review, as it builds a framework of research. A well-articulated conceptual framework can be seen as a research tool to scaffold research (Smyth, 2004) as the literature is structured in such a manner to best explain the progression of the research (Dyer *et al.*, 2003:64) to assist the researcher in developing an understanding of the situation studied (Smyth, 2004).

The conceptual framework becomes the heart of the study as it keeps the research focused by (Dyer *et al*., 2003:64; Smyth, 2004; Creswell, 2009:20):

- providing links from the literature to the research aims and questions;
- enlightening the research design;
- establishing points of reference for discussion of literature, methodology, as well as analysis of data; and
- adding to the trustworthiness of the study.

The conceptual framework of this study will be based on the concept that schools are considered organizations and are therefore considered formal structures wherein people stand in a certain relationship towards one another and where their actions are aimed at certain common objectives (Theron, 2003:78), establishing the fact that a very specific societal relationship exists within the school. According to Taljaard (in Van der Westhuizen & Mentz, 2003:65), a societal relationship is that which originates from individuals uniting with the rationale of meeting the requirements of a communal interest and where the communal interest is given preference over the individual's personal interest. The societal relationship found in the school as organization leads to the creation of a school community made up, in narrow terms, of the school principal, educators, parents/caregivers, learners and former learners (Barnard, 2004:406), each with a unique role (Theron, 2003:98) collaborating towards the communal interest, namely the education of the learner.

For the scope of this study, the school community therefore refers to the educators, including school principals, the learners and the parents/caregivers, as described in the relevant Acts (*cf.* 4.2.2), but excluding former learners. As it has been

established that a certain societal relationship exists within schools, and that there are unique roles with specific expectations attached to their roles, influencing the behaviour of the individual directly (Theron, 2003:98), it can be reasoned that the school community attaches its own societal status to a specific role. This implies that educators will be afforded a specific status within each society accompanied by specific expectations.

At the same time, UNESCO (2004) calls attention to the perception educators have of their declining status of educators and their increasing flight from the profession worldwide (*cf.* 1.1.1). On the other hand, Vongalis (2004:488) highlights the changes to the profession since the 1920s, in which the educators' responsibilities increased their workload far beyond the classroom (DoE, 2005:60). Moreover, all the above-mentioned lead to an experience of high levels of job-related stress (Olivier & Venter, 2003:186).

The reluctance of learners to adopt a career in education is indicative of the societal view on the profession. A 2005 study showed that only 1.5 % of the sample surveyed indicated an interest in a career in education, training and development (DoE, 2005:49). According to Hall, Altman, Nkomo, Peltzer and Zuma (2005:30), the lack of interest in the profession will not improve unless the working conditions of educators are improved.

It is necessary to uplift the status of educators so that they are revered and appreciated, making it a more attractive profession (Hatwood-Futrell, 2004). In order to attract and retain well-qualified educators, it would be necessary for educators to be paid salaries reflecting their professional status and the importance of the work they are doing. However, this will not happen if educator salaries are barely minimal or delayed (UNESCO, 1966), a problem already mentioned in 1966, but still current today.

Where the status of educators and the importance of their role are recognized, the morale of the profession is sustained, enhancing the ability of individual educators to educate learners to situate themselves in an increasingly complex world (ILO, 1990:1).

De Groof and Russo (2008:251) mention that there is an increasing worldwide inclination to hold educators publically accountable for learner performance. This tendency, seen in conjunction with the previously mentioned aspects, has created a need for an international focus on the legal status of educators. As the study of this

topic is crucial not only at national level, but also at international level from a comparative perspective, a comparative education law study (*cf.* 1.5.2, 4.2.1) regarding the status of educators was included in this study.

1.4.1 Concept clarification

For the sake of this study:

- educators will be considered to mean any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services at a school (84/1996:sec.1; 31/2000:sec.1), thus including school principals[3];
- learners[4] will be considered to mean any person receiving education or obliged to receive education in terms of the SA Schools Act (84/1996:sec.1); and
- parents/caregivers will be considered to mean the parent or guardian of a learner, the person legally entitled to custody of a learner or the person who undertakes to fulfill the obligations of a person referred to above towards the learner's education at school (84/1996:sec.1).

School Governing Body members would therefore automatically be included in the study population, as both parents/caregivers and educators are represented on the School Governing Body.

De Waal (2010) points out that there is a distinct shortcoming in the SACE Code of Ethics for South African Educators, as the document constantly refers to *professional and profession* while never offering a clear definition for either of these terms (*cf*. 2.5.1). Therefore, as suggested by De Waal (2010), the researcher will compile definitions for professional and profession (*cf.* 4.2.3.2).

In this study, the status of educators is considered to encompass both the legal status (*cf*. 2.2) and the professional and social standing of educators within the respective societies. Therefore, discussions regarding aspects affecting or affected by educator status will be expounded upon. In Chapters Two and Three, two such aspects, namely discipline at schools and in classrooms, and gender distribution are discussed. Discipline, because the researcher is of the opinion that a lack of respect

[3] In the case of Belgium and England the term teacher will be used (*cf*. 3.1)

[4] In the case of Belgium and England the term pupils will be used (*cf*. 3.1)

for educators and disciplinary problems is linked to a lack of respect for the status of educators. Gender is discussed because a variety of authors (Abel & Lewis, 1996; Rots, Sabbe and Aelterman, 2002; Irvine & Vermilya, 2010; Horrowitz, 2012) have pointed towards a link between the feminization of a profession and a decline in social status of that profession.

Although the male reference will be used in this study, the female is *mutatis mutandis* included as is standard practice in legally oriented research.

1.5 RESEARCH METHODOLOGY

According to Leedy and Ormrod (2005:2), research can be defined as a *systematic process*, which originates from a question in the researcher's mind, leading to the collection, analysis and interpretation of data in order to increase the understanding of the phenomenon. Creswell (2009:3) states that the research design refers to the researcher's plan of action which involves several decisions. The approach normally chosen by the researcher comprises three components: philosophical postulations, strategies of inquiry and chosen methods (Creswell, 2009:5).

This study used the components of concurrent mixed method, within a multi-strategy research design (*cf.* 1.5.2; 4.2). The concurrent mixed method approach combines both qualitative and quantitative forms (Creswell, 2009:4) to add depth to the study as both inductive and deductive reasoning are used (Wheeldon, 2010:88).

The researcher of this study regards the comparative education law study (*cf.* Chapter five) as the qualitative component of her research, based on the fact that a document analysis was conducted in that part of the research. The typology for the study can be illustrated as follows: **QUAL + QUAN,** as both components shared equal importance (Maree & Van der Westhuizen, 2007:33; *cf*. 1.5.2.4; 4.2.1; 4.2.5.2).

The quantitative or empirical investigation of the study was done in the form of a survey, by means of self-developed questionnaires (*cf*. 4.2.1.1). The questionnaires were distributed to educators, learners and parents/caregivers at schools in the Sedibeng D7 district in order to assess their perceptions regarding the status of educators (*cf*. 4.2.2) since this is a relatively big district close to the researchers place of work and residence.

Taking note of renowned researchers from the 1970s, the researcher of this study would like to point out that, according to Kamba (1974:486), comparative law refers to the study of law by systematically comparing legal systems or parts, branches or

aspects thereof, in order to find reasons for differences and similarities of social phenomena in the law (Kamba, 1974:493; Corcoran, 1996:56; Palmer, 2005:264-265, 284; Örücü, 2006:29; Hantrais, 2009:35) or even to assist in the solving of problems in general jurisprudence, as well as pressing public policy questions (Kiekbaev, 2003; Örücü, 2006:31; Eberle, 2008; Hantrais, 2009:35-36; *cf*. 4.2.1.1)

1.5.1 Research paradigm

While Creswell (2009:6) considers the concept paradigm to be synonymous with the term *worldview*, indicative of a broad view that the researcher has of the world and the nature of research, Morgan (2007:69) adds that it involves essentially ethical and moral issues. According to Babbie (2010:33), a paradigm refers to the primary context the researcher uses to systematize interpretation, while Mertens (2010:7) is of the opinion that the research paradigm reflects the philosophical conviction of the researcher and therefore impacts on all decisions made regarding the research process. Thus the research paradigm of a study refers to the world view from which the researcher embarks in order to reach the objectives of the study (*cf*.1.1.2).

The philosophical basis of this study was pragmatism. Soanes and Hawker (2005:798) describe pragmatism as a realistic and practical approach towards the research problem. According to Creswell (2009:18), the pragmatic researcher typically uses a mixed method approach as the inquiry is based on the supposition that the collection of diverse types of data lead to a better understanding of a research problem. Pragmatists are not dedicated to one reality: they have independence regarding options as they do not see the world as being in complete unison (Creswell, 2009:10-11). Moreover, supporters of pragmatism explore the *what* and *how* in a variety of circumstances, including those of a social, political and legal nature (Creswell, 2009:11).

This research study lent itself towards pragmatism as the researcher used a survey in order to establish the school community's perspectives of the status of South African educators, while using a comparative law method to investigate the status of educators in two other countries in comparison to the situation in South Africa. According to Morgan (2007:71), pragmatism lends itself towards abductive reasoning, a reasoning that moves back and forth between inductive and deductive reasoning, allowing one to converge findings into inferences and then into action. Thus the findings from the survey may lead to inferences which can be tested

against the findings of the comparative law study in order to find workable solutions to the dilemmas faced by the South African educators.

1.5.2 Research design

Linked to the pragmatic research design, Creswell's description of the mixed method design (2009:10) seemed to be the logical choice for this research. However, having read Hantrais (2009:23, 43, 96, 104-108, 109 & 126), the researcher of this study decided on using *methodological pluralism*. With this term defined as *an important stage on the way to combination methods or 'multi-strategy research'* for researchers dabbling in comparative research, (Bryman, in Hantrais, 2009:105), the researcher of this study chose the term *multi-strategy research* to describe her research design accurately (*cf*. 4.2). Despite the above, the distinctive characteristics of the mixed method design will feature prominently in the research that was conducted for the completion of this study.

As pointed out by Hantrais (2009:105-106), underpinned by the fact that comparative research would frequently be more advanced if different methods were incorporated at the same time, comparative law researchers of the last part of the 20th century also started looking at data collection instruments such as surveys, participant observation, interviews, interpretive methods and focus groups.

This research study can be considered as both descriptive and interpretive: largely descriptive, as the nature of the legal framework of the status of the educator was described, not only in South Africa, but also in the other two countries mentioned; interpretive, as the aim of the study was to gain insight into the nature of the perceptions South African school communities have regarding the status of educators, in order to develop new perspectives about the aspect, and/or discover possible concerns regarding the aspect.

The research plan can be described as a multi-strategy research design (*cf*. 4.2):

- a comparative law document analysis study was done regarding the legal status of educators; and
- a survey was conducted to determine the perceptions of the South African school community concerning the status of educators.

A multi-strategy research design was chosen in order to validate findings and recommendations, as evidence would not only be found in documents, but also in practice.

1.5.2.1 Strategies of inquiry

As an understanding of the present situation was the objective, a survey was necessary because it is considered to capture a *fleeting moment in time* (Leedy & Ormrod, 2005:184). The survey as research method is uncomplicated in its design, and draws conclusions from a momentary collection of data, allowing the researcher to generalize findings from what is seen (Leedy & Ormrod, 2005:184).

For this particular study, it was advantageous to use both a survey and a comparative education law study (*cf*. 4.2.1.1), since the information from the comparative study (*cf*. 1.5.2.6; 4.2.1) explained, expanded and elucidated the findings obtained from the quantitative component (*cf.* 1.5.2.6; 4.2.1) which will be integrated in Chapter Seven (*cf.* Chapter Seven).

- **The quantitative component**

The researcher used non-experimental, descriptive survey research (cf. 4.2.1.1) by developing structured questionnaires, based mainly on information from the literature study (*cf*. Chapter Two & Chapter Three). Three separate questionnaires, for educators (*cf*. Addendum E1), learners (*cf*. Addendum E2) and parents/caregivers (*cf*. Addendum E3) respectively, were developed, with the main difference being a shift in focus for each of the different groups of participants. The aim of the questionnaires was to ascertain the perceptions of the South African school community regarding the status of educators (*cf*. 4.3.2.1).

- **The qualitative component**

With the intention of gaining an educational-juridical perspective on the status of South African educators and how society recognizes this status (*cf*. 1.3.1), this researcher chose to include a comparative education law document analysis (*cf*. 1.5.2.6; 4.2.1.1) study as Chapter Five of this study in order to scrutinize and report on relevant international legal sources in an informed manner, as will be pointed out in greater detail later (*cf.* 4.2.6.2).

According to McMillan (2008:189), a comparative study permits researchers both to acquire insight and evaluate information by comparing and weighing the data that

were studied (*cf*. 4.2.5). In Chapter Five, the researcher of this study aimed at achieving an international educational-juridical perspective on the status of educators worldwide in order to advocate stronger for a change in South African society's perceptions on its own educators.

1.5.2.2 Research participants: sampling

The researcher used stage sampling (Leedy & Ormrod, 2005:207; *cf.* 4.2.2), a method combining different sampling strategies (Mertens, 2010:319), as method to draw the sample of schools for the study, ensuring the inclusion of primary and secondary schools, as well as rural and urban schools in different socio-economic milieus.

The survey population included educators, parents/caregivers of learners, and learners[5] currently involved at public schools in the Sedibeng-East District (D7). A variety of schools was used in the study, as the district comprises of diverse socio-economic areas. Therefore, after using purposive sampling to select the schools used in the study, the researcher used stratified sampling to obtain samples of the different strata evident in the population (Leedy & Ormrod, 2005:202; Muijs, 2010:34; *cf*. 4.2.2)

There were 75 public schools in the district (N=75) at the time of the sampling,[6] including single medium ex-Model C schools, parallel medium schools, dual medium schools, LSEN schools and section 21 schools. This selection of schools provided for a distribution of participants in different conditions. However, of these 75 schools, 7 schools were excluded. Using the guidelines for sampling as proposed by Stoker, (in Strydom, 2005c:196) a purposive sample of 50% of the schools (n=34) was selected (*cf*. 4.2.2).

The participating educators, learners and parents/caregivers of learners were male and female and they came from a variety of cultural backgrounds (*cf*. 4.2.2).

More detail on the research participants of this study will follow in the chapter on the research design, Chapter Four (*cf.* 4.2.3).

[5] At secondary schools the learners in Grade 10 were used and at primary school the learners in Grade 7.

[6] Data obtained from the district office of the Sedibeng-East District (Mr J Ceronio)

1.5.2.3 Pilot study

Leedy and Ormrod (2005:110) point out that a pilot study can be considered as an exploratory inquiry to establish if the study is feasible. A pilot study is also a time-saving method, as it allows the researcher to ascertain which approaches are effective and assists in reaching the aims of the study (Leedy & Ormrod, 2005:110), while making the researcher aware of possible deficiencies in the questionnaires (Fouché & Delport, 2005:82; *cf*. 4.2.3.2).

Such a study was conducted before the actual questionnaires were handed out to the research participants and the outcomes are reported in the chapter on the research design, Chapter Four (*cf.* 4.2.3). Important aspects of reliability (*cf*. 4.2.3.2) and validity (*cf*. 4.2.3.3) are also discussed in that chapter, including the results of the Cronbach alpha of the pilot study (*cf.* 4.2.3.2).

1.5.2.4 Methods of data collection

According to Mertens (2010:350), data collection is the medium researchers use to anchor their discussions in empirical data, as the data is used to answer research questions, to defend findings and to assist in making recommendations.

- **Quantitative: questionnaire**

As indicated above (*cf*. 1.5.2.1), the researcher chose to use three structured questionnaires as her research instruments for the quantitative phase of her research: one for educators; one for learners; and one for parents/caregivers (*cf*. 4.2.3.1).

The perceptions of the educator, learner and parent/caregiver participants were measured by using a Likert scale, also known as a rating scale (Leedy & Ormrod, 2005:185). A Likert scale is a widely used ordinal scale measuring the attitudes of participants (Maree & Pietersen, 2007b:167), by and large used in order to evaluate the phenomenon researched on a continuum, for example *agree, partially agree, partially disagree or disagree* (Leedy & Ormrod, 2005:185).

The purpose of the three questionnaires that were developed for this research was to establish:

- the knowledge the educator, learner and parent/caregiver participants have regarding the legal status of South African educators;

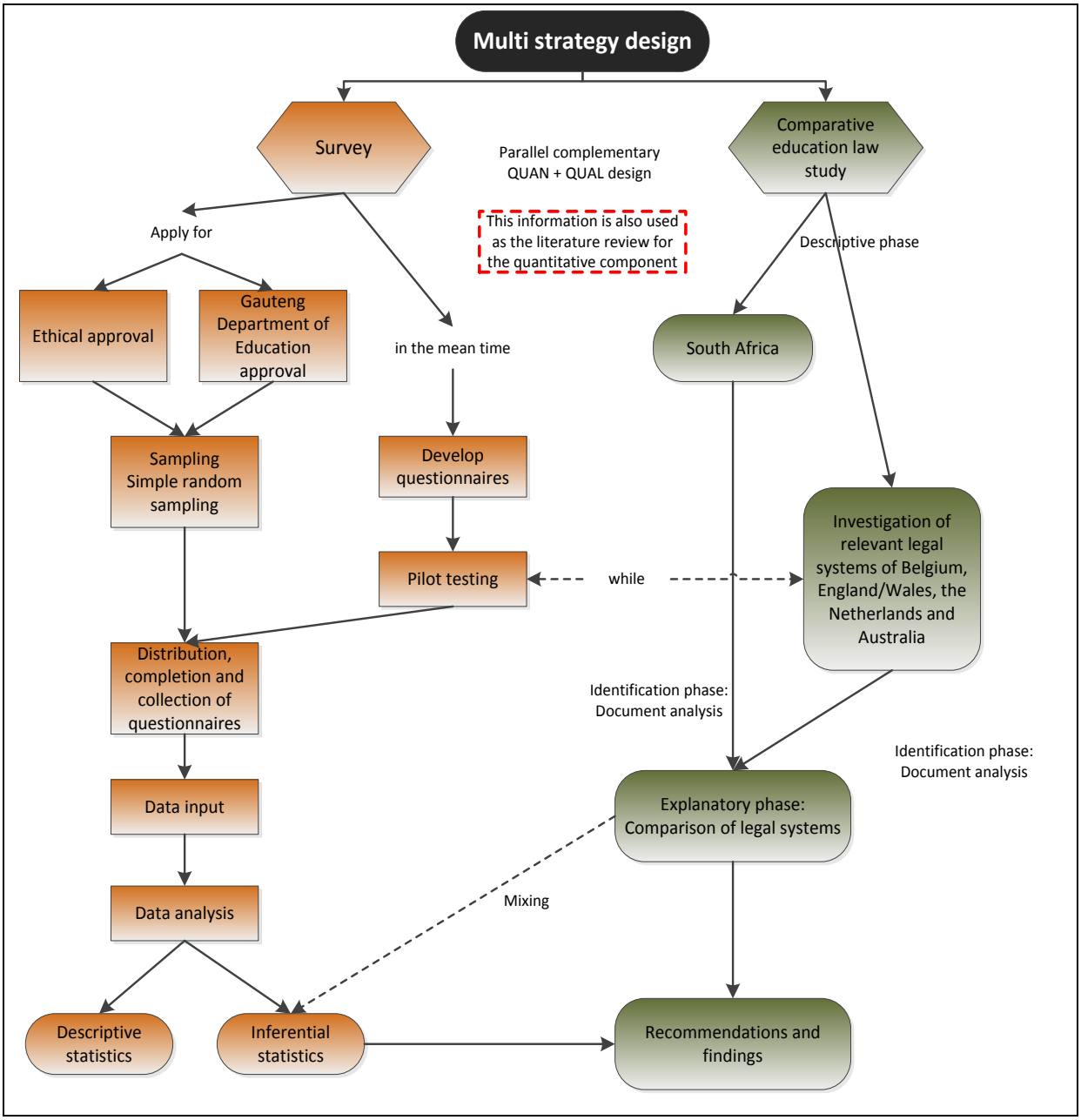
- the perceptions educator, learner and parent/caregiver participants have regarding the status held by South African educators; and
- which factors contribute towards the legal and societal status of educators.

A more detailed discussion of the questionnaires as research instruments and the feedback concerning the Likert scales of the three questionnaires will be presented in the chapter on the research design, Chapter Four (*cf.* 4.2.3.1).

1.5.2.5 A visual representation of the research design

The researcher of this study combined all the above-mentioned aspects (*cf.* 1.5.2-1.5.2.3) to illustrate the research design visually as is shown below in Figure 1.2.

Figure 1.2: A brief visual look at the research design



1.5.2.6 Data-collection process

Multi-strategy research designs share commonalities that are arranged in a variety of ways in order to discern between them. These commonalities would incorporate the cycle of collecting and analyzing the data, and how the results are mixed or integrated during the research process (Ivankova, Creswell & Plano Clark, 2007:268).

- **Timing**

According to Creswell and Plano Clark (2007:81), timing refers to the sequence in which the quantitative and qualitative data are collected. Timing can be either sequential or concurrent (Creswell, 2009:206).

The researcher of this study made use of concurrent timing, as will be pointed out further in the chapter on the research design, Chapter Four (*cf.* 4.2.5.1).

- **Weighting**

Another factor that is taken into account when designing a research procedure is the weight or precedence given to the components of a particular study (Creswell, 2009:206).

The researcher of this study gave equal weight to the quantitative and comparative components as is also reported in the chapter on the research design, Chapter Four (*cf.* 4.2.5.2).

- **Mixing**

The mixing of data leads to better insight into the problem and is done by merging, connecting or embedding the data sets (Creswell & Plano Clark, 2007:7; Ivankova *et al*., 2007:269; Creswell, 2009:208). There are many different reasons why mixing of data is done (Bryman, 2006:105).

In this study, the researcher decided to mix data in order to triangulate data, as well as for completeness (Bryman, 2006:106) and enhancement (Bryman, 2006:107), as will be indicated in the chapter on the research design, Chapter Four (*cf.* 4.2.1 & 4.5.2.3).

1.5.2.7 Data analysis and interpretation

A structured analysis and interpretation of the quantitative data that were gathered for the completion of this study will be presented in Chapter Six of this document.

The international comparative education law document analysis and interpretation is done in Chapter Five of this document.

- **Quantitative: questionnaire**

The statistical analysis of the survey data was done by the Statistical Consultation Services, North-West University (Vaal Triangle Campus). Both an inferential and a descriptive statistical analysis were done (*cf.* 4.2.6.1).

According to Soanes and Hawker (2005:1014), statistics can be defined as the collecting and analysing of a large quantity of numerical data. To Mertens (2010:405), descriptive statistics summarize the data by describing the characteristics found to be universal to the sample, while inferential statistics are used to determine whether there are significant differences between groups within the sample (Mertens, 2010:406).

Thus it can be said that descriptive statistics is the collective name for the different statistical methods used in order to categorize and examine data meaningfully and they can be divided into two ways of representation – graphical or numerical (Pietersen & Maree, 2007c:183). According to Ary, Jacobs, Razavieh and Sorensen (2006:440-441), when one uses the survey method it does not necessarily require complex statistical analysis and can consist of determining the frequencies and percentages of the responses to the questions, especially when making use of cross tabulation (Ary *et al*., 2006:442). Therefore frequency analysis was used as the descriptive statistical method. In this case it concerned the amount of times the various response categories of a variable were evident (Babbie, 2010:428) and is usually expressed as a percentage of the sample in the various categories (Pietersen & Maree, 2007c:184).

Inferential statistics rely greatly on probability theory (Pietersen & Maree, 2007d:198) and refer to the statistical methods that enable the researcher not only to summarize/describe the collected data, but also to be able to draw conclusions from the responses of the sample to the larger population (Babbie, 2010:476). Researchers make their deductions or inferences by way of probability statements (Pietersen & Maree, 2007d:198).

In this study a number of dependent variables needed to be explained, therefore a multivariate analysis of variance (MANOVA) was used first (Babbie, 2010:441; Mertens, 2010:406). In order to determine whether a significant difference existed

between the means of the three groups of participants, an analysis of variance (ANOVA) was done, since researchers use an ANOVA when they want to compare more than two groups (Mertens, 2010:406). A factor analysis was also done in order to detect possible correlations among different variables and to identify groups of interrelated variables/factors which may reveal causal themes in the data (Leedy & Ormrod, 2005:274).

The researcher of this study will provide the theoretical feedback on the research methodology in Chapter Four and the empirical feedback in Chapter Five of this document.

- **Qualitative: document analysis**

According to Venter, Van der Walt, Van der Walt, Pienaar, Olivier and Du Plessis (1990:219), the first step of the comparative law method requires an investigation into the relevant aspects of the different legal systems of the study. The investigation should be aimed at gaining information regarding the content of each of the unfamiliar legal rules individually, which forms the foundation of any comparative law study (Venter *et al.*, 1990:219).

In order to reach this aim, a document analysis was done. Document analysis is a descriptive research method in which current, written materials are analysed in order to identify a specified phenomenon (Best & Kahn, 2003:248; Strydom & Delport, 2005:325; Ary *et al.*, 2006:464; Creswell & Plano Clark, 2007:114). The documents that are analysed may include public as well as personal documents (Creswell, 2009:181).

According to Best and Kahn (2003:249), it is important that the document analysis should serve a purpose and assist in explaining or evaluating the educational aspects studied. Strydom and Delport (2005:325) warn that the researcher should continuously ensure the reliability and validity of the documents that are studied.

As this study included a comparison of different legal systems, only public documents, particularly legal documents were studied and analysed.

1.5.2.8 Steps followed during the collection of the quantitative data

The research was conducted by following specific steps (*cf*. 4.2.7):

- Ethical clearance
- Obtaining the necessary permission from the relevant organizations

- Developing the questionnaires, using the information obtained during the first step
- Pilot testing
- Doing the random sampling of the public schools in the district in order to establish which schools are to be contacted
- Contacting school principals to set up appointments in order to make the necessary arrangements regarding distribution of questionnaires.
- Distributing the questionnaires to educators, learners and parents/caregivers
- Collecting the completed questionnaires
- Analysing and interpreting the quantitative data.

1.5.2.9 Steps followed during the collection of the qualitative data

The qualitative component of the research was conducted by using the following two-step process:

Step 1: Investigating, analysing and reporting on different elements within the different legal systems.

Step 2: Using the results from step 1 to search for similarities and differences in order to synthesize the information (*cf*. 4.2.6.2)

1.5.3 ETHICAL ASPECTS

As pointed out by McMillan (2008:16), ethics are seen to deal with convictions about right and wrong/acceptable and unacceptable/fine and shocking. As, generally speaking, educational research deals with people, it is vital to appreciate the ethical responsibilities of being involved as a participant in research.

The ethical responsibilities which the researcher of this study adhered to will be discussed in the chapter on research design, Chapter Four (*cf.* 4.3).

1.6 CONTRIBUTION OF THE STUDY

1.6.1 Scientific terrain

- Contribution 1: The study could contribute to a better understanding of the precise nature of the legal status of the educator.

- Contribution 2: Understanding the above could lead to sound recommendations in order to advocate for a change in the perspectives leaners, educators and parents/caregivers have concerning the status of educators.
- Contribution 3: Differences in the perceptions held by learners, educators and parents/caregivers regarding the legal position of educators at school may lead to sound recommendations to establish better relationships between the different role-players.

1.6.2 Optentia Research Focus Area

The Optentia Research Focus Area aims to develop and organize knowledge for the optimal expression of individual, social and institutional potential, such as that of educators and schools, specifically in the African context. Within Optentia, the research project named *Creating successful public schools within a legal milieu* (Prof. Elda de Waal) has ethical clearance to include this thesis (*cf*. 4.3).

- Contribution 1: The study could contribute to the understanding of the importance of a regard for the legal status of educators in order to enhance the confidence of educators and to create greater job satisfaction leading to improved, more effective functioning of especially public schools.
- Contribution 2: Understanding the perceptions educators, learners and parents/caregivers have regarding the status of educators could provide insight into the way educators experience their own fundamental rights and security.
- Contribution 3: The study forms part of Prof. Elda de Waal's research project. Moreover, **one of the themes of Prof. de Waal's project is learners' best interests and educator rights in order to advance success at public schools within a legal milieu.**

1.7 POSSIBLE CHALLENGES

The researcher foresaw some challenges that could influence the process and progress of the research. While these challenges are indicated below, the feedback on how they played out will be presented in the chapter on the research design, Chapter Four (*cf*. 4.3).

1.7.1 Questionnaires

- Due to the diversity in language and reading skills of South African society some of the participants may not interpret the questionnaire items correctly.
- Some of the parents/caregivers of the learners may be difficult to reach.
- Illiteracy could be a factor concerning some of the parents/caregivers.
- Return rates may be low or differ significantly across the different participant groups.
- Participants may not be honest and answer the questions according to what they think the researcher wants (*cf*. 4.4.1).

1.7.2 Comparative education law study

- Finding reliable and valid information regarding the legal systems of the relevant unfamiliar countries.
- The impact of language in the interpretation of the documents of the non-English country.
- .Ensuring that the international education law comparison is not superficial.
- Finding the relevant information from the bulk of information available on the Internet (*cf*. 4.4.2).

1.8 CHAPTER DIVISION OF THIS STUDY

- **CHAPTER ONE AN ORIENTATION TO THE STUDY**

  This chapter considers substantiating the study by presenting an outline of all its components.

- **CHAPTER TWO A LEGAL FRAMEWORK FOR THE STATUS OF SOUTH AFRICAN EDUCATORS**

  A discussion of the relevant legislation and other legal documents that refer to the status of South African educators is provided.

- **CHAPTER THREE AN INTERNATIONAL OVERVIEW ON THE PROFESSIONAL STATUS OF EDUCATORS**

  An overview is presented of relevant legislation and other documents that provide insight into the legal status of educators in Belgium (Flemish community) and England/Wales.

- **CHAPTER FOUR RESEARCH DESIGN AND METHODOLOGY**

  The research design and methodology are expounded upon.

- **CHAPTER FIVE AN INTERNATIONAL COMPARATIVE EDUCATION LAW PERSPECTIVE**

  The information gained in the literature review, Chapters two and three, is compared and contrasted in order to provide insight and make findings and recommendations.

- **CHAPTER SIX QUANTITATIVE DATA ANALYSIS**

  The quantitative data that were obtained from the educator, learner and parent/caregiver participants are analysed and discussed.

- **CHAPTER SEVEN FINDINGS AND RECOMMENDATIONS**

  A summation of the preceding chapters is provided, findings are elucidated and recommendations are made.

1.9 SUMMATIVE REMARKS

This chapter provides a brief orientation of the study. The short literature review provides background to and validates the research problem. The researcher introduces the research problem by providing a short explanation of the shared relationships between educators, learners and parent/caregivers, with particular reference to the specialized legal relationship (*cf*. 1.2).

From the literature review it becomes clear that there are concerns regarding the status of educators resulting in a flight from the profession, not only in South Africa, but world-wide (*cf*. 1.1.1). Within the South African context educators experience stress and burnout due to among others the changing roles of educators, the lack of discipline at schools, unmotivated learners and large learner-educator ratios. At the same time, the demotion of educators to normal workers by the Labour Act (66 of

1995) has led to a situation where some educators act in an unprofessional manner, contributing to a loss of esteem for the profession (*cf*. 1.1.2).

In order to achieve the aim of the study – to obtain an educational-juridical perspective on the status of educators in South Africa – the researcher decided to make use of a multi-strategy research design, from the pragmatist world view (*cf*. 1.2, 1.5). The quantitative component of the research study comprises a survey by means of a self-developed questionnaire, while the qualitative component is a comparative education law study, as a document analysis of the relevant legal documents of South Africa, Belgium and the UK (England and Wales) was done (*cf*. 1.5).

In the next chapter a legal framework concerning the status of South African educators will be presented.

CHAPTER TWO
A LEGAL FRAMEWORK FOR THE STATUS OF SOUTH AFRICAN EDUCATORS

2.1 INTRODUCTION

This chapter forms part of systematically comparing a legal system and relevant aspects to other legal systems and their relevant aspects in order to find reasons for differences and similarities of social occurrences in the law (*cf*. 1.5) While consulting literature, such as sources commenting on the law, a document analysis will be shown with the specific aim of being able to compare it according to comparative law to the countries in Chapter Three.

2.2 BACKGROUND

In the contemporary South African context, there are different forms of legislation that can be considered as determining factors of education, or more specific: of the legal status of the educator. Legal status depicts a person's position in legal life and can be defined as the sum total of a person's capacities (Bray, 1996:95; Kruger & Robinson, 1997:13; Davel, 2000:14). Thus, legal status indicates the position a person fills legally, or the role a person plays in legal intercourse or the function such a person fulfils as a legal subject and it also determines the legal relationship between certain persons, between a person and the State and the capacity of such a person in the law (Eiselen, 1997:210).

Status, according to public law, differs from status according to private law (Rossouw, 2004:52). Public law controls and regulates the relationship between the State and its subjects, such as the persons of a country, as well as the relationship between the organs of the State and is intended to serve the public interest; private law controls and regulates the rights and duties of private individuals towards each other, thus the relationship between private individuals (Oosthuizen & Van der Westhuizen, 2003:15–16; Rossouw, 2004:52; Joubert, 2009b:8). According to Roos, Oosthuizen and Smit (2009b:58), one of the principal sources of Education Law can be seen as the different forms of legislation. Yet both common and case law also have a determining influence on the legal status of the educator (*cf*. 5.1).

According to Botha (2005:7), legislation comprises of all the different types of enacted legislation, namely Acts of parliament, provincial legislation, municipal by-laws, proclamations and regulations, thus public law. Common law, on the other hand, is not codified (Oosthuizen, 2004:16), but becomes accepted as the law of the country (Botha, 2005:7) as it arises through customs and historical developments (Joubert, 2009b:21). If no statutory law on the subject exists, the common law principle applies. However, common law may be changed by original legislation (Botha, 2005:7). Common law principles as accepted in South Africa springs from the Roman-Dutch legal heritage (Oosthuizen, 2004:16) and is known as Roman-Dutch law (Botha, 2005:7). Case law refers to the law as decided by courts (Botha, 2005:7): Constitutional, Supreme, Appeal or High Court rulings. According to the *stare decisis* principle a court is bound by previous judgments of higher courts and courts of equal status (Oosthuizen, 2004:16; Botha, 2005:7). Court judgments apply to both legislation and common law (Joubert, 2009b:21-22).

Furthermore, one can never lose sight of the fact that the Bill of Rights is applicable to all law, including common law (Bekink & Brand, 2000:174), as well as all human conduct (Bray, 2000a:269). Thus, if a rule of law contradicts any of the rights contained in the Bill of Rights it must be declared invalid (Bekink & Brand, 2000:174), while all government bodies and organs of State are bound by the Bill of Rights of the SA Constitution (1996).

Section 8(2) of the SA Constitution (1996) states that the provisions of the Bill of Rights bind a natural person or a juristic person if, and to the extent that it is applicable, taking into account the nature of the right involved and also the nature of any duty imposed by such a right. According to Bekink and Brand (2000:174), depending on circumstances, some rights are not *only enforceable between the State and the individual, but also between the individual and other private parties.* Lastly, educators, like any other person, can never forget that their conduct must be consistent with the SA Constitution (Bray, 2000a:269).

2.2.1 Educators in the South African education system

Before the 1994 elections, South Africa had 15 different ministries of education, ethnically based and the products of decades of Apartheid (Devenish, 1998:236). However, the social and political environment of democratic South Africa is radically different from South Africa pre-1994. According to Devenish (1998:236), the ANC developed a radical approach to education, reconstructing its very foundations. In

the new approach, two central themes and objectives can be identified: equality of opportunity in education and the training of all citizens irrespective of race, gender and class; and the integration of education and training (Devenish, 1998:236; *cf*. 5.2.1).

According to Bray (1996:95), the law recognises the status of an educator and therefore certain rights and duties are attached to the particular status held. Rossouw and Oosthuizen (2004:31) consider the position of South African educators specifically regarding their legal status as employees, as a unique one since the result of their labour is of critical importance to a variety of role players. In considering the legal status of educators one has to consider their rights and obligations, as well as the different positions held by them in the South African education system (Joubert & Prinsloo, 2001:74). Not only can educators lay claim to certain fundamental rights as citizens of the country, but their actions are also governed by national legislation as employees in the education system. Moreover the teaching profession has certain rights and obligations linked to it (Joubert & Prinsloo, 2001:75; *cf*. 5.2.1).

The most important and influential factor that determines the legal status of the educator, is the SA Constitution (1996; *cf*. 5.2.1). In Section 2 it becomes clear that it holds the highest authority in the country and any legislation contradicting t would be considered invalid and unconstitutional. According to Bekink and Brand (2000:171), the supremacy of the SA Constitution lies not only in the sense that conduct inconsistent with constitutional provisions can be declared invalid, but also that these provisions are binding on all branches of government, including public schools, and require of government to act accordingly (*cf*. 5.3). There are many different forms of education legislation and general legislation which all comply with the SA Constitution, influencing and determining education. All these different statutes are there to protect both educator and learner in different education circumstances.

According to Malherbe (2004:1), among citizens an emphasis on the respect of rights which followed the Apartheid era, led to the misconception that people only have rights, while there are no obligations under the new SA Constitution. Venter (2005:1) supports the viewpoint, stating the advent of a culture of human rights as being one of the most exciting new things in South Africa, but also noting that it has been accompanied by an abuse of human rights. Van der Bank (2000:302) states

that many learners seem to think that their fundamental rights protect them from any disciplinary steps taken at school, no matter what their conduct (*cf*. 5.2.1).

Malherbe (2004:1) continues by stating that this misconception has an even greater effect in education where the perception is held that only learners have rights and that educators are more or less without rights. Learners' rights are flaunted, while educators' rights are flouted, as stated by Venter (2005:1). A general feeling exists among educators that the learning climate in their classroom is being sabotaged by rights going mad in the classroom (Venter, 2005:1; *cf*. 1.1; 5.2.1).

This chapter will provide an in-depth study of the legal status of the South African educator by considering the constitutional structure within which educators function, as well as the legislation governing the educator as employee and as a professionally qualified person. Lastly the common law position of the educator is considered.

2.3 CONSTITUTIONAL OUTLINE

The SA Constitution protects the rights of all South Africans, including learners, educators and parents/caregivers. However, it is of importance that the educator never forgets that the learner's best interests are *of paramount importance in every matter concerning the child*, as specified in section 28(2) of the SA Constitution (1996). This duty to protect the learner has lead to an increased awareness concerning the rights of the learner, mostly because of the necessity to protect learners to a greater extent. However, South African educators are working under considerable stress in the new dispensation (Rossouw & de Waal, 2004:284). There seems to be a lack of awareness regarding the fundamental rights of educators.

The SA Schools Act (84 of 1996:Preamble) makes it clear that the intent is to uphold the constitutional rights of all learners, parents/caregivers and educators. At the same time the Act focuses on the acceptance of a partnership between learners, educators and parents/caregivers regarding the responsibility for the organisation, governance and funding of schools (84 of 1996:Preamble), making all role players responsible for their actions.

Although educators, like all South Africans, are entitled to the protection offered by all the fundamental rights contained in the SA Constitution, there are specific rights that have greater relevance for education as such (*cf*. 5.3). Specific fundamental rights that have particular relevance for education are:

- Section 9 – Equality
- Section 10 – Human dignity
- Section 12 – Freedom and security of the person
- Section 14 – Privacy
- Section 15 – Freedom of religion
- Section 16 – Freedom of expression
- Section 17 – Assembly, demonstration, picket and petition
- Section 18 – Freedom of association
- Section 22 – Freedom of trade, occupation and profession
- Section 23 – Labour relations
- Section 24 – Environment
- Section 28 – Children
- Section 29 – Education
- Section 33 – Just administrative action
- Section 36 – Limitation of rights

These constitutional sections (*cf*. 2.2.1.3 - 2.2.1.13) will be addressed below in an attempt at pointing out the roles affecting the education environment of South African educators.

2.3.1 The relevancy of constitutional rights to the status of educators

These rights listed above all have a direct bearing on the relationship between educators, learners and their parents/caregivers, as well as on the conditions of employment of educators in our current society. Therefore the listed rights have a direct implication on the legal status of educators (*cf*. 5.3). The relevance of each of the listed rights to the legal status of educators will consequently be discussed below.[7]

[7] Seeing as the relevancy of each listed right on the legal status of the educator will be discussed headings may appear repetitive.

2.3.1.1 The relevance of section 28 to the legal status of educators

Section 28(2) of the SA Constitution states that a child's best interests are of paramount importance in every matter concerning the child (*cf*. 5.3.1). Education is probably the single most prominent area in the life of a child. Here the child stands in a direct and intimate relation with the State and thus educators must promote and realize the rights in section 28 in the educational context (Malherbe, 2004:20). Since learners spend a great portion of their day at school, this has a direct bearing on education and requires all educators to be aware of these rights. Educators can therefore never forget that they are working with children, moulding and forming their lives, and every action should be in the best interests of those learners entrusted to them (*cf*. 5.3.1).

The judgements in three court cases in the South African jurisprudence[8] in the last eight years have confirmed how important the best interests of a child principle is considered to be. In these cases the best interests of a child principle took precedence over the interest of educators, parents/caregivers or education authorities in important matters that deal with aspects such as racial and gender equality and redress, if the law or conduct had a negative impact on the interests of the learners involved (Smit, Rossouw & Malherbe, 2008:197).

Although neither the *Laerskool Middelburg* nor *Mikro* directly refer to the legal status of educators, the cases are mentioned as they represent landmark decisions with regard to best interests of a child,[9] as well as the first indication that the best interests of a child principle can be considered as a substantive right. Of the three cases mentioned, *Point High School* is directly related to and of particular interest to the legal status of educators with regard to the best interest of a child principle.

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8 *Laerskool Middelburg v Departementshoof*; Mpumalanga Departement van Onderwys, 2003 (4) SA 160 (T) (hereafter referred to as Laerskool Midelburg); *Western Cape Minister of Education v Governing Body of Mikro Primary School*, 2006 (1) SA 1 (SCA) (hereafter referred to as Mikro); *Governing Body of Point High School v Head of Western Cape Education Department*, 2008(5) SA 18 (SCA)) (hereafter referred to as Point High School).

9 Both the mentioned cases dealt with language rights. Although the outcomes of the cases differed, the consideration of the best interests of a child was taken as of paramount importance and formed an integral part of the judgement.

The case before the court in this instance challenged the amendment made to the Employment of Educators' Act,[10] allowing the Department of Education to appoint any candidate from a list of three recommended candidates. In this case the Department decided not to appoint the two people indicated as first choices for the positions of principal and vice principal. The court ruled that the principle of the best interests of a child requires of the Department of Education to appoint the best candidate on merit in order to adhere to this constitutional requirement (*cf*. 5.3).

The close link between educator and learner places a constitutional responsibility on the educator with regard to section 28(1)(d) which states that every child has the right to be protected from maltreatment, neglect, abuse or degradation. It is the responsibility of any educator to be observant regarding conditions surrounding learners in their care, as well as to report any cases where abuse, neglect, maltreatment or degradation is suspected (*cf*. 2.3.2.2). With regard to protection against degradation, educators also have the responsibility to guard their tongues and teach learners to do the same (*cf.* 2.2.1.4; 2.2.1.7; 5.3.1).

Section 28(3) states that *child* means a person under the age of 18 years (1996), a stipulation mirrored in the Children's Act 38 of 2005 (38 of 2005:sec.1&17; hereafter Children's Act), as well as the Child Justice Act 75 of 2008 (75 of 2008:sec.1; hereafter Child Justice Act) bringing the child law legislation in line with the SA Constitution (*cf.* 2.3.2.2). However, this change leads one to question the position of South African educators when dealing with learners older than 18, especially when it comes to disciplinary and behavioural problems. This matter becomes even more problematic when one considers that section 3(1) of the SA Schools Act (84 of 1996) stipulates that school attendance is only compulsory until the last school day of the year in which a learner reaches the age of fifteen years or the ninth grade, whichever comes first (*cf*. 5.3.1).

2.3.1.2 Is the right to a basic education relevant to the legal status of the educator?

According to section 29 of the SA Constitution everyone has the right to a basic education in the official language of their choice in public educational institutions, where practically possible, but not to free basic education (*cf*. 3.2.2; 3.2.4.4; 3.3.4.4;

[10] Section 6(3) of the Educators' Act 76 of 1998

5.3.2). Cameron (1989:6) sees education as a quintessential human right, without which few of the other human rights can have meaning. Rossouw (2003:418) sees the learner as a developing human being, developing toward adulthood, in need of and dependent on others, such as his/her parents/caregivers and educators, for a relatively long time. The learner is dependent on education and would not be able to grow to the status of adulthood without it. According to the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (SA, 1998:art.1.4; hereafter Code of Conduct Guidelines) education is a platform for learners to practise the required conduct necessary to become part of a democracy based on a culture of human rights, while quality education provides learners with the opportunity to acquire the necessary knowledge and skills to compete with the rest of the world.

Reminding everyone of corresponding duties, Bray (2000a:282) points out that the right to a basic education places many important obligations and duties relating to school education on the learner, as successful teaching and learning is supported by an atmosphere of harmony and order (SA, 1998:art.1.1). It is therefore possible to withhold the right to a basic education from a learner who has, for example, been suspended rightfully. According to Joubert (2000:444), order depends greatly on the manner in which educators enforce legal procedures and principles. Thus, learners who contravene school rules are often punished by means of suspension and expulsion, which are well recognised as forms of correction (Bray, 2000b:291). However, these forms of punishment have to be exercised in a reasonable and justifiable manner, as stated in section 36 of the SA Constitution, as they could infringe upon the right to receive a basic education (Bray, 2000b:291; *cf*. 5.3.2). The learner would have to be found guilty of misconduct, and can only be suspended after a fair hearing (84 of 1996:sec. 9).

It can be said that a learner has to comply with the legal provisions of discipline (SA, 1998:art.3.6 & 4.6) and cannot flout school rules in the name of exercising the right to a basic education (Maithufi, 1997:259; Bray, 2000a:282; Joubert, 2009c:109; Prinsloo, 2009a:42), while disregarding their obligation to acknowledge the rights of other learners and educators (Bray, 2000a:282; Rossouw, 2004a:64-65). The current situation in South Africa is indicative of learners harbouring the misconception that their fundamental rights protect them from any form of discipline (Van der Bank, 2000:302), while educators feel that their hands are tied. Joubert (2000:444) states

that in the pursuit of quality education with a human rights culture, the protection of the interests of all the partners should be emphasized, as the only way one can recognise the limits of one's own rights is through conscious knowledge of other people's rights (*cf*. 5.3.2).

The Preamble of the SA Schools Act (84 of 1996) obliges educators to work towards the provision and protection of a homogeneous national education system focussed on redressing the injustices of the past, working towards the advancement of a democratic transformed society and the eradication of racism, sexism and any other form of discrimination. At the same time educators have to be devoted to education to enhance the culture of teaching and learning (SA, 1998:art.4.7.4). However, in accepting both previously mentioned challenges, educators need to understand and acknowledge that it is sometimes necessary to limit certain rights and freedoms entrenched in the SA Constitution in order to achieve quality education (Joubert, 2000:448; *cf*. 5.3.2).

From the above-mentioned it is clear that the right to a basic education requires a joined responsibility which is acknowledged in the Code of Conduct Guidelines (SA, 1998:art.4.7.4) which states that for education and learning to be successful, learners must be dedicated to expanding their development and learning, while educators must be devoted to educate and teach. In light of the current situation in South Africa with the increase in disciplinary problems reported continually over the last few years, the question needs to be asked: What is the position of the educator when learners who have passed the age of compulsory schooling, as well as the age of maturity, disrupt classes continually and infringe on the right to a basic education of other learners (*cf*. 5.3.1; 5.3.2)?

2.3.1.3 Section 9 – Equality

While Maile (2002:636 & 638) considers the word discrimination to refer to differentiation in treatment of people without proper justification in a manner that includes some aspect of injustice, the Bill of Rights uses the word in its *neutral non-pejorative sense* and the qualifier *unfair* provides the distinction that indicates prejudice or disadvantage (*cf*. 5.3.3).

The horizontal application of the equality right in the SA Constitution (1996:sec. 9) is guaranteed by section 9(4) which stipulates that no person may be unfairly discriminated against by anyone on the listed grounds, while section 9(5) states that discrimination on one or more of the listed grounds would be unfair unless it could be

established that the discrimination is justifiable. A reflection of the grounds listed in section 9 can be found in the Employment Equity Act 55 of 1998 (55 of 1998:sec. 6(1)), while three more grounds are added, namely family responsibility, HIV status and political opinion (55 of 1998:sec. 6(1); *cf*. 5.3.3).

This implies that no employers may discriminate unfairly against anyone, thus not only protecting educators who are employed by the Department of Education, but also those employed by an independent school and School Governing Bodies (Bray & Beckmann, 2001:118). Another important aspect with regard to equality in employment is that labour legislation should promote the right to equality, seeing that the SA Constitution holds the highest authority in the country, invalidating any legislation not upholding its principles (*cf*. 5.3.3).

Currently the HIV/AIDS pandemic in South Africa is increasingly influencing the education sector negatively. According to Nieuwenhuis (2000:479), HIV/AIDS is not only found in our education institutions among adults, but it has become a disease of school-going children. The National Policy on HIV/AIDS, for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions (SA, 1999a; hereafter HIV/AIDS Policy) was released by the government in 1999 and aims at promoting effective prevention and care within the public education system (SA, 1999a:Preamble; *cf*. 2.2.1.10; 5.3.9).

With regard to section 9 of the SA Constitution (1996), educators at public schools need to ensure that they are aware of the stipulations of article 3 of the HIV/AIDS Policy which states that no learner or educator with HIV/AIDS may be unfairly discriminated against directly or indirectly, while educators should be alert to unfair accusations against any person suspected of having HIV/AIDS (SA, 1999a:art. 3.1). Furthermore, educators with HIV/AIDS should be treated in a just, humane and life-affirming way (SA, 1999a:art.3.2). Any special measures in respect of educators with HIV/AIDS should be fair and justifiable according to the stipulations of article 3.3 of the HIV/AIDS Policy, which include acting within the best interest of the educator who has HIV/AIDS, as well as within the best interest of other educators (SA, 1999a; *cf*. 5.3.3).

According to section 7(2) of the Employment Equity Act (55 of 1998), it is prohibited to test an employee to determine the employee's HIV/AIDS status, except if the Labour Court determines such testing in terms of section 50(4) of the Act. This Act (55 of 1998) furthermore provides for authorised testing, permissible testing,

confidentiality and disclosure. This implies that no educator can be forced to undergo an HIV/AIDS test, or disclose his/her status (Prinsloo, 2002:601; *cf*. 5.3.3). Moreover, no educator may be denied the right to be appointed, to teach or to be promoted due to his/her HIV/AIDS status. Neither may the HIV/AIDS status of an educator lead to dismissal nor refusal to continuation or renewal of a contract (Prinsloo, 2002:602; *cf*. 5.3.3).

In *Hoffmann v South African Airways* 2000 (2) SA 625 (W) (hereafter referred to as *Hoffmann*), the High Court heard the case of an applicant who argued that the refusal of the South African Airways to employ him, constituted unfair discrimination. The court ruled for the respondent upon which the applicant appealed. In *Hoffmann v South African Airways* 2001 (1) SA 1 (CC)) (hereafter referred to as *Hoffmann CC*), the Constitutional Court reversed the decision of the High Court and stated that the refusal to employ the applicant was an infringement of the applicant's right to equality and that the reasons provided for the violation of the right were not justified. The Constitutional Court also considered the infringement of the applicant's right to human dignity and fair labour practices in its judgement. In his reasoning, Judge Ngobo stated that at the heart of the constitutional prohibition against discrimination lies the right for equal dignity to be bestowed upon everyone, regardless their position in society (*cf.* 2.2.1.4; 5.3.3; 5.3.4). Furthermore, Judge Ngobo remarked that the Constitution not only focuses on the prevention of unfair discrimination, but also on the elimination of the effects thereof. Thus, in the employment context, this constitutional aim would be reached by eliminating discriminating employment practices and, as far as possible, restore the position of the affected person to that which the person would have been in if the unfair discrimination had not happened.

Among others, based on the stipulations of the Employment Equity Act (55 of 1998) and the HIV/AIDS Policy (SA, 1999a), educators are legally bound to ensure that no direct or indirect unfair discrimination happens due to the HIV/AIDS status or perceived status, that they do not allow other educators to refuse to work with, or refuse to teach, or refuse to be taught by educators with HIV/AIDS. Lastly, educators are required to educate all learners, colleagues, parents/caregivers and other role players in this regard (Prinsloo, 2002:604; *cf*. 5.3.3).

The right to equality and its relevance to the legal status of educators

Regarding educators, section 9 of the SA Constitution (1996) ensures their equal treatment. In *Larbi-Odam v Member of the Executive Council for Education (North-*

West Province) 1996 (12) BCLR 1612 (B)) (hereafter referred to as *Larbi-Odam*), eight foreign educators temporarily employed in the North-West Province, some of them with permanent residence status, applied for an order declaring Regulation 2(2) of the Regulations Regarding the Terms and Conditions of Employment of Educators invalid. This regulation provides that persons shall not be appointed as educators at a public school in a permanent capacity, unless they are South African citizens. The applicants argued that regulation 2(2) was invalid on the grounds that it constituted unfair discrimination specifically in contravention of section 8(2) of the Interim Constitution of the Republic of South Africa, Act 200 of 1993 (200 of 1993). The application was dismissed and the applicants appealed to the Constitutional Court[11]. In the appeal, the Constitutional Court held that the equality principle also protected foreign residents with permanent residence status (Malherbe, 2004:9; *cf*. 5.3.3).

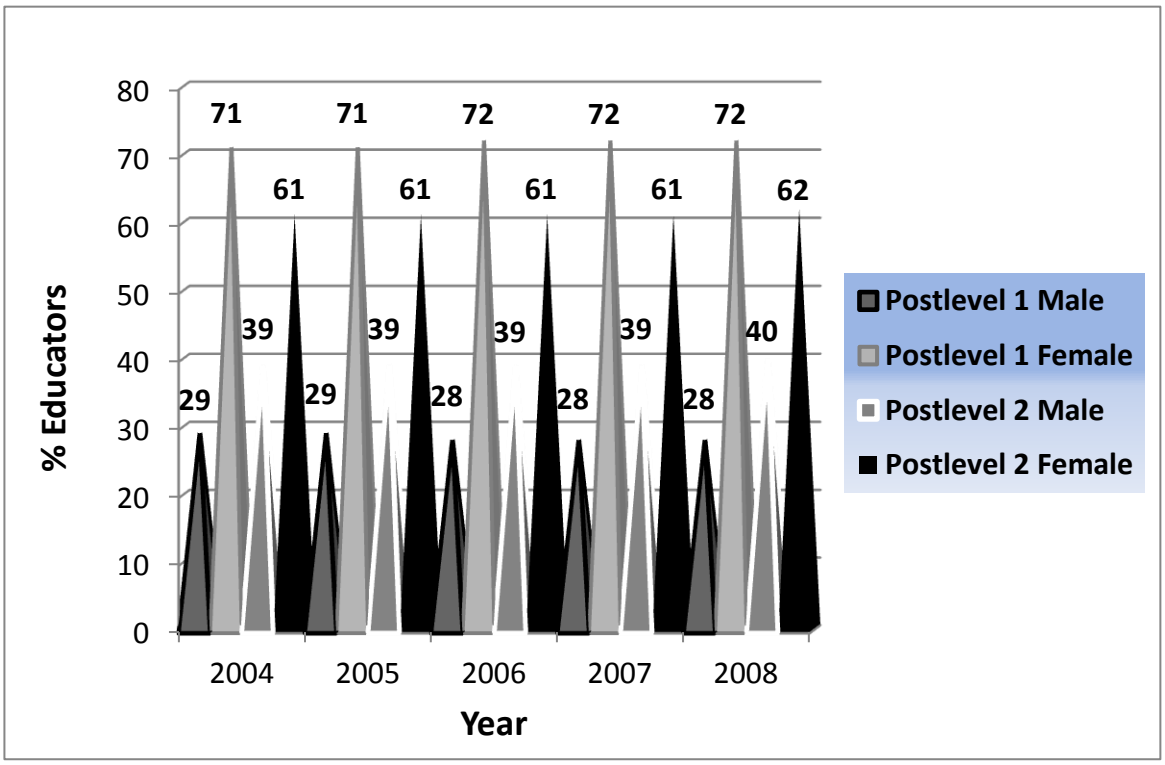
The equality principle implies that, in the appointment of educators, one cannot unfairly discriminate on any of the grounds mentioned in section 9(3) of the SA Constitution (1996). An example would be allowing the appointment of an educator to be unduly influenced by the mother tongue spoken by an applicant, while other more deserving applicants are much better qualified for the position (Davies, 1995:30; *cf*. 5.3.3).

Section 9(2) of the SA Constitution (1996) stipulates that all people should be able to enjoy all rights and freedoms fully and equally. However, it also refers to the fact that labour legislation should allow for affirmative action, seen as *positive* discrimination, towards previously disadvantaged people, to ensure the promotion of achievement of equality (Bray & Beckmann, 2000:437; 2001:117). According to Malherbe (2004:10), affirmative action is relevant to the appointment of educators and addressed extensively in the Employment of Educators' Act (76 of 1998; *cf*. 2.3.4; 5.3.3).

Hausmann, Tyson and Zahidi (2007:136) report that women dominate the education profession in South Africa, with over 76% of primary school educators being female. Male representation at primary schools is very low, while at secondary schools the distribution of male and female educators is much more balanced, with female educators' representation at 52% (Hausmann *et al*., 2007:136).

[11] Larbi-Odam v Member of the Executive Council for Education (North-West Province) 1998 1 SA 745 (CC)

Figure 2.1: Gender distribution of educators and Heads of Department



(Hindle, 2009)

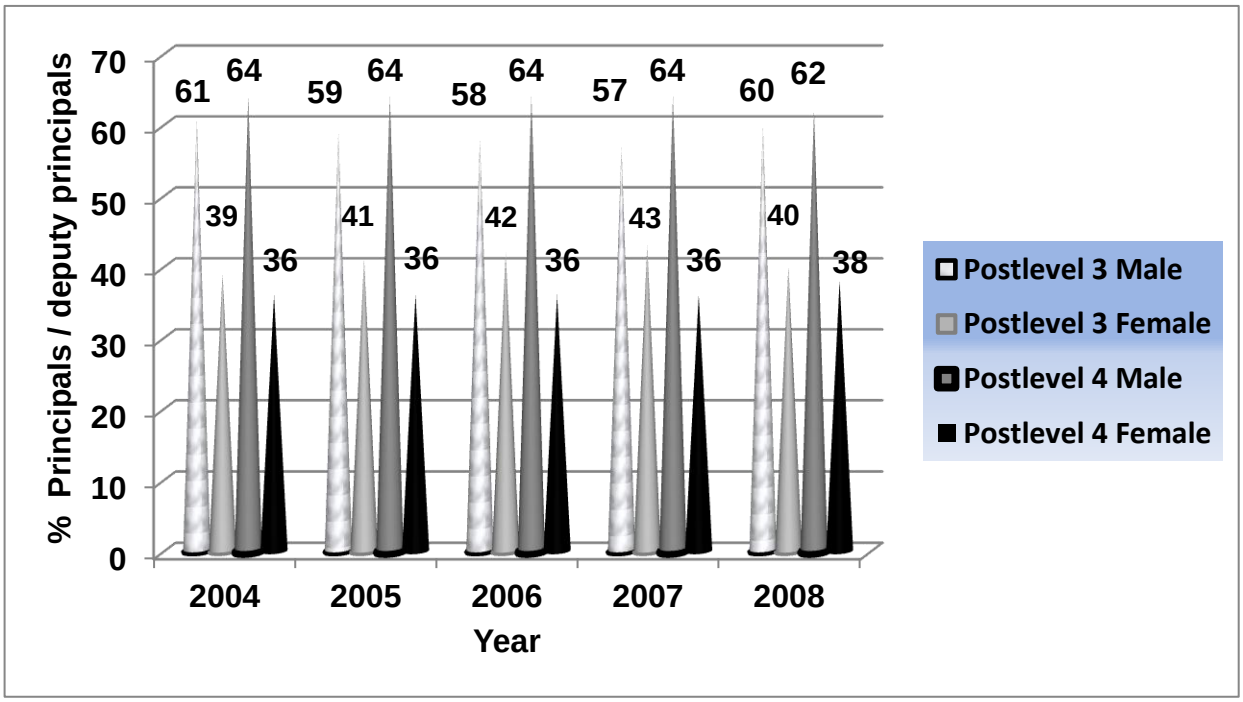
Figure 2.1 clearly portrays an education system characterised by a predominance of females. The represented data clearly indicates that on Post Level 1 male representation is low, with a slight rise in Post Level 2. The overall gender imbalance found in the profession reflects what many consider an inadequate presence of male role models in the field of education (DoE, 2005:42). Since 2009 the situation has not changed considerably, with the 2013 statistics showing that 68.3% of all educators in South Africa are female (Sapa, 2013; *cf*. 5.3.3).

Although not the only effect, one effect of the increased ratio of female educators is that it tends to undermine attempts to attract male candidates to the education profession (DoE, 2005:43), leading to an impact on supply. The impact is particularly evident with regard to certain specialised subjects known to conventionally attract more male than female learners (DoE, 2005:43). Even though the number of female educators has risen overall, there has not been a significant rise in female educator numbers in secondary specialist areas, for example those of Science and Mathematics (DoE, 2005:9). Women are still underrepresented in management positions, such as Post Level 3 and 4, at schools despite the increasing feminization of the education profession (Küng & Kocks-De Waal, 2010:20). Only pre-primary and

primary schools resort largely under the managerial responsibility of women (DoE, 2005:43).

The under representation of females in managerial positions is shown in Figure 2.2. The graph clearly reveals that the female representation at management level does not correspond at all with the female representation at educator level (Küng & Kocks-De Waal, 2010:20).

Figure 2.2: Gender distribution of principals and deputy principals



(Hindle, 2009)

The data represented in Figure 2.2 shows that between 2004 and 2008 approximately 36% of principals were females, while only approximately 40% of deputy principals were females. This has not changed at all as the female representation of principals in 2013 constitutes 36.4% (Sapa, 2013). When one considers that 70% of South African educators are female (*cf.* Figure 2.1) there is no doubt that gender discrimination is still evident in the consideration of managerial positions (Küng & Kocks-De Waal, 2010:21). Moreover, Bosch (2011:71) indicates that even though there is a great deal of salary parity in the social services sector, under which education falls, females experience a glass ceiling in terms of salary and potential participation at senior management levels. Pay differences on these levels may be as high as 66% or more (Bosch, 2011:72; *cf*. 5.3.3).

Referring to the right to equality before Figure 2.1 above, in section 9(3) of the SA Constitution (1996) it is stated that neither direct nor indirect discrimination may happen. Direct discrimination refers to discrimination on one of the listed grounds, while indirect discrimination imposes a restriction that appears neutral at face value, but has an adverse impact, or a discriminatory effect, on particular groups or individuals (Maile, 2002:640). In this regard schools that have dress code requirements for educators or learners might find that the restrictions in dress code may discriminate against certain religious groups (Maile, 2002:640).

To the same extent, when educators are required to work on weekends in order to accommodate working parents/caregivers this may also lead to unfair discrimination against those religious groups who regard Saturday or Sunday as their day of faith, according to the researcher of this study. Moreover, such a situation may lead to unfair discrimination on gender grounds, as educators who are also mothers may even be adversely affected by such arrangements (*cf*. 5.3.3).

Equality and the legal obligations of the educator

Equality should not be confused with differentiation. It is not implied by the equality principle that all people should at all times be treated identically (Oosthuizen, Roos, Smit & Rossouw, 2009:30), but rather that unfair discrimination should not take place. As Joubert and Beckmann (2001:568) point out, differentiation can be found all round us, society is regulated by it and even legislation differentiates: for example the age differentiation in the SA Schools Act (84 of 1996:sec.3(1)). The crux of the matter is that differentiation does not necessarily lead to unfair discrimination. According to Currie and De Waal (2006:230), at its most basic and abstract, the formal idea of equality is that people who are similarly situated in relevant ways should be treated similarly, and therefore the SA Constitution guarantees that the law will protect and benefit people equally, prohibiting unfair discrimination (1996:sec.9; *cf*. 5.3.3).

Educators have to keep in mind that the equality principle does not disallow one from making a distinction between groups or different people, as they may have different needs and interests (Currie & De Waal, 2006:230). The Constitutional Court held in the case *President of the Republic of South Africa v Hugo*1997 (4) SA 1 (CC))

(hereafter referred to as *Hugo*),[12] that a classification which is unfair in one context, may not necessarily be unfair in a different context (*cf*. 5.3.3). The matter before the court in this particular instance was a challenge to Presidential Act 17, in which the President granted certain categories of prisoners a special remission of sentence. Among these categories were *all mothers in prison on 10 May 1994, with minor children under the age of 12 years*. The respondent in this case was the father of a minor child under the age of 12 years. This father sought an order in a Provincial Division arguing that the Presidential Act was unconstitutional as it discriminated unfairly against him on the grounds of gender and indirectly against his son, as his incarcerated parent was not a female. In this matter the court held that it needed to be recognised that although a society which strove to obtain the goal of affording each human being equal treatment on the basis of equal worth and freedom, cannot reach that goal by insisting on identical treatment in all circumstances. This meant that the impact of the discriminatory action of each case needed to be carefully and fully understood, including the impact on the people concerned. The court also stated that *a classification which was unfair in one context might not necessarily be unfair in a different context*. Therefore, it is clear that in disciplining learners, different methods of discipline may be used by educators, as long as educators ensure that treatment is fair and just and equality in outcome is assured (Currie & De Waal, 2006:232).

Currie and De Waal (2006:232) refer to the requirement of the law to ensure equality of outcome as substantive equality. Substantive equality is prepared to tolerate disparity of treatment to achieve the goal of equality of outcome (Currie & De Waal, 2006:232). Pienaar (in Roos & Wolhuter, 2004:10) states that it is more difficult to justify discrimination based on race and gender as fair. Thus, should it be necessary for an educator to treat people of different genders or races differently from one another, it has to be ensured that the differentiation can be justified and does not amount to discrimination (*cf*. 5.3.3).

Another side to the coin is currently emerging in the South African education system where learners, often supported by their parents/caregivers, consider themselves as equal to educators in all regards. Venter (2005:1) states that this can partly be

[12] Although section 8(2) of the Interim Constitution Act 200 of 1993 applies, the discussion is relevant to section 9 of the Constitution of the Republic of South Africa Act 108 of 1996

ascribed to a misunderstanding of the context in which human rights operate within a school. Parents/caregivers and learners disregard the authority relationship which the educator has with learners, and consider the right to equality to imply equality of status, and not the constitutional view of equality of value (Venter, 2005:1).

Based on the above-mentioned, the researcher of the study is of the opinion that it is evident that differentiation and discrimination are often seen as synonymous. Therefore educators should show an awareness of the difference between substantive equality and unfair discrimination in their treatment of learners and colleagues. At the same time they should not hesitate to educate learners and parents/caregivers on this matter when it comes to aspects of authority and the possibility of fair discrimination (*cf*. 5.3.3).

2.3.1.4 Section 10 - Human dignity

Human dignity can be seen as intrinsic to every human being; part and parcel of being human (Bray, 2004:37), as it refers to being worthy of respect and honour not only by oneself, but also by others. It is a right that underlies many, if not all, other rights. Often when another right is violated, the violation also constitutes an infringement of section 10 (1996), as it is one of the values considered whenever the legality of a limitation of a fundamental right is taken into consideration (Bray, 2004:37; Malherbe, 2004:11; *cf*. 5.3.4).

Human dignity is not only a right, but also a responsibility of all human beings (Bray, 2004:42). Just as each person has a right to human dignity, there is the responsibility to treat every other person with respect and dignity. Thus it is clear that human dignity can be considered an extremely fragile component of the different relationships, especially in the education environment (Malherbe, 2004:11; *cf*. 5.3.4).

Bray (2004:46) mentions one of the most important education cases judged by the Constitutional Court, *Christian Education SA v Minister of Education* 2000 BCLR 1051 (CC) (hereafter referred to as *Christian Education CC*), in which it was ruled that the administering of corporal punishment in schools is in breach of several fundamental rights, of which human dignity is one. In the above-mentioned case, the applicants challenged the constitutionality of section 10 of the SA Schools Act on the basis that the total ban on corporal punishment at schools violated the religious freedom of the applicants who administered such punishment in their independent schools as a biblical directive (Malherbe, 2004:12). The application was dismissed and the appeal failed as well. The court held that it could not be shown that

educators and schools administered corporal punishment from a sincere religious belief, and that allowing the limitation of section 10 of the SA Constitution would undermine the State's duty to protect people from violence (*cf*. 5.3.4).

According to Currie and De Waal (2006:273), the constitutional protection of dignity requires the acknowledgement of the value and worth of all individuals as members of society. Thus educators should treat learners with respect and concern, while reciprocally, they should be treated with respect. However, since the relationship between educator and learner is inherently an unequal relationship (Malherbe, 2004:11), the possibility of breaching this fundamental right may easily happen (*cf*. 5.3.4). In as much as every person possesses human dignity in equal measure, everyone must be treated as equally worthy of respect (Currie & De Waal, 2006:273; *cf*. 5.3.4). When one studies the newspaper reports of the latter half of 2005, it becomes apparent that this is not the case at school. It is reported by Rademeyer (2005a:4), among others, that learners verbally abuse educators; learners are arrogant, ill-mannered and disrespectful.

Rademeyer (2005b:20) supports these reports of learner disrespect at school in another article based on time spent in a Grade 8 class. She reports on learners' blatant disregard of the educators. Several cases of educators who have collapsed due to the psychological strain are reported in the article. Viljoen (2006:4) reports a court appearance of a learner, after the learner threatened his educator with a knife and smacked her through the face, because she reprimanded him. According to an educator, the educators of the school are upset because the learner was not suspended, as the principal felt it was too near the examination (*cf*. 5.3.4).

South African educators are exposed to verbal violence from both learners and parents daily and many educators leave the occupation as a result of the emotional and verbal violence they have to endure (Rademeyer, 2008; SAHRC, 2008:10). In a study done by Marais and Meier (2010) on disruptive behaviour in the Foundation Phase, the educator-participants reported their experiences of disrespect towards educators with learners giving them rude answers, ignoring educators when spoken to, repeatedly ignoring the requests of educators, being uncooperative and disobeying classroom rules (Marais & Meier, 2010:50). The treatment an educator of the Glenvista High School had to endure, as seen in a Youtube video (Tame Times, 2013) which shocked many people during September 2013 is a portrayal of the disrespect some educators are exposed to. In the video, it is not just the actions of

the learner attacking the teacher that shocked everyone, but also the reaction of the other learners one cannot see (*cf*. 5.3.4).

Although there are some actions taken by some educators which cannot be condoned, such reports create an awareness of the psychological pressure educators are placed under, as is remarked by Botha (2005:12), in a letter in which he asks the question: *Who sees the marks left on the soul of the educator after some children have finished with him?*

According to Venter (2005:7), human dignity is a right which is abused by parents/caregivers and learners, when learners take this right to mean that an educator may not raise his/her voice, may not reprimand the learners, not even when a learner has been blatantly rude and has offended the educator's dignity. In conjunction with the above-mentioned infringement of the educator's right, the situation is further exaggerated by the fact that parents/caregivers and learners are allowed, even encouraged, to lodge complaints against schools and educators, without any real substance. In this case, what has been intended for the protection of individuals against abuse has become an incidence of abuse (Venter, 2005:7; *cf*. 5.3.4).

Educators need to realize that the unequal relationship that exists between educators and learners does not allow them the prerogative to humiliate learners. However, similarly learners need to realize that they do not only possess specific rights, but also have the duty to respect their educators, both as adults and as educators (*cf*. 5.3.4).

2.3.1.5 Section 12 – Freedom and security of person

This section allows every person to have the right to their freedom and security of person, as well as the right not to be treated in a vindictive, ruthless or undignified way (*cf*. 5.3.5). In terms of section 37(5)(c) of the SA Constitution, this right is a non-derogable right and has been tested in the Constitutional Court in a number of cases dealing among others with aspects such as judicially-imposed juvenile whippings and corporal punishment at school (Bray, 2000b:288).[13] This right, not to be treated or punished in a vindictive, ruthless or undignified way, is of particular

[13] S v Williams [1995] 7 BCLR 861 (CC); Christian Education (SA) v Minister of Education of the Government of the RSA 1999 9 BCLR 951 (SE)) (hereafter referred to as Christian Education).

relevance to education, as the prohibition of such behaviour directly affects corporal punishment and other forms of punishment at schools (Malherbe, 2004:11). Section 12 of the SA Constitution is given effect by sections 10(1) and 10(2) of the SA Schools Act (84 of 1996) which state that no person may use corporal punishment at a school (84 of 1996:sec.10(1)) and that any person who disobeys this would be guilty of a transgression and liable to a sentence that could be handed down for assault (84 of 1996:sec.10(2)). The words *no person* are of particular importance, as they legally bind educators not to knowingly allow parents/caregivers to administer corporal punishment at a school when their child has transgressed (*cf*. 2.3.1.1; 5.3.5).

The judgement given in *Christian Education* makes it clear that the explicit banning of corporal punishment by section 10(1) and 10(2) of the SA Schools Act (84 of 1996) is held to be applicable to both public and independent schools, regardless of the ethos of the independent school, or the fact that corporal punishment is administered with the consent of the parents/caregivers. This can be seen as a landmark case, where the court held that even if section 10 of the SA Schools Act (84 of 1996) violates the right to religious freedom (1996:sec.15), the infringement is not substantial enough to justify section 10 being declared unconstitutional. On appeal, the Constitutional Court[14] applied section 36 to this limitation of the right to religious freedom, as the appellant was seeking special exemption to administer corporal punishment as it forms part of the cultural and religious ethos of the member schools (Bekink & Brand, 2000:175; Malherbe, 2004:12). The court held that in balancing the relevant factors, upholding generality of law was favoured and thus the appellants claim for constitutionality *compelled exemption* (*cf*. 2.2.1.12; 2.3.1.1; 5.3.5).

Although it can be argued that any form of discipline contains, to some extent, elements of vindictiveness or ruthlessness, all disciplinary measures should not go so far that they cannot be justified in terms of section 36 of the SA Constitution (1996). It is therefore important for educators to find disciplinary measures which can be justified under normal circumstances, such as forms of legally acceptable community service. Moreover, educators need to be wary of any measures that limit

14 Christian Education SA v Minister of Education 2000 BCLR 1051 (CC)) (hereafter referred to as Christian Education CC)

the learner's right to a basic education (Malherbe, 2004:12; *cf*. 2.2.1.2; 3.2.4.4; 3.3.4.4; 5.3.2; 5.3.5).

Just as educators are prohibited from treating learners cruelly, or torturing and degrading them, or even humiliating them, they themselves are prohibited from treating other learners and even educators in such a way. Learners have to realize that any form of bullying, albeit from fellow learners or educators, constitutes a breach of this right and that they are directed to resort to non-violent and non-degrading behaviour (Malherbe, 2004:13; *cf*. 2.2.1.4; 3.3.6.3;.5.3.4).

The right to freedom and security of person includes the right to be free from all forms of violence from either public or private sources. It must therefore not be forgotten that educators are, just as learners, entitled to safe schools. In 2002 the National policy on the Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training Institutions (SA, 2002a; hereafter National Policy on Drug Abuse) was promulgated. In article 1 it is stipulated that the reason for the promulgation of the policy is to improve the ability of schools to manage drug abuse while article 2 refers to the critical necessity of a safe, disciplined environment for successful education (*cf*. 2.2.1.10; 5.3.5; 5.3.9).

At a South African Education Law Conference (SAELA), De Waal (2004) called for urgent attention to be paid to the escalation in drug abuse and the devastating effect thereof on school discipline, which in the end could be a determining aspect of safety and security at schools. At the same time, in a recent article, De Waal (2007:242) advocates for a parliamentary move towards random drug testing as a way of securing the right of learners and educators to safe schools. De Waal (2007:241-242) recommends among others that District Offices and Provincial Departments of Education address drug-testing and gather information on aspects such as the number of learners disciplined for drug abuse, as well as an investigation into the cost of implementing a drug-testing policy (*cf*. 5.3.5).

In reaction to various appeals including those of Joubert (2006:2) and De Waal (2007)[15] and in view of the situation at South African schools as it is understandable that the previous Minister of Education, Pandor, indicated in parliament that she was considering random drug searches at schools as means of containing violence at schools, thereby supporting safe workplaces for educators and safe schools for

[15] First submission of the article in May 2005

learners. In this regard, regulation 5(2)(e) the Regulations for Safety Measures at Public Schools (SA, 2006, hereafter referred to as Safety Regulations; *cf*. 2.3.1.1) grants the latitude to extenuate the principle of random search and seizure (*cf*. 2.3.1.1), while in 2008 the previous Minister of Education Pandor, published Devices to be Used and Procedures to be Followed for Drug Testing (SA, 2008a; hereafter referred to as Devices for Drug Testing) as stipulated in section 8A of the SA Schools Act (84 of 1996) in order to provide the necessary guidelines (*cf*. 5.3.6).

According to this researcher there are particularly two aspects related to section 12 which educators should show an unvarying awareness of. Firstly, in deciding on any form of chastisement, educators should focus on correcting behaviour and refrain from vindictiveness and cruelty. Secondly, ensuring safe schools takes priority and therefore, should any suspicion exist of possession of drugs or dangerous weapons, the correct steps should be taken to ensure that the best interests of all learners are held in high regard (*cf*. 2.2.1.1; 5.3.5).

2.3.1.6 Section 14 – Privacy

This section provides everyone with the right to privacy, which includes not having their person, property or home searched, their possessions seized, or private communication infringed. Although the right to privacy has many implications regarding personal searches for illegal items such as drugs and weapons, it can be expected in the education environment that much more leeway will be tolerated, as long as reasonable pedagogical considerations can be advanced, for example the protection and safety of other learners (Malherbe, 2004:13).

The Safety Regulations (SA, 2006:reg.4(3)) state that police or, in their absence, the principal or representative, may, without warrant, search any public school site or person, should there be reasonable suspicion **that a learner is in possession of drugs or dangerous objects** (*cf.* 2.3.1.1). Furthermore, according to regulation 5(2)(e), public school premises may only be entered with the permission of the principal or HOD. The principal or HOD may require of persons entering the premises to subject themselves or any of their possessions to a search by a person of the same gender, examination by an electronic devise, sniffer dogs or other devices in order to determine the presence of dangerous or illegal objects. Although regulation 4(3) of the Safety Regulations (SA, 2006) requires reasonable suspicion in order to do a search, the requirement does not appear in regulation 5(2)(e) of said regulations (*cf*. 2.3.1.1; 5.3.6).

The above-mentioned regulation strengthens the position of educators and the school and is further supported by the Code of Conduct Guidelines (SA, 1998), where article 3.8, regarding the legal authority for the control and discipline of learners, states that if there is reasonable suspicion, a principal or educator has the legal authority to search learners or their possessions, as long as they ensure no infringement of the learners rights to human dignity, the search is conducted by a person of the same gender as the learner, in private and preferably in the presence of at least one other person of the same gender (*cf*. 5.3.6).

According to De Waal (2007:231), parents/caregivers have the right to safe schools for their children and educators have the right to uphold authority, while section 36 of the SA Constitution (1996) holds the guarantee that learners' rights are not to be taken as absolute. Yet educators are expected to remain knowledgeable of requirements that govern, among others, their role in this regard: while the Code of Conduct Guidelines (SA, 1998:art.3.8) suggests that someone else of the same gender be present, the National Policy on Drug Abuse (SA, 2002a:art.21) prescribes that learners not only select someone to support them, but that another alike gendered adult witness be present. De Waal (2007:239) continues by stating that people taking care of learners have the responsibility of ensuring their well-being, while learners simultaneously carry the responsibility of adhering to specific standards that ensure, *inter alia*, their safety and health (*cf*. 2.2.1.1; 2.2.1.12; 2.3.1.1).

According to this researcher, it is evident that although learners are entitled to have their rights to privacy protected, they also have a responsibility to ensure their own health and safety. At the same time the legal status of the educator places a responsibility on the educator to ensure the safety of learners even if it requires drastic steps and the limitation of rights. The legal status of educators is marred by high expectations of educators keeping themselves aligned with prescriptive measures that guide their professional conduct.

2.3.1.7 Section 16 – Freedom of expression

According to Currie and De Waal (2006:360), freedom of expression is protected because of three reasons. These reasons are that freedom of expression contributes to the establishment and maintaining of a democracy, fosters the quest for truth, and is a dignity-reinforcing value intrinsic to the human personality (Currie & De Waal, 2006:360 – 361). Section 16(1) of the SA Constitution (1996) allows for everyone's

freedom of expression, including freedom of the press and other media, freedom to impart or receive information or ideas, freedom of artistic creativity, academic freedom and freedom of scientific research. It is notable that section 16 of the SA Constitution (1996) exhorts free expression and not only freedom of speech. Expression includes within its scope symbolic acts such as the wearing of certain items of clothing and jewellery, as well as physical gestures (Currie & De Waal, 2006:362; *cf*. 5.3.7).

Furthermore, section 16(1) leaves no doubt that freedom of expression is a right held by *everyone*, educators and learners. In section 19 of the SA Constitution (1996) a clear distinction is made between *every citizen* and *every adult citizen*, while section 28(3) defines a child as a person under the age of 18. As no distinction is made in section 16(1), there is no doubt that both adult and child are entitled to freedom of expression. The inclusion of children, thus learners, mirrors the Convention on the Rights of the Child (UN, 1989), wherein article 13(1) states that the child shall have the right to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds, while article 14 of the same document states that state parties shall respect the rights of the child to freedom of thought, conscience and religion.

This need for such respect towards the child's right to freedom of thought, conscience and religion is exemplified in the case *Pillay v MEC for Education, KwaZulu-Natal* Case AR791/05 Equality Court (hereafter referred to as *Pillay Eqc*). In this instance the respondent requested that the School Governing Body allow her daughter to wear a gold nose-stud to school. This was in-keeping with the traditions and culture of her South Indian family, but against the Code of Conduct of the school. The governing body refused the application of exemption and took a decision *prohibiting the wearing of a nose-stud at school by Hindu/Indian learners.* The respondent then approached the Equality Court, which found that although the conduct of the school governing body was prima facie discriminatory; it did not constitute unfair discrimination (*cf*. 5.3.7).

The respondent appealed and, on appeal, the High Court[16] set aside the order of the Equality Court as it found the School Governing Body's conduct to be both discriminatory and unfair under the Promotion and Prevention of Unfair

[16] Pillay v MEC for Education, KwaZulu-Natal 2006 (6) SA 363 (N) (hereafter referred to as Pillay High court)

Discrimination Act 4 of 2000 (4 of 2000). The High Court replaced the Equality Court order with an order declaring the school's decision prohibiting the wearing of a nose-stud by Hindus/Indians invalid. The school then applied directly to the Constitutional Court to appeal against the High Court decision. The Constitutional Court[17] upheld the decision of the High Court and in its judgement specifically held that although a religious or cultural practice is voluntary, and not mandatory, schools and educators need to show a more accommodative approach when balancing conflicting interests (*cf*. 2.2.1.11; 5.3.7; 5.3.10).

At South African schools strict rules regarding dress for both educators and learners have always been maintained. According to the researcher this does not necessarily have to change. However, cultural composition in schools has changed considerably. Therefore it is important for educators to ensure that they are aware of different cultural and religious beliefs, in order to establish a more accommodative approach towards learners, while not being exploited (*cf*. 5.3.7).

An educational viewpoint on freedom of expression

From an educational viewpoint freedom of expression not only includes academic freedom, but also includes freedom of choice and can take on different forms, including aspects such as music, dress, symbols, gestures and other forms of conduct by which one's views are conveyed (Beckmann, Maile, Van Vollenhoven & Joubert, 2002:129; Malherbe, 2004:17). Since the education process is all about expression and the conveying and receiving of information and ideas, there is no doubt that it is closely involved with freedom of expression (Malherbe, 2004:17). According to Alston (2001:533), freedom of expression also extends to what is taught and learnt. Stipulations in education legislation are indicative of the close link between education and freedom of expression and the importance of freedom to expression in the education environment.

The National Education Policy Act 27 of 1996 (27 of 1996) requires of the Minister of Education to determine national policy in accordance with constitutional provisions in order to further the fundamental rights of every person. This should be done also in terms of international conventions ratified by parliament, and in particular the right of every person to the freedoms of conscience, religion, thought, belief, opinion,

[17] MEC for Education, KwaZulu-Natal v Pillay 2007 (1) SA 474 (CC) (hereafter referred to as Pillay CC)

expression and association within education institutions (27 of 1996:sec.4(a)(vi)). As it is in the National Education Policy Act (27 of 1996), the State's intent to uphold the constitutional rights is also evident in the preamble of the SA Schools Act (84 of 1996). However, the SA Schools Act (84 of 1996) juxtaposes the upholding of rights with responsibilities in respect of the school (Wood, 1998:286; *cf*. 2.3.1.1; 5.3.7).

One such a shared responsibility is the school's adoption of a consulted Code of Conduct, as required in sections 8 and 20(1)(d) of the SA Schools Act (84 of 1996), and which is further emphasized by the Code of Conduct Guidelines (SA, 1998:art.1.5). The educators' role in drawing up such a Code of Conduct for their school is expanded by pointing out their shared accountability for establishing a sound learning environment (SA, 1998:art.1.10), for furthering fundamental rights (SA, 1998:art.3.2) and for committing themselves to teaching (SA, 1998:art.4.7.4). It is therefore imperative for educators to have an in-depth knowledge of the relevant statutes and guidelines in this regard.

Although everyone has the right to freedom of expression, it has to be understood that total freedom of expression at a school is impossible, especially where it leads to disruption of school operations or activities, or infringes on the rights of others (Prinsloo, 2009a:56). The need for certain limitations regarding freedom of expression is recognised by the United Nations (UN, 1989), where articles 13(2), 14(2) and 17(e) each address specific restrictions or limitations, such as the protection of the child from information and material injurious to his/her well-being (*cf.* 2.2.1.1; 5.3.7). According to Currie and De Waal (2006:363), the closer expression comes to action, and the further it drifts from conveying ideas and opinions, the less protection it will receive under section 16 of the SA Constitution.

Misinterpretation of the right to freedom of expression can lead to a possible conflict between the right to freedom of expression and the right to dignity, which entails the right to a reputation (Wood, 1998:276). In the SA Constitution no indication can be found that freedom of expression allows for a total disregard of the law of defamation (Wood, 1998:280).

Learners cannot consider it an expression of their right to freedom of expression when they back chat the educator who has just reprimanded them, or when they interrupt the educator while instructing, on the presumption that they are demanding to voice their opinions (Venter, 2005:4). Neither does this allow educators to disallow learners from expressing views with which the educator or the school, or even the

State, does not agree. Neither does it allow learners or educators to make lewd nor indecent remarks in speeches, towards other learners or towards educators (*cf*. 5.3.7).

Freedom of expression and the school's responsibility

It must be kept in mind that all learners are not equal in terms of age or life experience (Wood, 1998:291). This is one reason why schools, and therefore educators may find that they can place reasonable and justifiable restrictions of freedom of expression in the school milieu which might not be considered constitutional when applied to adults in a different situation (Wood, 1998:291). This implies that learners need to accept that their right to freedom of expression is exercised within an authority context, which allows educators to weigh their right to freedom of expression in terms of the rights of others (Venter, 2005:4; *cf*. 5.3.7).

According to Venter (2005:4), the same basic principles regarding freedom of speech that prevail in courtrooms, should prevail in the classroom. Learners should be taught that there is a time and place for everything. For instance, if they want to lodge a complaint concerning a disciplinary or other action, it would be more appropriate after the lesson, during a civil discussion. This does not mean the learner has been denied the right to freedom of expression, but rather that he/she has been taught how to exercise the right responsibly (Venter, 2005:5; *cf*. 5.3.7).

Another reasonable and justifiable restriction would be the school's right to regulate the question of obscene and sexually explicit material. In *Case v Minister of Safety and Security; Curtis v Minister of Safety and Security* 1996 1 SACR 587 (CC) these two cases came before the magistrates' court, but were suspended and referred to the local division of the Supreme Court, where the applicants applied to have the matters referred to the Constitutional Court, which was granted and both matters were heard together in the Constitutional Court. In both these cases the accused challenged the constitutionality of the statutory offence they were charged with, viz the prohibition on the possession of indecent or obscene photographic matter in terms of s 2(1) of the Indecent or Obscene Photographic Matter Act 37 of 1967. Although the court declared s 2(1) of this Act inconsistent with the Constitution, it held that some forms of pornography and obscene matter should not enjoy constitutional protection and that children should not be exposed to pornography (Wood, 1998:291).

Therefore it is the duty of educators to protect learners, among other things, against any such material through prohibiting the possession of obscene material (SA, 1998:art.11(e)), organising searches where reasonable suspicion exists (SA, 1998:art.3.8), as well as exercising reasonable censorship of school newspapers (Wood, 1998:291). According to Wood (1998:292), the regulations and codes found in the Code of Conduct Guidelines (SA, 1998) which restrict freedom of expression of the learner may be regarded as a form of prior censorship or prior restraint and the education authorities could find themselves challenged to prove that prior restraint is valid when measured against the stipulations of section 36 of the SA Constitution (1996). Thus, the educational authorities will be required to prove that some form of irreparable harm would result if the specific form of expression were not restrained (*cf*. 5.3.7).

The researcher of this study considers the discussion above as a clear indication that educators have multiple responsibilities regarding the right to freedom of expression within the school milieu. At the same time, the handling of the limitation of this right requires circumspection. On the one hand, school and class rules may lead to unconstitutional limitation of the learner's right to freedom of expression. On the other hand, irresponsibility towards limitation of freedom of expression may lead to the educator being held liable for harm to their charges. This is especially relevant when one considers the possible influence of electronic communication media and the use thereof, by learners, to victimise and abuse fellow learners (*cf*. 5.3.7).

Academic freedom and the educator's right to freedom of expression

As South African citizens, educators are equally entitled to the right to freedom of expression (1996:sec.16(1)), including freedom of speech. If the Code of Conduct Guidelines (SA, 1998:art.4.5(1)) regards the right to freedom of expression to include the right to *seek, hear, read* and *wear*, the same should apply to educators. Therefore, who chooses what may be taught, heard or read, who decides how it is taught and what restrictions may be placed on classroom speech, dress and legal conduct? In this regard, Alston (2001:534) points out that the learner population at schools differs greatly in age and maturity while the educators are mostly state employees, who may not all be highly qualified academics. This has an effect on the interpretation of academic freedom within the school environment as schools have traditionally been considered to be *transmitters of knowledge* with the responsibility to pass on cultural values (Alston, 2001:535).

Davies (1995:30) mentions that many constraints were previously placed on educators regarding their freedom of expression. However, Malherbe (2004:17) states that people in the education community should not be prohibited from expressing their views and from receiving information, unless these views can disrupt or detrimentally affect the education process. Alston (2001:533) considers educators' right to publicly criticising their employers and the education system, as a strand of freedom of speech worthy of investigation.

Yet educators' right to freedom of speech does not necessarily give them the right to say just what they want to (Davies, 1995:31), as educators can never lose sight of the fact that they are working with impressionable young minds. According to Wood (1998:297), the nature of the position held by an educator leads to the presumption that the employer, albeit the Department of Education or the School Governing Body, is legitimately allowed to restrict the right, if only in the classroom. Thus, the regulation is not focused so much on the content of the speech, but more on the time and place of such expression by the educator.

Venter (2005:3) points out that the right to freedom of speech has to be exercised in terms of the educational mission of the school, as with all other rights. Wood (1998:297) considers possible restrictions to include restrictions which would:

- reduce the dangers of indoctrination of fanatic views held by the educator; and
- protect learners against other contentious issues held by the educator as individual, such as sexuality, religion, creationism and the origin of man.

Such limitations are implied in the SACE Code of Ethics (SA, 2000d) which regulates the conduct of all registered educators and which received statutory recognition through the SACE Act (31/2000). According to the SACE Code of Ethics (SA, 2000d), educators who are registered with the Council are expected to act in a proper and becoming way in such a manner that their behaviour does not bring the teaching profession into disrepute (SA, 2000d:item 2.5). With regard to their behaviour towards learners, educators are expected to use appropriate language and behaviour in their interaction with learners, while acting in such a way that their actions elicit respect (SA, 2000d:item 3.6). Lastly, with regard to the employment relationship of educators, SACE (SA, 2000d:item 8.3) calls for educators to refrain from discussing confidential and official maters with unauthorised persons. Thus, should any restrictions on the educator's freedom of expression based on the implied

limitations be brought within the fold of the limitation clause (1996:sec.36), such limitations will be constitutionally valid.

According to Wood (1998:297), educators are entitled to enjoy the right to freedom of expression as is the case with any other citizen, including their political rights. Section 197(3) of the SA Constitution (1996) stipulates that no public servant may be favoured or prejudiced only because such person supports a particular party or cause, thus protecting educators employed by the Department of Education. However, the Public Service Act (103 of 1994) stipulates in section 36 that public employees may not draw up or publish any writing or deliver a public speech to promote or prejudice the interests of any political party (*cf*. 5.3.7).

As recently as 1993 advice in this regard to educators was not to criticize the administration adversely in public and not to disclose information obtained through employment without the prior approval of the Director General according to an educators' guide to conditions of service issued by the now defunct Department of Education and Training (Wood, 1998:294). However, matters have changed and educators, like any other employees in the public and private sector, may now find protection in the Protected Disclosure Act 26 of 2000 (26 of 2000). The aim of this Act is as follows:

> To make provision for procedures in terms of which employees in both the private and public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

The SA Constitution (1996) not only protects educators' right to freedom of expression as discussed above, but also protects academic freedom in section 16(1)(d), encompassing any academic enterprise, including educators at schools (Currie & de Waal, 2006:370). According to Wood (1998:266), individual educators at public schools cannot lay claim to academic freedom as they have very little discretion in deciding on the curriculum or any other aspect linked to academic freedom. In this regard, Alston (2001:546) states that although it is the right and the responsibility of the State to provide broad curriculum parameters, it is an infringement of the educator's right to freedom of expression to prescribe the teaching methodology and methods of assessment (other than an external

examination), as well as preventing the introduction of supplementary or unconventional alternative material. Smit *et al*. (2008:198) believe that although more serious limitations seem to be imposed in the school environment and educators are required to use fixed curricula, educators and learners have the right to engage in debate, voice their opinions, raise questions and write questioning and critical papers. According to Smit *et al*. (2008:199), it is those educators who challenge learners, encouraging them to think beyond the prescribed and obvious, who are the best educators.

From the above-mentioned it becomes clear that the over-regulation of the South African education system and the prescribed uniform curriculum enforced by the education authorities ensure that education in South Africa is primarily seen as an instrument to pursue State-determined objectives and not as a service provided by the State to empower learners to reach their highest potential.

However, it is important for all education role players to keep in mind the effects of claiming their right to freedom on other legal rights. Educators who use the classroom as platform to express their viewpoints without allowing for debate, or to present radically different views, might be claiming their right to freedom of expression, but denying their learners academic freedom (Alston, 2001:546).

According to this researcher, it is clear that educators have the duty to honour the learner's freedom of expression, yet also limit this right if the limitations are reasonable and pedagogically sound. However, pedagogical concerns will have to be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account the relevant factors as stated in section 36 (1996*; cf.* 2.2.1.12). When it comes to freedom of expression, the most important for educators and schools to use as guidelines are the last lines in both article 4.5.1 and article 4.5.2 of the Code of Conduct Guidelines (SA, 1998) which state *the disruption of the school is unacceptable.*

2.3.1.8 Constitutional sections relevant to labour issues

Malherbe (2004:19) states that there are various rights in the SA Constitution (1996) that relate to labour issues, which form the basis for the labour rights of education and other labour matters as they apply to education. These labour-related rights (*cf*. 5.3.8) include:

- section 17 which states that everyone has the right to assemble, to demonstrate, to picket and to present petitions, but that such actions should be peaceful and unarmed;
- section 18 which states that everyone has the right to freedom of association;
- section 22 which allows every citizen the right to choose their trade, occupation or profession freely, while providing that such practice of trade, occupation or profession may be regulated by law; and
- section 23 which provides everyone with fair labour practices.

Fair labour practices

Section 23 protects employees and employers in their respective individual and collective labour relations (Bray & Beckmann, 2000:437; Bray & Beckmann, 2001:118; Malherbe, 2004:20). At the same time, section 23(5) provides for the adoption of national legislation to recognise and secure collective labour agreements (1996; Bray & Beckmann, 2000:437). According to section 23 of the SA Constitution (1996), educators, like all other employees, have the right to form and join a trade union, to participate in the activities and programmes of a trade union and to strike. Beckmann *et al.* (2002:128) indicate that although educators have the right to strike, striking should be used as a last resort, when all dispute resolution measures are exhausted, as strikes in education do not inflict as much harm on the employer as on the learner (*cf*. 5.3.8).

Never has the harm on the learners been more evident than during the general public servants' strike in 2010 (*cf*. 1.1.2; 5.3.8). Although this was a general public servant strike, the conduct of educators and health workers attracted the most media attention. During a three week period the media reported on striking educators intimidating and even attacking non-striking colleagues and in some cases even learners. Sapa (2010c) reports on a high school being evacuated after intimidation, while two provincial education departments needed to postpone preliminary matric examinations (Sapa, 2010b). Philp, Eggington, Jurgens and Hawkey (2010) report that Maluleke (the general secretary of the South African Democratic Teachers Union) claimed that 27 000 schools were *non-functional* during the largest stay-away of educators since 1993.

Not only did learners lose three weeks of academic time, but they also witnessed the appalling behaviour displayed by some of their role models. Therefore it was no

surprise when learners across the country, belonging to the Congress of SA Students (COSAS) (SAPA, 2010a), started acting exactly in the same way to demonstrate their dissatisfaction with the state of matters (*cf*. 1.1.2; 5.3.8).

2.3.1.9 Section 33 – Just administrative actions

Squelch (1999:360) is of the opinion that administrative justice is considered a fundamental principle of administrative law and embraces principles such as fairness and impartiality, and this principle of administrative justice is entrenched in the administrative action clause. Section 33(1) of the SA Constitution (1996) stipulates that every person is entitled to administrative action that is just, lawful and procedurally fair (1996; (*cf*. 5.3.8). According to Currie and De Waal(2006:643), the SA Constitution requires of any administrative body to act in compliance with fundamental principles of evenhandedness. To the same extent, an employer or educator, being in an authoritative position, must act in a lawful, fair and reasonable manner in the employment relationship or the educator-learner relationship. Squelch (1999:360) points out that the legal context within which principals and educators find themselves requires far greater responsibility and accountability than ever before.

Section 33 of the Bill of Rights is one of the rights which affect school governance and management practices the most and often present School Governing Bodies with the most problems (Squelch, 1999:359). Educators are often despondent regarding discipline at schools as decisions taken by governing bodies have been challenged and overturned, due to a failure to apply the rules of natural justice or to follow the correct administrative procedures (Squelch, 1999:359–360; *cf*. 5.3.8). Malherbe (2004:22) states that the main features of the rules of administrative law relating to administrative actions are encompassed in section 33 (1996), forming the constitutional basis of our administrative law.

When section 33 of the SA Constitution (1996) is scrutinised, three aspects need to be closely examined: lawful administrative action, reasonable or justifiable administrative action and procedural fairness (*cf*. 5.3.8). Section 33 provides for lawful administrative action. According to Squelch (1999:362), this provision should be interpreted widely in order to ensure compliance with all aspects of administrative action, thus indicating that not only statutory requirements of legality should be included, but also common law requirements of legality, including compliance with the SA Constitution, legislation and the rules of common law (Squelch, 1999:362).

First and foremost it implies that all administrative actions taken by any Head of Department, principal or School Governing Body should comply with the two basic aspects of administrative action, namely procedural fairness and substantive fairness (Davies, 1995:29; *cf*. 5.3.8).

The term justifiable refers to the ability to show that an act was right or reasonable (Soanes & Hawker, 2005:551), thus indicating that administrative actions and decisions must be rational and coherent with a rational link between the reasons given for the action or decision and the action or decision (Squelch, 1999:362). According to Squelch (1999:363), the word *reasonable*, by virtue protects substantive fairness, as substantive fairness deals with questions of whether the reasons provided for the action or decision are fair (Rossouw & Oosthuizen, 2004:41).

The last stipulation of importance is the procedural fairness of the administrative action. In this instance, the procedure followed is required to be fair and to comply with procedural requirements (Squelch, 1999:362–363). Squelch (1999:363) points out that prior to the SA Constitution (1996), common law rules of natural justice (*cf.* 2.4.3) were to be applied before certain administrative actions could be taken. These rules of natural justice were aimed at protecting individuals against unjust and arbitrary actions. Although procedural fairness and rules of natural justice are similar, Squelch (1999:363) states that courts have held that these two are not synonymous, meaning that procedural fairness is not a codification of the common law principle. Procedural fairness is concerned with fair and proper procedures and thus includes aspects not addressed in common law (Squelch, 1999:363). Failure to comply with fair procedure will invalidate administrative action (Squelch, 1999:363).

According to section 33(2), a person whose rights have been adversely affected by such administrative actions is entitled to be given written reasons (Bray & Beckmann, 2000:437; Bray & Beckmann, 2001:118; Malherbe, 2004:22). How clear the reasons should be is not very clear (Squelch, 1999:364) In the case *Moletsane v The Premier of the Free State* 1996 (2) SA 95 (O)[18] an educator charged with misconduct was provided with a letter informing her of her suspension, with the reason for suspension given as *departmental investigation into alleged misconduct*.

[18] Section 24 (c) and (d) of the Interim Constitution of the Republic of South Africa Act 200 of 1993 applies, but discussion is also applicable to section 33 of the SA Constitution (1996)

In this matter the court had to decide *inter alia* whether the reason provided in the letter was in compliance with section 24(c) of the 1993 Interim Constitution. The court ruled that sufficient reasons were indeed provided and that the suspension was justifiable in relation with the reasons provided. Furthermore, Hanke J[19] held that one would expect more detailed reasons to be provided in the case of more drastic action such as the discharge of a person (*cf*. 5.3.8).

According to the researcher, the concept of just administrative action is not something new to educators, as even-handed conduct has always been expected of them. The main change is the awareness of rights and the reaction of parents/caregivers and learners towards section 33. This over-awareness has led to educators being oversensitive with regard to maintaining a position of authority.

An educational viewpoint on just administrative action

Section 8(1) of the SA Constitution (1996) stipulates that the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state (*cf.* 2.2.1.13), while section 8(2) states that a provision of the Bill of Rights binds a natural or a juristic person (1996). Therefore all legislation can be tested against section 33, while all educators, employed by the state or a Governing Body, are bound by section 33 (Squelch, 1999:365). One of the areas where section 33 seems to present most problems for schools is in the application of school discipline (Squelch, 1999:366).

Educators are entitled to just administrative action. Moreover, the right to administrative action, as contained in section 33 of the SA Constitution (1996), is also relevant to learners, and this is expanded upon in other laws, such as the SA Schools Act (84 of 1996; *cf.* 2.3.1.1). Section 8(5) of the SA Schools Act (84 of 1996) specifies that a Code of Conduct must contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings. Due process includes both procedural and substantive fairness, encompassing the rules of natural justice and all the principles of procedural fairness under section 33 of the Bill of Rights (Squelch, 1999:366; Van der Bank, 2000:307; *cf*. 5.3.8). Thus the Code of Conduct serves as protection to learners and regulates

[19] Moletsane v Premier of the Free State and Another 1996 (2) SA 95(O)

the process of a disciplinary hearing, but it does not prohibit the institution from carrying out the disciplinary process (Joubert, 2009c:106).

According to Squelch (1999:367), fairness entails being granted the opportunity to be heard as well as to receive adequate notice, which does not only apply to formal hearings, but to any proceeding prior to the formal hearing, which could lead to an administrative decision that affects an individual's right. Moreover, Squelch (1999:367) points out that principals and School Governing Bodies can be considered to be impartial bodies, if they do not have a personal stake in the hearing or its outcome, act with malice or with prejudice. At an international level, US jurisprudence holds that an informal meeting in the office of the principal where a fair discussion with a learner takes place is adequate to satisfy due process requirements, but this will all depend on the severity of the case and the sanctions imposed (Squelch, 1999:376).

Davies (1995:29) mentions that the educator must always, even in class, remember that the learner is not only entitled to the right to administrative justice, but also to the right to information applicable to his/her situation (1996:sec.32(1)(b)), implying that the educator's handling of matters must be transparent. This is reflected in the common law principle *audi alteram partem* (*cf.* 2.4.3) which also requires that all relevant information be given to persons who may be affected by the administrative action, in order for them to prepare their case (Squelch, 1999:368). It is necessary for educators and other role players/partners to ensure that they are familiar with the legal requirements needed for a disciplinary process, and to comply with all procedural and substantive requirements (Oosthuizen, 2004:21; Rossouw, 2004a:63-64; Joubert, 2009c:136) in order to ensure that decisions in disciplinary actions are legal, reasonable and procedurally fair. Kocks-De Waal(2009:152) recommends that educators receive training regarding exactly what is meant by legal, reasonable and procedurally fair administrative action (*cf*. 5.3.8).

Venter (2005:5) states that although it is admirable to insist on due process in society and at school, due process in its strictest form is intended for serious situations and formal hearings. Venter (2005:6) continues by stating that due process was never intended to be applied to the classroom and daily discipline matters as they arise in the classroom; it is rather the *spirit* of due process which should prevail: reasonableness and informing learners of prohibited behaviour. Roos and Wolhuter (2004:7) indicate an awareness of the fact that educators are

sometimes loathe to institute a formal disciplinary process, either due to expected red tape or due to sympathy towards the offender or parents/caregivers (*cf*. 5.3.8).

On the other hand, Venter (2005:6) maintains that it must be remembered that a classroom is not a courtroom, but he mentions that some learners and their parents/caregivers do insist on educators providing absolute proof that, for example, a child kept on talking in class and exactly how many times the child was reprimanded. Venter (2005:6) continues to state that another problem that arises regarding due process in classrooms is the fact that learners confuse substantive and procedural fairness, and then use it to their advantage – learners try to argue that if they think the educator is being unfair or rude, they do not have to obey (*cf*. 5.3.8).

According to section 9 of the SA Schools Act (84 of 1996), a public school may only suspend a learner after a fair hearing. This stipulation can be problematic and impractical and lead to conduct that is *ultra vires* should the principal be faced with a situation where a learner threatens fellow learners, or deals in illegal drugs at school (Squelch, 1999:369). Such a learner cannot be suspended before an investigation has been conducted and a hearing has taken place. The question remains: How can a safe and orderly school environment be maintained if the learner still attends school? Squelch (1999:369) reports on a case where a female principal was instructed to reinstate a suspended learner. The learner threatened her and was suspended pending an investigation and hearing. The reinstatement was ordered as a fair hearing had not been conducted before the learner was suspended.

In a country where examples like those provided above are not exceptional, but rather seem to be at the order of the day, it could be advantageous to follow the way of the United States jurisprudence. An amendment to the Schools Act (84/1996) in 2005 is moving towards the way illustrated in the United States jurisprudence. In *Goss et al. v Lopez et al. Supreme Court of the United States 419 U.S. 565* it was argued on appeal that various high school learners were denied due process of law as they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter. The Ohio Code empowers the principals of schools to suspend learners for misconduct for up to ten days or to expel learners. However, the principal must notify the parents/caregivers of the learner within 24 hours in either case. The court acknowledged that there are recurring situations in which prior notice and hearings cannot be insisted upon. The

court further acknowledged that learners who pose a threat to people or property, or an ongoing threat of disrupting academic time, may be immediately removed from school, with the necessary notice and hearing following as soon as practically possible (*cf*. 5.3.8). Section 9(1) of the SA Schools Act allows for the suspension of a learner suspected of serious misconduct by the school governing body as a precautionary measure, after the learner has been afforded the reasonable opportunity to represent his or her case (84 of 1996). In this case the right to a safe environment allows for a limitation of the right to due process. Amendments like this in South African legislation may just contribute to South African educators taking their schools back and governing their classrooms to ensure a secure and safe educational environment (*cf.* 2.2.1.10).

What is important in this regard is that educators should not refrain from instituting disciplinary proceedings, but at the same time should ensure that the learner's right to administrative justice is respected. However, in the classroom the learner should be made aware that there is a right time, place and even a way in which to approach the educator, but this does not afford the learner the right to demand formal proof or the need to produce evidence (Venter, 2005:6).

From the afore-mentioned it is clear to this researcher that educators are entitled to fair, reasonable and justifiable administrative actions, but at the same time should ensure that they protect the learners' rights to section 33 in maintaining discipline. This, however, does not mean a learner or parent/care-giver can expect of an educator to have a hearing for every little transgression in a classroom.

2.3.1.10 Section 24 – Environment

This section (1996:sec.24) guarantees the right to an environment not harmful to anyone's health or well-being, while section 8(1) of the Occupational Health and Safety Act 85 of 1993 (85 of 1993, hereafter referred to as Health and Safety Act (85 of 1993)), calls on employers to provide, as far as possible, a safe working environment which poses no risk to the health of employees. The Code of Conduct Guidelines (SA, 1998:art.4.6) refers to learners' right to a safe environment that would contribute to education. Therefore it is clear that both learner and educator are entitled to a safe environment that would support teaching and learning.

According to Van der Bank (2000:302), it is a well known pedagogical fact that discipline is an essential part of effective teaching and learning. In the same light, De Waal (2007:229) states one of the determining factors of a safe learning environment

to be that of sound school discipline. Article 7 of the Code of Conduct Guidelines (SA, 1998) emphasizes the importance of maintaining discipline at school and in the classroom. However, the current situation at South African schools portrays a learning environment that is disorderly, disruptive and often unsafe (Van der Bank, 2000:302). Joubert (2000:449) maintains that a lack of understanding regarding the interpretation and application of rights as found in the Bill of Rights often leads to unrest, tension and conflict in education situations (*cf*. 5.3.9).

Upsetting reports in newspapers published during 2006 are evident of the lack of safety at schools in South Africa. Liebenberg (2006:1) reports a 16-year old boy facing murder charges after a fight at a party which claimed the life of a friend. De Beer (2006:1) reports a Grade 12 learner landing in hospital with three skull fractures and a badly damaged left eye after being assaulted at school by a fellow learner in the changing rooms. Mouton (2006:16) reports a learner arrested at a school after holding a fellow learner at gun point with a stolen gun (*cf*. 5.3.9).

In 2008, the South African Human Rights Commission reports that corporal punishment is still used in 51.4% of schools, 28% of educators admit to still be using corporal punishment, while 51% of learners report having been the receivers of some form of corporal punishment (SAHRC, 2008:12; *cf*. 2.2.1.5). Two days after the emergence of the Youtube video of the Grade 8 learner assaulting an educator with a broomstick in the classroom (Tame Times, 2013; *cf*. 2.2.1.4, 2.2.1.5), an educator was shot by a 15-year-old learner at another school (Bruwer, 2013). Within the first two months of 2014, two grade R learners died in tragic circumstances at school – the first was killed when run over by the school lawn mower (Mbangeni, 2014) and the second died in a pit toilet at a rural school (Tau, 2014). These reports are only the tip of an iceberg and it is clear that neither learners nor educators are safe at school (*cf*. 5.3.9).

De Waal (2007:229-230) calls for educators to be given the opportunity to manage their schools and to enforce school rules (*cf.* 2.1.2.2) in order to provide learners with the safe and secure environment needed to nurture their physical and spiritual wellbeing. In this regard the Code of Conduct Guidelines (SA, 1998:art.7.1 & 7.3) stipulates that discipline must be maintained at school and in the classroom in order to ensure that education of learners proceeds without disruptive behaviour and offences by giving educators the right to use reasonable measures where necessary to prevent a learner from harming him/herself or others. Article 7.5 stipulates that

educators are responsible for discipline at all times, including school-related activities with full authority and responsibility to correct the behaviour of a learner, while serious misconduct must be referred to the principal.

Closely related to the right to an environment that is not harmful to their health and well-being (1996:sec.24(a)), is the threat of HIV/AIDS. It has become clear that the HIV positive educator are protected from discrimination (*cf.* 2.2.1.3*)* and their right to keep their HIV positive status private (*cf.* 2.2.1.6), but what about the right of HIV negative educators and learners to a safe environment (*cf*. 5.3.3; 5.3.9)?

The HIV/AIDS Policy (SA, 1999a) provides for a safe school and work environment and introduces a number of duties and responsibilities to be carried out by educators. As Prinsloo and Beckmann (2000:320) point out educators applied for a position as educators and is trained as educators, not healthcare workers. Neither have they given up their right to a safe working environment, nor have they released their employer from the duty to provide a safe working environment free of safety and health hazards when they applied for positions as educators (Prinsloo & Beckmann, 2000:320). In this regard the Recommendations Concerning the Status of Teachers (UNESCO, 1966:art.131) state that certain infectious diseases prevalent among children should be regarded as occupational diseases when contracted by educators who have been exposed to them by virtue of their contact with learners, an aspect the HIV/AIDS policy is silent on (*cf*. 5.3.9).

In conclusion, it is important to take cognisance of the fact that in order to ensure the learners' right to an environment that does not pose a threat to their well-being, each school is expected to have an effective safety programme in place. Such a safety programme should comply with the stipulated requirements found in the Health and Safety Act (85 of 1993; *cf.* 2.3.2.6) and the Safety Regulations (SA, 2006; *cf*. 5.3.9).

2.3.1.11 Section 15 – Freedom of religion, belief and opinion

One more right that has an implication for education is the right to freedom of religion, belief and opinion. This right allows people to practise their own religion and to have their own convictions. It also allows religious observances to be conducted at state and state-aided institutions, but attendance has to be free and voluntary, and these observances have to be conducted on an equitable basis (1996:sec.15; *cf*. 5.3.10).

Section 7 of the SA Schools Act (84 of 1996) gives effect to section 15(2) of the Constitution, by allowing religious events at a public school, given that such events be held on an even-handed basis and attendance is based on free will (84 of 1996). According to Smit *et al*. (2008:200), traditionally the South African approach to freedom of religion has always been that the State is actively involved in creating favourable conditions for exercising one's right to freedom of religion. The only difference may be that the current stipulations ensure that one religion is not favoured above another (Smit *et al*., 2008:201; *cf*. 5.3.10).

Section 15(1) of the SA Constitution (1996) makes it clear that educators like other citizens, share the right to religious freedom and do not forfeit it because they are educators (Smit *et al*., 2008:200). Furthermore, the right to freedom of religion does not only provide for one to acknowledge one's religion, but also to promote, teach and manifest one's beliefs. According to Smit *et al*. (2008:200), the right to freedom of religion allows for schools to profess a particular ethos, for educators to speak about their beliefs and even to engage with learners in this regard. On the other hand, for a public school to acknowledge and profess a particular religious ethos could be regarded to contradict the National Policy on Religion and Education (SA, 2003b:art.5) which suggests not advancing any specific religion at school level.

Two court cases, both dealing with learners wearing religious dress can be considered as watershed cases in this regard. In *Antonie v Governing Body, Settlers High School* 2002 4 SA 738 (C) the applicant was suspended from school after wearing her dreadlocks under a cap as she embraced the Rastafarian religion. In this instance the suspension was set aside since the court argued that adhering to religious dress codes did not amount to serious misconduct under the school's disciplinary code. In *Pillay CC*, the school would not grant an exemption to its Code of Conduct and allow a Hindu learner to wear a nose stud. The Constitutional Court also ruled in favour of the learner. The court held that the actions of the School Governing Body constituted unfair discrimination on the grounds of religion and culture, as the learner could not express her beliefs (*cf*. 2.2.1.7; *cf*. 5.3.10).

Although both these cases concern learners, there is no reason why educators should be treated any differently. This would mean that educators may show their beliefs among other things in the way they dress. However, this has a particular implication for schools, as educators have to ensure that it is never forgotten that

one party is not allowed to influence the other unduly in any of these regards (*cf*. 5.3.10).

It is important to understand clearly the provision of section 15 (1996), as it refers to religious observances and not to religious instruction. According to Bray (2000b:290), religious observances refer to aspects such as individual or collective Bible readings and prayers, moments of silence for personal devotion and even the exhibition of religious symbols, whereas religious instruction is often included in, and forms part of, the school's curricula Thus, the SA Constitution and the said Act does not recognize religious instruction as a constitutional right (Bray, 2000b:290). Lastly, an educator may not be required or coerced to lead or participate in religious observances which are against his/her convictions. Just as the attendance of religious observance is voluntary for learners, the participation of educators should also be free, voluntary and equitable.

2.3.1.12 Section 36 – Limitation of rights

A limitation refers to an infringement or *justifiable* infringement that occurred and although a law that limits a right infringes that right (Currie & De Waal, 2005:164), it must never be forgotten that fundamental rights are not absolute (Wood, 1998:268; Bekink & Brand, 2000:177; Rossouw, 2002:629; Oosthuizen, 2004:22). However, the limits or boundaries are set by the rights of others and by the legitimate needs of society. According to Bray and Beckmann (2000:438), rights may also be limited by the law when public interests demand it, while Joubert (2000:449) points out that safety, health and democratic values also justify the limitation of fundamental rights. Joubert (2000:447) states that the limitation of a right is not unconstitutional if the reason for the limitation is recognised as a justification for infringing that right. Section 36 of the SA Constitution provides for the general limitation of rights (1996). When rights are limited, we have to weigh or balance competing or conflicting rights (Bray & Beckmann, 2000:438), thus determine whether the benefits to other role players will outweigh the cost to the holder of the right (Joubert, 2000:447; *cf*. 5.3.10).

A sound example of the weighing or balancing of conflicting rights is found in the *Prince v President of the Law Society of the Cape of Good Hope* (*Prince*) 2002 (1) SACR 431 (CC) judgement. In this instance, the appellant was a practising Rastafarian, who sought to register his contract of community work with the Law Society of the Cape of Good Hope, who refused to register his contract since the

appellant had two previous convictions for possession of cannabis. The appellant also expressed his intention to continue using cannabis as the practise of his religion required it of him. The appellant challenged the constitutionality of the decision of the Law Society as it infringed his rights to freedom of religion, to dignity, to pursue the profession of his choice, while subjecting him to unfair discrimination and the matter was brought before the High Court. The High Court, the Supreme Court of Appeal and the Constitutional Court all ruled that the limitation was justifiable under section 36.

In *Prince* the Constitutional Court held that in a proportionality analysis, as required by section 36 (SA Constitution, 1996), no doubts exist. The right to freedom of religion and to practise one's religion of choice is important in an open and democratic society based on human dignity, equality and freedom: the legislation in dispute placed a substantial limitation on the religious practices of Rastafarians. However, according to the Constitutional Court, legislation serves an important governmental purpose in the war against drugs and the use of cannabis by Rastafarians could in these circumstances *not be sanctioned without impairing the ability of the State to enforce its legislation in the interest of the public at large and to honour its international obligation to do so.*

There are various fundamental rights which have the potential of being limited unconstitutionally. Malherbe (2004:9) mentions that all parties involved including educators should protect their fundamental rights and take matters to review or appeal where their rights are unconstitutionally limited. The requirement of section 36, that a limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, implies that a balance must be found between the limitation and its purpose in order for the limitation to be reasonable and justifiable (Malherbe, 2004:4; *cf*. 5.3.10). In *S v Manamela and Another* 2000 (3) SA 1 CC[20] the court held that it is not possible to formulate an absolute standard for determining reasonableness, as it is inherent in the requirement of proportionality, and the proportionality of a limitation must be assessed in the context of its legislative and social setting (Smit *et al*., 2008). As in *Prince* it is important to weigh the different factors in deciding if a limitation is

[20] This case deals among other with whether a limitation is reasonable and justifiable. The central issue in this case is whether the reverse onus in a statute dealing with the acquisition of stolen goods is compatible to the right to a fair trial.

reasonable and therefore what is considered reasonable in one instance, may not be in the next. Rossouw (2002:630) states that rights of different parties must be weighed against each other in determining reasonableness. It is not only educators who may infringe or limit the rights of learners, but learners may actually infringe and limit the rights of educators as well as their friends. Among others, rights of educators can be infringed or limited by decisions and actions of officials acting on behalf of the State (Malherbe, 2004:9; *cf*. 5.3.10).

It is clear to this researcher that when and how rights are to be limited is no clear-cut matter. Educators are faced daily with situations in which the conduct of a learner infringes on the rights of the rest of the learners and/or educators themselves. Situations like these require of educators to limit the rights of transgressing learners. In establishing the need to limit rights, an educator has to remember that the rights of the majority weigh more than the rights of the individual (*cf*. 5.3.10).

2.3.1.13 Other relevant constitutional provisions

The preceding discussion in this chapter focussed mainly on the fundamental rights as found in the Bill of Rights (1996), as they pertain to the legal status of educators. However, there are other provisions contained in the SA Constitution which have a direct bearing on the legal status of educators.

According to Bray (2000a:273; 2000b:293), the public education and training sector constitutes an important sector in the broader public service. Therefore general public service legislation also applies to the public service education. Section 195(1) of the SA Constitution (1996) states that public administration must be governed by the democratic values and principles enshrined in the Constitution and then specifically mentions a number of principles. Among the principles mentioned are the following:

- A high standard of professional ethics must be promoted and maintained (1996:sec.195(1)(a); *cf.* 2.5.1).
- Efficient, economic and effective use of resources must be promoted (1996:sec. 195(1)(b).
- Services must be provided impartially, fairly, equitably and without bias (1996:sec.195(1)(d).
- Sound human-resource management and career-development practices, to maximise human potential, must be cultivated (1996:sec.195(1)(h)).

Since public schools and their functionaries, principals and educators are considered organs of State (1996:sec. 239(b)(ii)) and section 195(2)(b) states that the principles contained in section 195(1) apply to organs of State as defined in section 239, educators are bound by these constitutional principles (1996) and also bound by the Public Service Act 103 of 1994 (103 of 1994). Thus educators have to ensure that the democratic principles as stipulated in section 195 must be adhered to.

In the preceding pages the status of the educator as pertaining to the Constitution was discussed in depth. Particular attention was paid to the human rights which relate to the legal status of educators. Lastly, other relevant constitutional principles were mentioned. The Constitution is, however, not the only Act relevant to the legal status of educators. Thus a discussion follows on the legislation affecting the legal status of educators.

2.4 LEGISLATION THAT AFFECTS THE LEGAL STATUS OF EDUCATORS

Educators need to be aware of the different statutes implicating their role as educators. These statutes are there to protect both learners and educators in a number of situations which may occur in an educational set-up. It is important to note that the SA Constitution holds the highest authority in the country and that all legislation should support it (1996:sec.2). According to section 43 of the SA Constitution (1996), parliament has the legislative authority to promulgate national legislation. National legislation can be divided into two categories namely, education-specific legislation and general legislation. In the South African context there are certain Acts which have direct bearing on society in general and are not only relevant to education specifically. Both general and education legislative Acts are considered to be original legislation. Yet subordinate legislation such as regulations, proclamations and school rules also have determining influence on education and the status of educators.

It is apparent that different forms of legislation influence and determine education, albeit in a major or minor way. Some forms of legislation concern the employment relationship of educators directly, while others provide guidelines regarding the management of the school or national education and its relevant policies. Others have a much more indirect bearing on education and only determine certain aspects of education in a minor way. It does not really matter if the influence on education is

major or minor. Disregarding of such legislation may have grave implications for those involved.

2.4.1 Education legislation influencing educators' legal status

This form of legislation refers to parliamentary laws that are promulgated for the purpose of education specifically (Roos *et al.*, 2009b:60). Although there are a number of Acts which have a determining influence on education, such as the National Education Policy Act 27 of 1996, these do not all have a bearing on the legal status of the educator (*cf*. 5.4) and are therefore not discussed.

2.4.1.1 SA Schools Act 84 of 1996

Rossouw (2000:495) illuminates the fact that the SA Schools Act (84 of 1996) has a direct relation to the education clause, section 29, of the Bill of Rights (*cf*. 5.4). According to Bray (2000a:275), the Act can be considered as the most important national law on South African education as it provides for a standardized system for the organisation, governance and funding for schools by setting down norms and standards for the education of learners at schools (84 of 1996).

Bray (2000b:286) considers the essential principle of the SA Schools Act (84 of 1996) to be that of responsibility: responsibility of all the role players in the organization, governance and funding of schools (84 of 1996:Preamble). Rossouw (2000:495) considers the Preamble of this Act to provide a clear portrayal of the aspects of education that are characteristic of an ideal situation. Apart from the promotion of the acceptance of responsibility for the organization, governance and funding, there are a number of characteristics in which educators have to take cognisance of (84 of 1996:Preamble):

- Providing progressively sound education to all learners;
- Rectifying past injustices in providing education;
- Needing to lay a sound basis for developing learners' talents and capabilities;
- Promoting the democratic transformation of society;
- Combating racism and poverty;
- Striving for the economic well-being of society;
- Promoting the diverse languages and cultures of the country;
- Upholding fundamental rights.

In the following six pages the researcher of this study will reflect on the important aspects of school rules and the official guidelines for stepping up safety at schools (*cf*. 5.4).

School rules and the Code of Conduct

According to Joubert (2009c:111), a Code of Conduct can be considered as a benchmark of behaviour and conduct set out in a code, with which all the role players of a school community must be able to identify; whereas school rules specifically refer to a *code of discipline*, thus requiring conformity in actions to provide for governance and control.

Roos *et al.* (2009b:85) consider the terms Code of Conduct and school rules to be synonymous and state that school rules are *a code of conduct for learners*. According to De Groof (1997:133), school rules are a way of balancing the rights and obligations of the two main extremities in education, namely the *educational consumers* and the *educational providers*. When the purpose of the Code of Conduct as per the SA Schools Act (84 of 1996:sec.8) is considered, it is clear that school rules are embedded in such a code although a Code of Conduct may encompass more than just mere school rules. This is also made clear in the Code of Conduct Guidelines (SA, 1998:art.5.1) which deals with school and classroom rules. According to article 8.1 (SA, 1998), the School Governing Body must consult on and adopt a Code of Conduct for the learners: educators of the school thus need to be involved.

The purpose of a Code of Conduct at school is to maintain an ordered and purposeful school environment, committed to improving the quality of the learning process (SA, 1998:art.8.2), while all learners are responsible for adhering to its contents (SA, 1998:art.8.4). Moreover, the Code of Conduct must include due process to protect the interests of everyone involved in disciplinary proceedings (SA, 1998:art.8.5). Although the School Governing Body needs to adopt the Code of Conduct after working with the relevant education partners, it is the educator and principal on whom the power to maintain discipline at schools is bestowed (Dlamini, 1996:71). Educators are given the right to maintain authority over learners as they hold an *in loco parentis*-position (*cf.* 2.4.1) in terms of South African common law (supported in the Regulations to Prohibit Initiation Practices in Schools; hereafter referred to as Initiation Regulations; SA, 2002b:reg.3.4 & 6.5; Oosthuizen & De Wet, 2004:75) and one of the duties of an educator is maintaining discipline at schools

(Prinsloo, 2009c:174). The *in loco parentis*-position is also supported in article 3.7 of the Code of Conduct Guidelines (SA, 1998) which indicate educators having the same rights as a parent to control and discipline the learner during the any school-related activities, as long as Educators' Act in compliance with the stipulations.

The judgement in *Rex v Muller* 1948 (4) SA 848 (O)[21] makes it clear that an educator not only has delegated authority to impose reasonable punishment, but in certain circumstances also has the power to exercise original authority: such as where it can be reasonably expected to take steps in the interest and for protection of the school. Thus, according to *Rex v Muller* 1948 (4) SA 848 (O), the duty to maintain discipline and exercise authority is based on the fact that where a learner is placed in a school, there are two main objectives which should be aimed at, Firstly to create a feeling of security within the child in preparation of a general training to mould his character during general education and secondly to ensure that the institution has the necessary authority to protect against *inter alia* the consequences of unchecked liveliness or lack of discipline (Dlamini, 1996:71).

When formulating school and classroom rules it is important to take the stipulations found in article 5 of the Code of Conduct Guidelines (SA, 1998) into consideration. According to article 5:

- The purpose of school rules is to regulate the organisation of the school, and the relationship between principal, educators and learners whereas classroom rules specifically regulate the relationship between the learners and educator in the classroom. Thus classroom rules may regulate classroom interaction and management (SA, 1998:art.5.1(a)).
- Educators must take care to consult with learners as well when setting down class rules (SA, 1998:art.5.1(b)).
- Educators must make sure that classroom rules include the opportunity for giving fair warning (SA, 1998:art.5.1(c)).
- Educators must ensure that both classroom rules and the corresponding fitting punishment for the offence are posted in the classroom (SA, 1998:art.5.1(e)).

[21] The case deals with the legal right to inflict corporal punishment as well as the justification of the infliction of mass corporal punishment.

- Educators must ensure that learners are aware of all school and class rules in order to adhere to these, as ignorance of the law (rules) has never been an acceptable excuse (SA, 1998:art.5.1(f)).

From the above-mentioned it is clear that when educators decide to punish learners who have transgressed the school rules, it is necessary for such an educator to act according to the *rules of natural justice* (*cf.* 2.4.3), thus ensuring that the learner is aware of which rule was broken, what the consequences of the illegal behaviour is, and understand what the punishment will be (SA, 1998:art.5(1)(e)(f); Joubert, 2009c:123). The educator must also ensure the recording of the punishment, especially in more serious cases (Joubert, 2009c:123). In deciding on the punishment it must be kept in mind that in terms of common law (*cf.* 2.4), as well as the Code of Conduct Guidelines (SA, 1998:art.5.1; art.7.5), the punishment should at all times be consistently applied, fair, reasonable, lawful and in proportion to the offence (SA, 1998:art.7.2).

Section 10 of the SA Schools Act (84 of 1996) bans corporal punishment at school level (84 of 1996:sec.10(1)) and warns of possible conviction on the basis of assault (84 of 1996:sec.10(2)). This provides effect to the fundamental right to be safe from treatment or punishment that is vindictive or ruthless, as guaranteed in section 12(1)(e) of the Bill of Rights (*cf.* 2.2.1.5; Dlamini, 1996:72; Bray, 2000b:287). The wording of this provision indicates not only the prohibition of corporal punishment by educators, but also that educators cannot knowingly allow parents/caregivers, for example, to inflict corporal punishment on their own child at a school. Educators at public schools who transgress this prohibition attract individual liability and may consequently be sued for damages. Two cases in the South African jurisprudence, namely *Dowling v Diocesan College* 1999 3 SA 847 (C) and *Hiltonian Society v Crofton* 1952 3 SA 130(A)[22] make it clear that educators and schools can be held responsible for damages incurred in such instances.

Taking this matter one step further, Bertelsmann (1999:301) poses the question: if a member of a School Governing Body is aware of a principal of a school still administering corporal punishment, can such a member be sued as a co-defendant

[22] Although both these cases concern private schools the judgment can be considered relevant to educators at both private and public institutions, as the conduct is unconstitutional and unlawful.

in an assault case? In the same vein it could be asked: Could an educator who shares knowledge of continued corporal punishment attract individual liability?

When one considers the banning of corporal punishment by any person (1996:sec.12; 84 of 1996:sec.10) in conjunction with the example set by jurisprudence, then there is a possibility that educators, principals or School Governing Body members who refrain from acting when they know about colleagues using corporal punishment, or who allow parents/caregivers to punish learners in this way at school, may find themselves in deep waters. Proving contributory guilt in such a case may not be difficult.

Safety Regulations

This document, Safety Regulations (SA, 2006; *cf*. 2.2.1.5), makes it clear that educators have a legal responsibility to maintain discipline at school and in their classrooms, but at the same time have to ensure that they fulfil their legal obligations when disciplining learners who misbehave. Another legal duty of the educator is that of ensuring the safety of learners, which originates from many sources, such as legislation, common law and case law (*cf*. 2.2.1.4; 3.3.6.3; 5.4).

Constitutional stipulations such as the right to freedom and security of person (1996:sec.12; *cf.* 2.2.1.5) and the right to an environment that is not harmful to their health or well-being (1996:sec.24; *cf.* 2.2.1.10), as well as stipulations in the Children's' Act (38 of 2005; *cf.* 2.3.2.2) and the Health and Safety Act (85 of 1993; *cf*. 2.3.2.6) case judgements and common law principles are all indicative of the legal duty of an educator to ensure the safety of learners.

According to section 3 of the SA Schools Act (84 of 1996), parents/caregivers have a legal duty to send their children to school, which leads to the common law expectation that the parent delegates the legal duty of care to the school, the educator (Joubert, 2009d:144). The *in locus parentis*-position of the educator originates from both original and delegated authority (Roos *et al.*, 2009a:126; Joubert, 2009d:145)[23]. Linked closely to the *in loco parentis*-position of educators (SA, 1998:art.3.7; SA, 2002b:reg.3.4 & 6.5) is the entrusted *duty to care*, which

[23] The original authority of the educator lies in the educator's professional position, while the delegated authority lies in the delegation of authority from the parent (Joubert, 2009c:145)

indicates that educators have to accept responsibility for the safety and security of learners in their care (*cf*. 2.4.1; 2.4.2).

In this regard, the Safety Regulations (SA, 2006) address a number of aspects regarding the safety and security of the school environment. The following will be discussed as these aspects are deemed relevant to the legal duties of the educator:

- Visitors, including parents/caregivers, to the public school
- School activities and transportation of learners

i. Visitors to the public school

Although it is not the responsibility of the educator to monitor access to public school premises, it is important that educators be aware that access to public schools is restricted and that regulation 5 of the Safety Regulations (SA, 2006) contains a stipulation regarding the duties of the principal. In regard to parents/caregivers visiting a public school, educators need to be aware that although parents/caregivers are allowed to visit the public school where their children have been admitted, such visits may not disrupt any of the school activities (SA, 2006:reg.8(1)). Furthermore, the Safety Regulations stipulate that parents/caregivers are required to make an appointment with the principal for a personal appointment with him/her prior to the visit, in which the reason for the visit must be stated as well as any person who may be involved in such a visit (SA, 2006:reg.8(2)).

ii. School activities

According to the Safety Regulations a public school[24] has the duty to ensure that learners are under constant supervision of the educator on duty as far as practically possible, while it is allowable to ask other responsible adults to help with supervising (SA, 2006:reg.8A(2)(c)). According to the Safety Regulations, the ratio between educators and learners should be 1:20 in the case of primary schools and 1:30 in the case of secondary schools. Gender must be taken into account when ratios are calculated (SA, 2006:reg.8A(2)).

Furthermore, it is the duty of the public school, and therefore the responsible educators, to ensure that learners have sufficient prescription medication for the

[24] Although the Safety Regulations specifically refer to the duty of the public school it has to be considered that educators have a legal duty to care, which implies personal liability in case of harm to the learner.

duration of the activity. If necessary, certified copies of the prescription must be in the possession of both the educator and learner and the supervising educator must ensure that a written report regarding the medical condition of the learner is available (SA, 2006:reg.8A(7). In case of injury or illness requiring medical treatment the parents/caregivers of the learner must be contacted for consent (SA, 2006:reg.8A(8)(a)). Should the supervising educator fail to reach the parents/caregivers, a decision must be taken whether or not to consent to treatment (SA, 2006:reg.8A(8)(b)). In the case of an accident, injury or act of misconduct, a report must be submitted to the principal (SA, 2006:reg.8B(2)) including, as specified in subsection (3), the nature of the incident, the nature of the injury, the time, date and place (if applicable) of the incident and the name of the educator in charge.

Of importance is that the accompanying educators must ensure that all the learners undertaking the school activity have the written consent of their parents (SA, 2006:reg.8C(1). Should educators have any doubts regarding the safety of the vehicle or the competence of the driver, it is their duty to intervene (SA, 2006:reg.8D(2)). As the educators are responsible for all aspects of safety, they have to ensure that the behaviour of the learners on the bus is not distracting or break the rules of the road, that the bus is not overloaded and that there are sufficient educators accompanying the learners on the bus (Joubert, 2009d:160).

Lastly, the educator is responsible for staying with learners upon return to the school until all of them have been collected by a parent or guardian. At no time should a learner knowingly be left alone at the school (Joubert, 2009d:160).

2.4.2 General legislation

Roos *et al.* (2009b:62) indicate that general legislation is not specifically promulgated for education, but it could have an impact on education. In this regard, it is considered important to discuss the following Acts as they may have an influence on education and the educator.

2.4.2.1 Promotion of Administrative Justice Act 3 of 2000

Section 33 of the SA Constitution (1996) guarantees the right to just administrative action (*cf.* 2.2.1.9.) and is considered an important instrument when ensuring a lawful, open and accountable democratic environment (Malherbe, 2000:451). The Promotion of Administrative Justice Act 3 of 2000 (3 of 2000) deals specifically with administrative law and is considered by Malherbe (2000:451) as a direct result of

section 33. However, section 33 of the SA Constitution (1996) encompasses the main features of the laws governing administrative justice and therefore forms the constitutional basis of the South African administrative law (Malherbe, 2000:451-452). It is important to note that section 33 is not dependant on the Promotion of Administrative Justice Act (3 of 2000), and can thus be applied without the Act (Malherbe, 2000:452). However, the Act may grant more rights than section 33, but may never take any rights away from section 33 (Malherbe, 2000:454).

The SA Schools Act (84 of 1996) provides for administrative procedures in many instances, for example section 9 which contains stipulations regarding the suspension or expulsion of a learner after a fair hearing (*cf.* 2.3.1.1). However, such a fair hearing cannot take place if it is not based on the principles contemplated in section 33 of the SA Constitution (1996) and reiterated in the Promotion of Administrative Justice Act (3 of 2000; Malherbe, 2000:459). Section 9 of the SA Schools Act (84 of 1996) is not the only section providing for administrative procedures: sections 22, 47 and 51[25] refer to administrative procedures, which may lead to a conclusion that the SA Schools Act gives sufficient effect to the right to just administrative action and that the Promotion of Administrative Justice Act (3 of 2000) bears no relevance on the education sector, and the educator in particular.

Malherbe (2000:459) states in this regard that as a matter of practically the following aspects should be borne in mind:

- Not all administrative actions performed by the different partners of a school, including educators, stem from the SA Schools Act (84 of 1996), but may originate from numerous other laws, as well as regulations and directives issued in terms of such laws, while section 33 and the Promotion of Administrative Justice Act (3 of 2000) apply to all administrative procedures;
- Should the relevant laws, directives and regulations not provide sufficient or particular stipulations regarding administrative procedures, these procedures must be supplemented by the procedures found in section 33 of the SA Constitution (1996) and the Promotion of Administrative Justice Act (3 of 2000)

It is imperative that the educator be aware of the requirements of the above-mentioned law (*cf*. 5.4).

[25] Although not of particular relevance to the legal status of the educator.

2.4.2.2 Children's Act 38 of 2005

Section 28 of the SA Constitution (1996) ensures the rights of children (*cf*. 2.2.1.1; 5.3.1; 5.4).The protection of children is further ensured by the Children's Act 38 of 2005 which concentrateson this aspect. The Children's Act defines a child as a person under the age of 18 years (38 of 2005:sec.1) and section 17 states that a child, whether male or female, reaches the age of majority at 18 years (38 of 2005).

In the introductory paragraph of the Children's Act (38 of 2005), it is stated that the Act ensures certain constitutional rights of children to establish rules regarding care and protection of children, the establishment of new crimes relevant to children and to provide for matters connected to these crimes (38 of 2005). These are by no means the only aspects mentioned in the introductory paragraph, but the ones most relevant to this discussion.

The best interest of a child as a legal principle is reiterated in section 7 and further supported by section 9 of the Act as these sections state that in all matters concerning the care, protection and well-being of a child, the principle that the child's best interests are of paramount importance, must be applied. Educators in government employ need to be aware of section 8(2) of the Children's Act (38 of 2005) as it relates directly to their employment position, in that it states that all organs of State in any sphere of government and all officials, employees and representatives of an organ of State (which would therefore include educators appointed by School Governing Bodies) must respect, protect and promote the rights of children contained in the Act.

Section 2 of the Children's Act (38 of 2005) states the objects of the Act to be, among others, to give effect to the certain constitutional rights of the child, of which one is the protection from maltreatment, neglect and abuse or degradation, and that the best interests of a child is of utmost importance in all matters concerning the child, ensuring a continuation of the best interests principle of section 28(2) of the SA Constitution (1996). Section 6(2) of the Children's Act (38 of 2005) states that all proceedings, actions or decisions in a matter concerning a child must respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interests standard set out in section 7 and the rights and principles as set out in this Act, subject to any lawful limitations. Furthermore, section 6(2) of said Act (38 of 2005) states that, among others, the child's inherent dignity must be respected, children must be treated fairly and equally, and protected from unfair discrimination

on the same grounds as the SA Constitution, but includes grounds of health status or disability of the child or a family member of the child.

Chapter 3 of the Children's Act (38 of 2005) regards parental rights and responsibilities and includes the legal duty of parents/caregivers and guardians to care for and protect their children from physical and psychological harm (38 of 2005:sec.1; sec.18). Joubert (2009d:140) points out that, according to the *in loco parentis*-principle (*cf.* 2.4.1), educators at schools are required to act as the responsible parent. Therefore educators are legally bound to ensure that they also fulfil the obligations to care and protection as stipulated in the Children's Act.

Section 7 of the Children's Act (38 of 2005) supports the best interests of a child and lays down factors to be considered of which the child's need for protection against physical and psychological harm is of particular relevance to educators. In section 1 of the Children's Act (38 of 2005), abuse in relation to a child means any form of harm or ill-treatment deliberately inflicted on a child, and includes assaulting a child or inflicting any other form of deliberate injury to a child, sexual abuse of a child or allowing sexual abuse of a child, bullying by another child, a labour practice that exploits a child, or exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally. The emphasis placed on the best interests of a child in the above-mentioned sections of the Children's Act underlines the weight of the right of the child being of utmost importance as indicated in section 28 of the SA Constitution (1996).

The Children's Act (38 of 2005:sec.111) calls for the keeping and maintaining of a National Child Register, consisting of two parts. Part A of this register keeps records of particulars of abused and deliberately neglected children (38 of 2005:sec.113), while the purpose of part B of the Register is to have a record of persons who are unsuitable to work with children and to use the information in the Register in order to protect children in general, against abuse from those persons (38 of 2005:sec.118).

With regard to the National Child Register, the legal duty of educators is twofold. Firstly, educators deal with learners on a daily basis and are therefore in a position to identify possible abuse, neglect and molestation of learners. Section 110(1) of the Children's Amendment Act 41 of 2007 (41 of 2007) includes educators in the list of persons who must report the matter to the relevant authorities, if they have come to the conclusion that a child has been abused physically or sexually or deliberately neglected. Moreover, section 110(2) stipulates that any person who believes on

reasonable grounds that a child is in need of care or protection may report the matter to the relevant authorities. However section 110(3)(a) requires substantiation of the conclusion reached or the belief. Furthermore, Part B of the Act is also of particular interest to educators, as well as school management, as it would point to not appointing a person on the National Child Register (38 of 2005:sec.123(2)).

However, the Children's Act (38 of 2005) acknowledges the fact that children also have responsibilities in section 16 which refers to the responsibilities of children and states that every child has responsibilities appropriate to the child's age and ability towards his/her family, community and State. It is important for educators to realise that the responsibilities expected of a learner will have to be realistic in terms of the learner's age.

2.4.2.3 National Road Traffic Act 93 of 1996

An educator may be involved in the transportation of learners, either as supervisor of the learners being transported or as the driver of such a vehicle. As far as education is concerned, the National Road Traffic Act 93 of 1996 (93 of 1996) requires of educators and school managers to be aware of aspects such as roadworthiness of buses, licensing of school vehicles, transportation of learners and learner patrols at pedestrian crossings (93 of 1996; *cf*. 5.4). This legal obligation is codified in the Safety Regulations (SA, 2006:reg.8D; *cf.* 2.3.1.1).

2.4.2.4 Copyright Act 98 of 1978

The Copyright Act 98 of 1978 (98 of 1978) has implications for educators in search of study material, as it contains certain specifications regarding the copying of published documentation (*cf*. 5.4). For example:

- Only approximately 10% of the content of a book may be copied for own use.
- Educators may not make any profit from copies, nor may any expenditure be recovered.
- Educators may not continuously copy work in this way (98 of 1978; Roos *et al.*, 2009b:80).

2.4.2.5 Health and Safety Act 85 of 1993

The aim of the Health and Safety Act (85 of 1993) is to provide, among others, for the health and safety of persons at work, as well as the health and safety of persons working with industrial equipment and machinery.

The Health and Safety Act (85 of 1993) is particularly applicable to schools that are equipped with facilities such as workshops, laboratories, kitchens or gymnasiums which may pose a danger to the personal safety of educators, learners and other staff members (Roos *et al.*, 2009b:80), although it also concerns the general safety of employees in the workplace, as it states in the introductory paragraph that the Act is to ensure the protection of individuals against dangerous activities of persons at work (85 of 1993; *cf*. 5.4). According to Joubert (2009d:161), the Health and Safety Act (85 of 1993) requires of educators and principals to be aware of any possible dangers and hazards and to identify such dangers continuously.

As schools are a workplace, but also as the SA Constitution (1996:sec.24) ensures the right to an environment that is not harmful to their health or well-being (*cf*. 2.2.1.10), principals and educators have certain duties in regard to the insurance of a safe environment for learners. According to Joubert (2009d:156), in this regard educators have the following duties:

- Educators should work together to create and maintain an environment that is as safe and risk-free as possible.
- Educators should take responsibility and reasonable care of the safety of their learners, as well as their personal safety.
- Educators should carry out any legal instructions issued by schools regarding health and safety.

Educators should always be aware that learners may be affected by their actions and ensure that sufficient supervision is available. Although learners should be supervised at all times, there are certain classes and situations which require a greater need of supervision (Botha, Smit & Oosthuizen, 2009:188). Classes in which learners use machinery or dangerous objects or substances particularly come to mind (Botha *et al*., 2009:189). For instance an educator can never leave learners unsupervised when they are working with power tools, sharp objects or dangerous chemicals. Furthermore, where protective gear is prescribed it is the duty of the educator to ensure that the learners comply with these safety prescriptions (Botha *et al.*, 2009:189; Joubert, 2009d:158).

Another danger zone where constant supervision must be assured is the school grounds. Educators must take cognisance of the fact that if learners are left unsupervised on the school grounds and an accident occurs the principal and the

educator may be held liable. It is quite evident that all learners cannot be supervised at all times, but it is legally expected of educators to supervise learners, not only during break, but also before and after school (*cf*. 2.4.1; 2.4.2; Joubert, 2009d:158, Roos *et al*., 2009a:127).

During school sport activities it is every educator's duty to ensure the safety of learners by meeting specific requirements of the particular sport (Rossouw, 2004b:47; Botha *et al*., 2009:190; Joubert, 2009d:159). As in the case of leaving learners unsupervised on the school grounds, such an educator can be held liable if the learner is injured during this time (Botha *et* al., 2009:190; Joubert, 2009d:159). Lastly, educators also have a legal duty to ensure that they are qualified to coach a particular sporting activity, or they might find that they are held liable for any injury that happens to a learner (Rossouw, 2004b:65; Joubert, 2009d:159).

Educators need to be aware that safety measures should be stringent when any electrical installations are done or electrical appliances are used and it is imperative to check electrical apparatus for exposed wires regularly (Joubert, 2009d:161), as the educator would have a statutory duty to act (Botha *et al*., 2009:190). During the construction, renovation and repair of school facilities the staff of a school have to ensure that a safety programme is drawn up and implemented (Joubert, 2009d:162) as this creates a particularly dangerous situation (Botha *et al*., 2009:190), not only with regard to the danger of building materials and other harmful objects that can cause injury (Joubert, 2009d:161), but also because the workers involved with the construction pose a very definite threat such as among others sexual abuse and the selling or smoking of marijuana, or other drugs to learners (Joubert, 2009d:162).

2.4.3 Labour legislation in education

Labour law is a complex field of study (Rossouw, 2010:1) which deals with the regulation of the relationships between employers and employees (Prinsloo, 2009b:184; Rossouw, 2010:1) and is mainly concerned with fairness (Prinsloo, 2009b:184). According to Rossouw (2010:1), labour law in South Africa was found in a number of different Acts, but since the enactment of the SA Constitution in 1996 South African labour laws have mostly been amended to conform to the culture of human rights (Rossouw, 2009:245).

Prior to the enactment of the Labour Relations Act 66 of 1995 (66 of 1995), educators were in a service relationship with the education authorities mainly

regulated by administrative law which principally focuses on legality of actions and correct procedures (Prinsloo, 2009b:184), opposed to administrative labour law which is focused on the fairness of actions taken (Prinsloo, 2009b.184).

2.4.3.1 The employment relationship of the South African educator

Bray and Beckmann (2000:430) state that educators as employees stand in a legal relationship with their employer, who may be the responsible provincial department of education (76 of 1998:sec.3(1)(b))[26] or the individual public school (84/1998:sec.20(4))[27], depending on the type of position the educator is appointed in. Furthermore the employment relationship is considered a public-law relationship (*cf*. 2.1) of authority, as a vertical relationship exists between employee and employer where the employer exercises authority over the employee, while different rights and obligations flow from this relationship (Bray & Beckmann, 2000:431; Joubert, 2009b:7). At the same time the employment contract between employer and employee is based on private law (*cf*. 2.1) principles, individual contractual obligations, while there has been a distinct movement in South African educator employment relations to unionisation (Bray & Beckmann, 2000:431). Thus the employment relations a South African educator stands in can be seen as both individual and collective labour law (Bray & Beckmann, 2000:431; Rossouw, 2009:245; Rossouw, 2010:1; *cf*. 5.4).

With regard to collective labour relations, the Education Labour Relations Council (ELRC) is statutory council which draws authority from the Labour Act (66 of 1995). The ELRC, was established to maintain labour peace (ELRC, 2009) by acting as a forum for negotiation between educators' unions and employers on educators' terms and conditions of service (Bray & Beckmann, 2000:231; Smit *et al.*, 2008:192; Rossouw, 2009:246; Rossouw, 2010:107). According to Bray and Beckmann (2000:432 & 2001:114), the SA Constitution is the most important legal document for labour relations in South Africa (Rossouw, 2009:246; Rossouw, 2010:20; *cf*. 2.2.1.8; 5.4) and has paved the way for several statutes regarding national labour legislation, which normally applies to most labour relations in South Africa. While there are five statutes which are the main sources in the governing of most public- and private-sector employment relations in South Africa, the Public Service Act 103 of 1994 (103

[26] These teachers are civil servants.

[27] These teachers are employees.

of 1994) specifically governs public-service employment issues (Bray & Beckmann, 2000:433).

The Public Service Act (103 of 1994) recognises the status of educators in public service. Therefore legislation governing employment relations of public service educators in the general education and training sector have specifically been adapted to the employment conditions of educators (Bray & Beckmann, 2000:434). Statutes such as the Educators' Act (76 of 1998) and the SA Schools Act (84 of 1996) contain provisions regulating the employment of educators (*cf*. 5.4).

The Educators' Act (76 of 1998) deals expressly with public school educators' employment conditions, such as the conditions of those educators who stand in the employment of the provincial HoD. Furthermore, in terms of this Act, regulations have been developed (1) to manage educator posts in the different provinces (76 of 1998:sec.3) and (2) to specify the terms and conditions concerning the educators' service. The latter terms and conditions are found in the Personnel Administration Measures (PAM; *cf*. 2.3.4.4). The SA Schools Act not only addresses the organization/governance (84 of 1996:sec.16 & 16A) and funding (84 of 1996:sec.43-44) of South African schools, but also includes stipulations concerning employment aspects of educators who are appointed in additional posts at public schools (84 of 1996:sec.20(4), (6), (7) & (8); *cf*. 5.4).

Although these statutes would take precedence over general legislation when referring to the employment of educators, it is necessary to determine whether general legislation applies in a specific education employment relationship and/or whether the specific legislation has supplemented or replaced the general labour legislation (Bray & Beckmann, 2000:434; Bray & Beckmann, 2001:115; Rossouw, 2009:257). According to Bray and Beckmann (2000:434) this is not an easy task, but barring oversimplification, it may be deduced that education legislation dealing specifically with educator employment usually overrides general labour legislation or the conditions of service as stipulated in the Public Service Act (103 of 1994).

Collective agreements and/or resolutions negotiated in the education and training sector, as well as in the broader public service, has modified educator employment relations greatly and therefore these documents become important instruments in the governance of said relationship (Bray & Beckmann, 2000:434; Rossouw, 2010:108). The rules negotiated in these documents form part of the framework and source of the collective labour law. Thus in employment issues one would not only

have to consult the individual employment contract, but simultaneously consult relevant labour law and collective agreements (Bray & Beckmann, 2000:434; Rossouw, 2010:114). Should the provisions of the relevant collective agreements be beneficial to the individual, such provisions may prevail in the case of inconsistencies between the sources (Bray & Beckmann, 2000:434; Rossouw, 2010:113).

This means that educators should ensure that they are aware of any collective bargaining agreements or resolutions, as these are important sources of labour law and with the Constitution and labour law form part of the educator employment relationship (Bray & Beckmann, 2000:432; Rossouw, 2009:246; Rossouw, 2010:113).

2.4.3.2 Educator employment relationships and the South African educator

According to Bray and Beckmann (2000:440), the employment relationship of the South African public service educator is predominantly governed by original national legislation, either by labour laws which deal with labour matters in general, for example the Labour Act (66 of 1995) and the Educators' Act (76 of 1998), or with specific issues regarding employment in a general matter, for example the Basic Conditions of Employment Act 75 of 1997 (75 of 1997).[28]

2.4.4 The Educators' Act

The purpose of the Educators' Act (76 of 1998) is to provide for the employment of educators by the State, for the regulation of the conditions of service, discipline, retirement and discharge of educators and for matters connected therewith, i.e. it can be considered the main statutory instrument regulating the employment of educators (Smit *et al.,* 2008:192). According to Prinsloo (2009b:190), the Act only provides for minimum standards of employment. This Act should therefore be the first to be consulted in any matter concerning educators' employment (Rossouw, 2009:250).

The Educators' Act is a statute dealing exclusively with employment of educators in public education (Bray & Beckmann, 2001:120; Smit *et al.*, 2008:192). Relevant sections of importance are regulations on the conditions of service for educators, Personnel Administration Measures (PAM) and collective agreements of the public

[28] In this instance the terms and conditions of service.

education and training sector. This Act gives special attention to the following aspects concerning the service dispensation of educators:

- The regulation of service conditions;
- The regulation of appointments, promotion and transfers; and
- The regulation of termination of service of educators.

According to section 4 of the Educators' Act (76 of 1998), the National Minister of Education determines the salaries and other conditions of service of educators, consistent with the stipulations of the Labour Act and collective agreements concluded with the ELRC (76 of 1998:sec.4(1)), which may differ according to ranks and grades (76 of 1998:sec.4(2); *cf.* 2.3.4.4).

2.4.4.1 Appointments

Public school educators in the service of a provincial education department are appointed, promoted or transferred by the Head of Department (76 of 1996:sec.6(1)(b)), according to the procedures and requirements determined by the Minister of Education (76 of 1998:sec.6(2)). However, educators can only be appointed, transferred or promoted if a recommendation was made by the School Governing Body (76 of 1998:sec.3(a)), who are required to ensure that they adhere to the equity, redress and representivity principles, among others (76 of 1998:sec.6(3)(b)). In the case of newly trained applicants applying for their first position or educators who are returning from a break in service, the Head of Department may receive and process applications in order to match these applications to vacant positions at schools and make appointments after consultation with the relevant School Governing Body on the requirements of the post, having made sure the person appointed meets the requirements of the position and that the person has the required qualifications (76 of 1998:sec.6A; *cf*. 5.4.1).

Educators may be appointed in temporary positions, which can be converted into permanent positions by the Head of Department after consulting the School Governing Body (76 of 1998:sec.6B). In this instance, the School Governing Body merely has to be consulted and does not have to make a recommendation. Section 7 of the Educators' Act allows for the appointment of educators in different capacities. An educator may be appointed in a permanent capacity, with or without probation (76 of 1998:sec.7(2)(a), in a temporary capacity for a fixed period (76 of

1998:sec.7(2)(b)) or on a special contract for a fixed period or a specific assignment[29] (76 of 1998:sec7(2)(c); SA, 1999c:Chapter B item 2.1(a)). Educators employed in a temporary capacity may be employed on a full-time, part-time or shared basis[30], while educators appointed on a special contract may be appointed full-time or part-time (*cf*. 5.4.1).

No appointment may be made in any capacity if the person does not meet minimum requirements as found in the PAM document as well as having required experience; does not possess an approved qualification and/or cannot provide satisfactory evidence thereof (SA, 1995:reg. 2(1); *cf*. 2.3.4.4). Educators newly appointed will have a probation period of no less than 12 months, which may be extended, when good cause can be shown, for a further period, no longer than 12 months (SA, 1995:reg.3(1)(a)). Different types of experience will be considered in varying degrees when an appointment is made. Actual education experience and appropriate working experience which the Minister considers to develop the candidate directly and appropriately for holding an educator's post will be recognised fully, while experience other than education experience and appropriate experience will be recognised by acknowledging one year's experience for every two years of actual work experience (SA, 1999c:reg. 11; SA, 2003a:reg.4.1 & 4.2).

Even though public school educators are employed by the Department of Education, they must consent to appointments, promotions and transfer. Without the consent of the relevant educator and the School Governing Body, the Department may not make any appointments or transfer educators. According to section 8(1) of the Educators' Act (76 of 1998), an educator may not be transferred if he did not consent to such a transfer. In *Simela v MEC for Education, Eastern Cape* 2001 9 BLLR 1085 (LC)[31] (hereafter referred to as *Simela*) the court ruled in favour of the applicants on the grounds that the provisions regarding the transfer of educators in the Educators' Act (76 of 1998) requires consent of the affected educators and no such consent

[29] Educators appointed for fixed period such as a school term to perform duties different from the normal duties of educators will be appointed in this capacity. Appointments such as these are exceptional.

[30] Educators appointed on a shared basis will share a position, thus share a salary and other benefits based on the percentage of time they work.

[31] In this case the entire professional staff of a school was transferred to another school after they were handed copies of a report by a task team. In the report the task team concluded that they were guilty of various acts of misconduct by a task team.

was obtained (Smit *et al*., 2008:193). The court also added that by summarily transferring the educators on the bases of untested allegations was unconstitutional and unfair, as the idea of fair administrative action is that people have the right to be heard before such drastic action is taken.

Educators who have retired either at the age of retirement or before the age of retirement may be reappointed if the Head of Department approves such a re-appointment in the case of departmental posts (SA, 1995:reg.4; SA, 1999c: Chapter B item 2.3).Thus approval is not required in the case of School Governing Body appointments (*cf*. 2.3.5). Re-appointment will only be possible if it is considered to be in the interest of education and there are no other applicants, particularly newly trained teachers who qualify for the position (SA, 1999c:Chapter B item 2.3(a) & (b)). The reappointment of educators, who were offered another suitable position during rationalisation and elected to retire early, or educators, who took early retirement at their own requests, will not be deemed in the interest of the State (SA, 1999c:Chapter B item 2.3(d) & (e)).

In cases where educators are declared in excess due to operational requirements not linked to rationalisation to effect equity the authorities are required to offer all vacancies at educational institutions to the displaced educators and to make every attempt possible to accommodate the displaced educators. The relevant provincial education department may publish a closed vacancy list in such an instance (SA, 1999c:Chapter B item 2.4(c)).

2.4.4.2 Termination of services

Chapter 4 of the Educators' Act (76 of 1998) deals with termination of services. Special attention is given to incapacity and retirement. Section 10(1) of the Educators' Act (76 of 1998) stipulates that educators retire at the age of 65. Educators employed before 2 September 1994 have the right to retire on or after reaching the retirement age as applicable to the educator at the time the educator was appointed (76 of 1998:sec.10(2)). However, educators do have the right to request to retire at the age of 55 (76 of 1998:sec.3(a)) or before reaching 55 if enough reason exists (76 of 1998:sec.3(b)(i)), but does not relate to ill-health (76 of 1998:sec.3(b)), and the employer deems the retirement to be advantageous to the State (76 of 1998:sec.3(b)(ii)). Educators employed before 1 May 1996 who have completed 10 years uninterrupted pensionable service have the right to retire at the age of 50 (76 of 1998:sec.10(4)).

According to section 11, the employer may discharge an educator from service, but must act in compliance with the applicable provisions of the Labour Act (66 of 1995). Possible reasons for discharge include:

- continuous ill-health;
- restructuring leading to changes in departments;
- educators being incapable to fulfil the duties related to their position or inability to fulfil duties efficiently;
- misrepresentation by an educator applying for the post[32]; and
- when an appointment is not confirmed after the probation period.

Section 14 of the Educators' Act (76 of 1998) stipulates that, among others, if an educator employed in a permanent capacity is absent from work for a period more than 14 consecutive days without permission. He/she will be deemed to be discharged. According to Smit *et al.* (2008:204), this provision implies that an educator has already terminated his/her employment contract and therefore no hearing has to take place.

The Supreme Court of Appeal ruled that section 14(1) of the Educators' Act (76 of 1998) read with section 14(2) is not unconstitutional in the *Phenithi v Minister of Education and Others* 2008 (1) SA 420 (SCA) case. In this case the appellant, a primary school educator, was discharged from service in terms of section 14(1)(a) of the Educators' Act (76 of 1998) as she was absent from work for more than 14 consecutive days without the permission of her employer. The appellant held that section 14(1)(a) was unconstitutional as it was firstly in conflict with the provisions of section 188 of the Labour Act (66 of 1995), secondly violated her right to fair labour practices, and thirdly, violated her right to fair administrative action. The High Court dismissed the appellant's application for the setting aside of her dismissal. On appeal, the Supreme Court of Appeal held that, among others, section 14(1)(a) creates an essential and reasonable mechanism for the employer to deduce that an employee has deserted his/her post when statutory requirements have been met.

[32] In this instance the educator shall be deemed to have been discharged on account of misconduct (76 of 1998:sec. 11(2)).

Educators employed by the DBE are required to give 90 days' written notice, while employers may approve a shorter notice period when requested by the educator (76 of 1998:sec.15(1)). Circumstances will determine the approval of a shorter period of notice, as well as the shortened length of the notice period. The enforcement of the 90 day notice period may be deemed unfair, particularly if the educator's position with the new employer is jeopardised (Juta, 2007:3A-14). Educators whose names are struck off the list by SACE will be deemed to have resigned effectively from the day immediately following the day on which the educator's name was struck off the list (76 of 1998:sec.15(2)).

Incapacity, serious misconduct and misconduct of educators are dealt with in Chapter 5 of the Educators' Act (76 of 1998). According to section 16 of the Educators' Act (76 of 1998), the employer should consider the ability of educators if it is suspected that they are incapable of performing the duties attached to the position or unable to carry out those duties efficiently. Action may be taken according to the incapacity code and procedures for work performance as provided in Schedule 1 of said Act.[33]

Serious misconduct is dealt with in section 17 of the Educators' Act and includes (76 of 1998:sec.17(1)):

- stealing, bribery, fraud and any other manners of corruption relevant to examinations or the promotion of learners;
- sexual assault on a learner or colleague;
- becoming sexually involved with an enrolled learner at the school where the educator teaches;
- seriously attacking a learner or colleague, with the objective of harming the person;
- unlawfully having substances which are illegal or intoxicating;
- causing a learner to commit any of the acts mentioned above.

[33] Schedule 1 of the Educators' Act (76 of 1998) deals with the prescribed procedures in respect of incapacity and poor work performance

Unlike in the case of incapacity and misconduct where guidelines are provided by the Educators' Act regarding procedures to follow, with serious misconduct it is specified that an educator must be dismissed if found guilty (76 of 1998:sec.17(2)).

According to section 18 of this Act (76 of 1998), misconduct refers to a breakdown in the employment relationship and includes a wide variety of actions mostly referring to abusing the position held by the educator or the infringement of rights. The types of conduct considered as serious misconduct are typified as serious in nature and are all offences that could harm learners and lead to an abuse of the educator's position of trust (Prinsloo, 2009b:205). Schedule 2 of the Act deals with the prescribed procedures used in cases of alleged misconduct and may lead to the termination of the educator's employment contract. Educators who do not attend disciplinary proceedings, or stop attending such proceedings without permission, who refuse to comply with the requirements set out in item 7(12) of schedule 2, shall be deemed guilty of an offence and if convicted, may receive a fine and/or be imprisoned for up to six months (76 of 1998:sec.34).

Educators have the right to appeal against decisions regarding incapacity (76 of 1998:sec.25(1)) or the decision taken by the presiding officer of a disciplinary proceeding (76 of 1998:sec.25(2)), as long as the procedures found in schedule 2 are followed (76 of 1998:sec.25(3)). Employers are required to provide SACE of records of proceedings of an inquiry where steps, excluding cautioning or reprimanding, were taken against the educator (76 of 1998:sec.26; *cf*. 2.5.1).

2.4.4.3 General matters

Educators employed by the provincial department of education are required to be at the disposal of their employers during the times stipulated by the Minister (76 of 1998:sec.33(1)(a)) unless their conditions of service stipulate differently. Moreover, educators may not do work outside their official work for which remuneration is received without prior permission from the employer (76 of 1998:sec.33(1)(b); *cf*. 5.4.1). This provision ensures that educators do not neglect their official duties or harm the employer-employee working relationship. Educators who receive any form of remuneration without the permission of the employer may be charged with misconduct in terms of section 18(1)(n) of the Educators' Act (76 of 1998). Educators may be required to perform duties not normally assigned to them temporarily, as long as the duties are appropriate to the educator's post (76 of 1998:sec.2).

Educator may not claim additional remuneration for official work done voluntarily or as ordered by a competent authority (76 of 1998:sec.33(1)(c)).

It is important to take note of the fact that in terms of the Educators' Act, educators employed in non-subsidized positions by public schools are not regarded as educators (*cf.* 2.3.5). Thus educators not employed by the State are bound by general labour laws (Rossouw, 2010:42).

2.4.4.4 Personnel Administrative Measures (PAM)

The terms and conditions of employment of state employed educators are set out in detail in this regulation. It is important to read the regulation with section 4 of the Educators' Act (76 of 1998). The PAM document is applicable to, among others, educators, as defined by the Educators' Act (76 of 1998), at schools. Currently, the Department of Education is in the process of revising the PAM document based on recent collective agreements regarding educator salaries and post structures (Juta, 2013:3C-i).

Included in PAM are duties and responsibilities of educators, with specific reference to school based workload, as well as scheduled teaching time per post level, developmental appraisal, allowances and service benefit awards.

Duties

The PAM document includes the following duties as core duties which form part of the work expected of educators:

- scheduled teaching time;
- relief teaching;
- extra-curricular duties;
- co-curricular duties;
- pastoral duties, such as scholar patrol, ground duty, detention duty;
- administration;
- supervisory functions;
- management functions;
- planning, preparation and evaluation;

- professional duties, including meetings, workshops, conferences and seminars; and
- professional development (SA, 1999c:Chapter A item 3.1(b)).

Core duties are to be done within the formal school day, while educators are expected to complete core duties such as planning, preparation and evaluation, extra and co-curricular duties, professional duties and professional development, outside the formal school day (SA, 1999c:Chapter A item3.1(b)(ii)).

The duties and responsibilities of educators differ according to post level. The degree to which educators have to complete certain core duties will differ and certain specialised duties and responsibilities may be allocated to staff members by the principal (SA, 1999c:Chapter A item 3.1 & 4.1; *cf*. 5.4.3). Principals are required to ensure that duties are equitably distributed and that one teacher or a certain post level is not over-burdened (SA, 1999c:Chapter A item 3.1(b) & (c)).

PAM provides job descriptions for educators, among others (SA, 1999c:Chapter A item 4.5). According to the job description, the educators' class duties encompass academic, administrative, educational and disciplinary components as well as the organisation of extra- and co-curricular activities to ensure the promotion of learner education. Educators are required to carry out lawful written and/or verbal instructions given by an authorised person, but have the right to request that a verbal instruction be confirmed in writing, while also allowed to submit any complaint regarding such a verbal instruction to the employer for a decision (SA, 1995:reg.27; *cf*. 5.4.3).

Work hours

Educators are required to account for 1800 actual working hours per year (SA, 1999c:Chapter A item 3.1(e); SA, 2000b:art.3.1.5) within a school year which should consist of approximately 195 - 200 school days (SA, 2000b:art.3.1.1). In order to reach the prescribed 1800 hours, educators are required to be at school for no less than 7 hours during the formal school day (SA, 1999c:item 3.2(a); SA, 2000b:art..3.1.5). The seven hours includes break times as well as periods during which learners are not at school (SA, 1995:reg.23; SA, 1999b:reg.1.1; SA, 1999c:Chapter A item 3.2(b)).

Post levels of educators, as well as the size of the school, influences the scheduled teaching time during the formal school day (SA, 1999c:Chapter A item 3.3(a)).

School principals allocate subjects and the scheduled teaching time according to the timetable after consultation with the educator staff (SA, 1999c:Chapter A item 3.2(b)). The allocation should be done in such a way that each educators' individual abilities are used to the maximum and the institution's teaching and learning is at the optimal level (SA, 1999c:Chapter A item 3.3(b)(i)(ii)). PAM provides as guideline that the scheduled teaching time of post level 1 teachers at a primary school must constitute between 85% and 92% of the educators' formal school day, while post level 2 educators should have 85% to 90% scheduled teaching time allocated. At secondary schools the guided allocation for post level 1 educators is between 85% and 90%, while a post level 2 educator should be allocated 85% of scheduled teaching time (SA, 1999b:reg.1; SA, 1999c:Chapter A item 3.3.(b)(iii)).

The approximately 10% - 15% remaining during a formal school day should be used to perform other core duties as agreed upon with the principal. The expectation is that core duties will be performed both during and after the formal school day (SA, 1999c:Chapter A item 3.2(c)). Allocated core duties, other than scheduled teaching time, may not reduce the overall number of scheduled teaching hours, nor have a negative impact on the curriculum (SA, 1999c:Chapter A item 3.2(c)).

Employers may expect of educators to attend continual professional development (CPD) programmes. CPD programmes must be conducted outside the formal school day hours or during school holidays and may not take up more than 80 hours per year (SA, 1999c:Chapter A item 3.2(d)).

Salaries

Educators are paid according to a set of salary ranges, called a salary band, which is linked to the post level of the educator (SA, 1999c:Chapter B item 4.1). Within each salary band there are a number of salaries, normally three. When appointed, an educator is generally appointed at the lowest salary position within a salary band, while promotion should lead to advancement of one salary level (SA, 1999c:Chapter B item 4.2). Educators appointed for the first time and who have qualifications higher than the required minimum qualifications for the specific salary band will receive a bonus after one year of continuous service (SA, 1999c:Chapter B item 4.3). The salary of an educator shall come into effect on the first day he/she assumes duty and will continue up to and including the day services are terminated (SA, 1995:reg.6(1)). Should such an educator have been employed for 30 consecutive days and such

service ends on the last day of the last school term of the year, the educator must be paid up to and including the last day of the year (SA, 1995:reg.6(7)).

Cost of living adjustments are made to salaries from time to time, mostly on a yearly basis. Furthermore, educators who received an evaluation of acceptable or satisfactory in the yearly performance measurement, receive a 1 percent notch increment per year in respect of the educator's performance in the preceding 12 months. Educators not subjected to an evaluation through no fault of their own will still qualify for the salary progression (ELRC, 2003b:item 4.2).

At all times educators reappointed after a break in service must be placed at a salary level that is the most beneficial to the appointee, given the circumstances of the re-appointment. As in the case of new appointees, a re-appointed educator with improved qualifications appointed to the same or lesser salary position will receive a bonus after one year of continuous service (SA, 1999c:Chapter B item 4.4).

Improvement in qualification, which leads to an improvement in relative education qualification value goes hand in hand with a financial benefit, once proof has been submitted (SA, 1999c:Chapter B item 4.5).

Educators performing certain additional duties may receive additional income in the form of allowances. Allowances may be received for supervisory duties at school hostels (SA, 1995:reg.19; SA, 1999c:Chapter D item 1.2), Educators' Acting in positions higher than their current post level (SA, 1999c:Chapter D item 1.3) and educators appointed to perform duties related to public examinations (SA, 1995:reg.20; SA, 1999c:Chapter E item 1.1), which include compensation for travel and subsistence expenses, the setting of papers and memoranda and the marking and control of examination scripts.

Educators, retired educators and surviving spouses of deceased educators and retired educators fulfilling the requirements are entitled to an employers' contribution towards their medical aid contributions (SA, 1995:reg.64 & 67). In situations where the positions require state housing other than in a hostel, housing may be made available to an educator at a rent levied at 4% of the educator's annual basic pensionable salary, with a maximum determined by the Minister (SA, 1995:reg.68). In such instance, the educator will be liable for levies, taxes and other charges payable to the local authority. While the employer is liable for the upkeep of the house, the educator is responsible for the day-to-day upkeep of the house. In their

birthday month, educators are entitled to a non-pensionable service bonus (SA, 1995:reg.88).

Educators may receive a non-pensionable allowance for additional duties performed voluntarily by them according to specific guidelines, including among others:

- participation is optional;
- additional duties must be clearly identified and not form part of the normal duties of the educator during this time;
- selection of educators must be done according to clear, open and transparent criteria;
- duties must be performed satisfactorily, while normal duties may not be neglected; and
- a signed contract clearly stipulating all relevant information must be available (SA, 2007:reg.1)

The employer determines the allowance payable according to a system determined by the Minister. Moreover, since 2008, fully qualified educators, as defined in the Educators' Act (76 of 1998), who teach at remote schools (SA, 2008b:reg.8.1) or in other schools within difficult urban areas, appointed in a subject certain schools continually find difficult to fill and posts requested by the principal or School Governing Body to be eligible for incentive (SA, 2008b:reg.8.2), will receive an incentive of 10 percent of the first notch of salary level 7, but may qualify for more than one incentive if the position is applicable to more than one incentive (SA, 2008b:reg. 9).

Minimum requirements

Educators cannot qualify for an appointment if they do not at least have a recognised three year qualification, which must include educator training (SA, 1999c:Chapter B item 2.2), except when the person appointed is appointed in a position specified in the Evaluation of Qualification for Employment in Education and meet the specific requirements to such as post[34] (SA, 1999c:Chapter B item 2.2(a); SA, 2000a:reg.7). The Norms and Standards for Educators (hereafter referred to as the Norms and Standards (SA, 2000c)) is a policy which describes the roles of educators, as well as

[34] For example posts for technical subjects or instrumental music (SA, 1999c:item 2.2(a)(i)).

the associated set of applied competences (norms) and qualifications (standards) for the development of educators. According to the researcher of this study, this policy document portrays the minimum requirements for all educators as professionals.

The Norms and Standards contains the seven roles of educators, which all qualified educators should be able to display through three applied competences: practical competence, foundational competence and reflexive competence (SA, 2000c:art.3). The seven roles are:

- learning mediator;
- interpreter and designer of learning programmes and materials;
- leader, administrator and manager;
- scholar, researcher and lifelong learner;
- community, citizenship and pastoral role;
- assessor; and
- learning area/subject/discipline/phase specialist (SA, 2000c:art.3).

The seven roles and the associated competences provide the exit level outcomes for educator training and provide a description of what is meant with being a competent educator.

Classroom educators are appointed on post level 1 (SA, 1999c:Chapter B item 2.2(b)). Hereafter, post levels increase at an increment of two years, thus post level 2 requires at least a minimum of three years' experience, post level 4 a minimum of five years and so forth. Post level 2 educators are required to fulfil management duties.

Evaluation

The Integrated Quality Management System resulted from negotiations and establishes an agreement between the government and the major education trade unions and organisations in South Africa and was intended to be implemented in 2004 (Weber, 2005:70). Evaluation should be seen as part of the education process (ELRC, 2003a:Preamble). At each school three evaluation programmes should be in place: development appraisal, performance measure and whole school evaluation. Although whole school evaluation concerns the educators as part of the school, it does not have a direct impact on the educator's career and will therefore not be

expounded upon. Developmental appraisal focuses on an evaluation of individual educators, while performance measurement has the objective to evaluate if educators qualify for salary progression, grade progression, affirmation of appointments, as well as rewards and incentives (ELRC, 2003a:Preamble; *cf*. 5.4.3).

The Quality Management System aims at the following:

- to determine competence;
- to assess the educators' strengths, as well as the areas that need to be developed;
- to provide opportunities for development and support in order to ensure that the educator grows continually;
- to promote accountability; and
- to monitor the overall effectiveness of the school (ELRC, 2003a:Preamble).

By linking developmental appraisal and performance management in a yearly cycle[35], duplication of structures and procedures can be avoided, while the one can inform and strengthen the other (ELRC, 2003a:item 2). An appraisal cycle starts with the individual educator completing the self-evaluation instrument. This must happen before any lesson observation by the Development Support Group[36] of the educator is done (ELRC, 2003a:item 6). After the Development Support Group has observed a lesson and completed the prescribed instrument, the outcomes must be discussed with the educator who is entitled to request copies of the lesson observation records. The Development Support Group must make the information available to the Staff Development Team. It must be kept in mind that the focus is, among others, on:

- positive and constructive feedback;
- the importance of self-evaluation and discussion about individual expectations;
- transparent and open discussion;
- implementing quality controls to ensure validity, reliability and relevance;

[35] Starting at the beginning of a calendar year.

[36] The Development Support Team for every educator consists of the relevant immediate senior and one other educator selected on the bases of experience in the phase or learning area/subject. An educator has the right to request the appointment of additional members (ELRC, 2003:item 2).

- fairness; and
- promotion of individual professional growth and support (ELRC, 2003a: item 3).

Within each evaluation cycle, two developmental cycles are included, one each in the second and third term. Therefore the first term is used to plan the school's quality management system and the baseline evaluation of each educator; during the second and third terms development plans must be implemented and during the fourth term summative evaluations are done (ELRC, 2003a: item 2). The summative assessment is needed for performance measurement as it must be based on the work done by the educator, as well as progress made during the calendar year (ELRC, 2003a:item 2). Educators, consulting with their Development Support Groups, are also required to develop a Personal Growth Plan (ELRC, 2003a:item 11.2.1). The Personal Growth Plan informs the School Improvement Plan. The completed Personal Growth Plan forms, the self-evaluation, the baseline evaluation and the performance measurement all forms part of the important records of the needs and progress of individual educators (ELRC, 2003a: item 11.2.1).

Differences and/ or grievances are bound to arise and therefore educators must make attempts to discuss differences of opinion with the Development Support Group. When the difference cannot be resolved, the matter is to be referred to the Staff Development Team within a week. When there are serious breaches of guidelines of the process or serious grounds for challenging the process or the result, and no resolution has been reached, either party may request a formal review by the Grievance Committee. A Grievance Committee must consist of a senior manager, observers from trade unions and a neutral person appointed by the Regional or District Manager or a delegated person. The Grievance Committee is required to make a recommendation to the Head of Department, who has to make a decision within five working days of the receipt of the recommendation (ELRC, 2003a: item.10; *cf*. 5.4.3)

Even though the implementation of IQMS was scheduled to start in 2004, Mestry, Hendricks and Bisschoff (2009:476) report that the system has not been implemented successfully in some provinces, while in others implementation is very slow. Reasons cited related to the advocacy programmes and training, among others. Participants indicated that the way in which the advocacy process was driven by the National Department of Education was flawed (Mestry *et al*., 2009:476) and insufficient funds allocated (Bischoff & Mathye, 2009:397). The designated persons

for training from schools had to distribute the information to the educators at the schools. However, this was delayed, due to a lack of clarity concerning when it should happen, who should do it and a lack of confidence. When the information was passed along, the negative feelings of principals were clearly evident and subsequently influenced the perception of the educators (Bischoff & Mathye, 2009:399). Training provided by the provincial departments of education for educators was deemed insufficient as it was once off: a single day, lacking in quality (Bischoff & Mathye, 2009:397; Mestry *et al*., 2009:476).

Another factor influencing the successful implementation is the low morale of educators who have had to deal with many changes over the last two decades, as well as the top-down approach taken by many provincial education departments when it comes to policy matters (Mestry *et al*. 2009:477). Some participants indicated that they received the information regarding training via circular, while others just received verbal instructions (Bischoff & Mathye, 2009:399). Educators participating in the research study of Bischoff and Mathye (2009:401) experienced the system as paper-driven, impractical to schools with little resources, with very little benefit, only 1 percent at the end of the year for those who are successful (*cf*. 5.4.3). There was also a lack of understanding if the conceptual framework, where the Development Support Team signed off IQMS process forms without consultation on the submitted Personal Growth Plan of the individual educator. Participants did not experience the IQMS system to improve competence, but rather as leading to cheating and threatening the Development Support Group (Bischoff & Mathye, 2009:401).

Leave

Educators are entitled to annual leave which is automatically taken during school holidays, while educators are still required to perform some of their normal duties and responsibilities during these periods (SA, 1999c:Chapter J item 1.1 & 2.1). Educators who are required to appear as a witness in a court case or labour-related proceedings, appears defendant in civil proceedings arising from official duties, appear in court on criminal charges and are acquitted or are required by their employer or the SACE to attend or participate in training programmes, are not considered to be on leave (SA, 1999c:Chapter J item 1.4; *cf*. 5.4.3).

Moreover, educators are allowed 36 working days' sick leave with full remuneration in a three year cycle, while unused sick leave lapses after three years (SA,

1999c:Chapter J item 8.1). When an educator is unable to go to work due to sudden illness, the immediate employer must be notified immediately (SA, 1999c:Chapter J item 8.2), while a certificate providing the reasons for and duration of the absence is required from a registered medical practitioner for absences of three or more working days of sick leave (SA, 1999c:Chapter J item 8.3). Employers may require a certificate for periods less than three working days or even refuse absence for sick leave relating to the certificate, when patterns in the utilisation of sick leave have been established (SA, 1999c:Chapter J item 8.4; *cf*. 5.4.3). A maximum of 30 days additional paid sick leave may be granted by the Head of Department in cases where the 36 days sick leave have been exhausted. Temporary incapacity leave can only be granted in a case where the absence due to incapacity is temporary in nature. If, after the 30 days have expired, the educator is still incapacitated an investigation into the matter should be conducted, after which further leave may be granted on the basis of the medical evidence according to the conditions determined by the Head of Department (SA, 1999c:Chapter J item 9).

Leave for occupational injury and diseases will be granted in cases where the educator suffered a work-related injury or contracted a disease while executing his/her duties. In the case of work-related injuries involving a third party, occupational injury leave will be granted if the educator agrees to bring a claim for compensation against the relevant party and to use compensation received to reimburse as far as possible the employer's costs relating to the accident. The employer is required to take reasonable steps to assist the educator in such a claim (SA, 1999c:Chapter J item 11). Educators exposed to medical conditions requiring to be placed under quarantine will receive fully paid special leave upon submission of a certificate from a registered health practitioner (SA, 1999c:Chapter J item 12; *cf*. 5.4.3).

Educators are also entitled to:

- Four consecutive months of maternity leave (SA, 1999c:Chapter J item 13).
- 45 working days of adoption leave if the child is under two years of age (SA, 1999c:Chapter J item 14).
- Three working days per year for family responsibility and special leave for urgent private affairs (SA, 1999c:Chapter J item 15).

- A maximum of 3 working days per year for special leave for professional and personal development and for religious observances (SA, 1999c:Chapter J item 16).
- Special leave for study purposes according to conditions approved by the employer (SA, 1999c:Chapter J item 17).
- Special leave for examination purposes, one day paid leave for each examination the educator sits for and one additional day special leave for study purposes per examination (SA, 1999c:Chapter J item 18).
- Special leave for participating in sporting, cultural and other events according to conditions approved by the employer (SA, 1999c:Chapter J item 19; *cf*. 5.4.3)

Continual Professional Development (CPD)

There is currently no official CPD programme in place in South Africa, even though the Norms and Standards call for the educator to be a life-long learner (SACE, 2014:3). A Continuing Professional Teacher Development (CPTD) system was announced in the National Policy Framework for Teacher Education and Development in 2007. SACE, as the statutory body to uphold the education profession, will use the CPTD system to encourage the professional development of educators (SACE, 2014:1; *cf*. 2.5.1; 5.4.5).

The system is currently being implemented. Post level 2 educators, i.e. principals and vice principals are currently, 2014, being trained and will be required to start their CPTD in 2015, while Post level 1, i.e. classroom educators will be trained in 2015 and will be required to start in 2015 (Jannasch, 2014). CPTD will be compulsory and educators will be required to earn 150 personal development points in a three year cycle. SACE will evaluate teacher development activities and allocate PD points. Teacher development activities will be available on the SACE website for completion[37] and educators will receive points for completed activities (SACE, 2014:2-3; *cf*. 2.5.1; 5.4.5).

2.4.5 Educators employed in governing body positions

Departmental budget constraints to the one side and the growing needs of schools to the other side have led to a common practice of school governing bodies using

[37] Activities will also be available off line (SACE, 2014:2).

school funds to fund additional staff (Breetzke & Lawrence, 2011:3; Deacon, 2011:1; *cf*. 5.4.1). While the SA Schools Act (84 of 1996:sec.20(4) as amended by the Education Laws Amendment Act 100 of 1997) allows for the appointment of educators in non-subsidised positions, the employment relations of educators employed in additional non-subsidised posts by public schools need special attention (*cf.* 2.3.3.2.1). As stated previously (*cf.* 1.4.1) the definition of an educator as found in the Educators' Act (76/1996:sec.1),[38] does not include educators in non-subsidised positions, which means that School Governing Body appointees are not governed by this educator-specific law, but by the individual private employment contracts as agreed on by the relevant parties (Rossouw, 2009:264; *cf*. 5.4.1) and the Basic Conditions of Employment Act 75 of 1997 (Bray & Beckmann, 2000:441; Bray & Beckmann, 2001:120; Prinsloo, 2009b:191).

School Governing Bodies have two options regarding the type of contract they wish to appoint an educator on. The school governing body may elect to enter into a permanent contract for an indefinite period of time (Deacon, 2011:2). When entering in a permanent contract, the contract can only be terminated in cases of misconduct, incompetence and unsuitability, operational requirements and when the educator reaches the stipulated retirement age. The second and definitely more popular contract type is a fixed-term contract. A fixed-term contract is entered into for a fixed-term, mostly one year, with the employment contract ending at the end of the contract period. As school governing bodies are often not able to enter into long-term contracts, as the number of learners in a school, the departmental post establishment and the income differ year-to year, fixed-term contracts are the only practical consideration (Deacon, 2011:5). Fixed-term contracts do not provide good job security, as the yearly uncertainty when the time comes to renegotiate may lead to low morale and even affect the educator's performance in the classroom (Deacon, 2011:8; *cf*. 5.4.1).

According to Rossouw (2010:92), when entering into a contract with an educator the School Governing Body should adhere to labour law principles and attempt to agree on terms and conditions that are consistent with the PAM document. However, there

[38] The Educators' Act defines an educator as any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school, departmental office or adult basic training center and who is appointed in a post of any educator establishment under this Act.

is no obligation on School Governing Bodies to match the terms and conditions of state employed educators (Breetzke & Lawrence, 2011:4; *cf*. 5.4.3). Although School Governing Body appointed educators fulfil the same functions, they are legally in a less favourable position (*cf*. 5.4.1). Although remuneration of School Governing Body employed educators may be more or less that of state-employed educators, they do not have the bargaining power to ensure annual increases by means of collective agreements, nor are they organised to the extent that they can use strike action to improve their working condition, while they are totally dependent on the financial situation of the public schools, and they seldom have pension fund and/or medical aid benefits, as state-employed educators have (Breetzke & Lawrence, 2011:4). In fact, School Governing Bodies seldom attempt to keep to improved terms and conditions of state employed educators, as the financial pressures becomes too much for the School Governing Bodies (Breetzke & Lawrence, 2011:7).

School Governing Body appointees are also in a different position when it comes to disciplinary matters. In the Labour Act (65 of 1995) there is no provision equivalent to section 17 and 18 in the Educators' Act (76 of 1998). It is the prerogative of the School Governing Body to determine their own standards of conduct, or rely on the basic common law principles, while using the Code of Good Practice in terms of the Labour Act (Breetzke & Lawrence, 2011:4; 5.4.4). Hypothetically, a School Governing Body may act harsher when an employee transgresses, than the DoE. When one considers the *Dispatch High School v Department of Education, Eastern Cape* [2001] JOL 8990 (SE), the difference in view a School Governing Body and the DoE may have becomes clear. The case dealt with the lack of action by the DoE after the principal stole a cell phone and then lied about it. The School Governing Body wanted to prosecute the principal and felt that the actions of the principal materially undermined the relationship between the School Governing Body and the principal. On the other hand, the DoE was of the opinion that the incident was not critical to the relationship between the two parties (Breetzke & Lawrence, 2011:7). The High Court voiced its displeasure with the way in which the complaint was dealt with by the DoE. State-employed educators have the right to appeal disciplinary decisions, while the School Governing Body employed educator only has this benefit if an appeal process is adopted by the body.

Thus any concerns with regard to conditions of employment and remuneration of such educators will be settled by weighing the stipulations found in the individual

contract of employment and the provisions of the Basic Conditions of Employment Act (75 of 1997) to determine which is the most favourable for the individual. However, educators employed by the school governing body are still bound by the SACE Act (31 of 2000) and therefore have to register with SACE and are subjected to the code and discipline exercised by SACE – like all other practising educators in South Africa (Bray & Beckmann, 2000:441).

The employment of non-subsidised educators by a school does not exclude the State's accountability for damages. In *MEC for Education and Culture, Free State v Louw* 2005 (4) SA 483 (SCA) (hereafter referred to as *Louw*) the matter before the court dealt with whether vicarious liability lies with the State or the public school when the educator involved is employed by the School Governing Body. In its reasoning, the court argued that section 60 of the SA Schools Act deals with liability for damage or loss resulting from acts or omissions in connection with any school activity conducted by the public school (84 of 1996). Section 20(10)[39] only refers to the contractual responsibilities of the School Governing Body regarding employment. Thus the court ruled that the responsibility for the damage caused by the negligent action of an educator appointed by the School Governing Body of a public school lies with the State.

2.5 COMMON LAW PRINCIPLES

Oosthuizen (2004:16) points out that the basis of South African private law is formed by common law principles, while Rossouw (2010:29) indicated that the link between common law and current legislation is very close, as legislators keep common law principles in mind when formulating legislation. Rossouw and Oosthuizen (2004:37) consider common law an important source in labour legislation, particularly when the mutual obligations of the different parties have to be determined. The most significant common law principles educators need to be aware of are the *in loco parentis*-position of the educator, the duty of care principle (Oosthuizen, 2004:16) and the rules of natural justice.

[39] Stipulates that despite section 60, the State is not liable for any act or omission by the public school relating to its contractual responsibilities as the employer in respect of staff employed in terms of subsections (4) and (5).

2.5.1 The i*n loco parentis*-principle

Educators hold the position of *in loco parentis* according to South African common law due to their position as educators and the fact that they have been professionally trained to work with learners (Oosthuizen & De Wet, 2004:66). According to the Initiation Regulations (SA, 2002b,) *in loco parentis* is defined as *acting in the place of the parent* (SA, 2002b:reg.2). Thus it can be said that the educator takes the place of the parent/caregiver while the learners are at school, or during any school activities (Oosthuizen & De Wet, 2004:66), during normal intra- and extramural activities (SA, 2002b:reg.2). However, this does not mean that the parent/caregiver is substituted by the educator as the primary caregiver (Roos *et al.*, 2009a:125). Due to the fact that the parent/caregiver with a lack of professional skills is dependent on the trained, skilful educator as secondary caregiver, educators derive their *in loco parentis*-position from the authority delegated by a parent/caregiver (SA, 2002b:reg. 2 & 6.5; Roos *et al.*, 2009a:126; Joubert 2009d:145).

Bray (2000a:283) questions the need for, or place of, the *in loco parentis*-principle in the educator-learner relationship, based on the fact that the public-law status of the learner and the educator, as well as the status of the child as a bearer of fundamental rights in the parent/caregiver-child relationship are recognised. Be it as it may, the *in loco parentis* role of the educator is recognised in the Initiation Regulations (SA, 2002b)[40] and the Devices Drug Testing (SA 2008)[41] and will therefore be considered as relevant and discussed.

The *in loco parentis*-position places the responsibility on the educator to fulfil two very important functions, namely:

- the autonomous right to maintain authority (*cf.* 2.2.1.10; 2.3.1.1);
- the duty to care for the learners like a caring supervisor (SA, 2002b:reg.3.4 and 6.5; Oosthuizen & De Wet, 2004:66; Roos *et al.*, 2009a:126; *cf.* 2.4.2; 5.4.6).

[40] Regulation 2 of the Initiation Regulations (SA,2002b) of his/her child to an educator or another person during normal intramural or extramural school activities, and mention the obligation the status brings to the educator in regulation 5(3).

[41] In Annexure B item 1 of the Devices for Drug testing it is stated that search and seizure is done within the boundaries of the *in loco parentis*-position between educator and learner (SA, 2008a).

According to the Initiation Regulations (SA, 2002b:reg.3.4), all suitable measures, both social and educational, should be taken to protect learners from all forms of mental and/or physical maltreatment or degradation by the educator acting *in loco parentis.* While in the Devices for Drug Testing (SA, 2008a: Annexure B item 1) document the guiding principle of search and seizure is founded on *common sense*, conducted within the boundaries of the *in loco parentis* bond between learner and educator. According to De Waaland Mawdsley (2010:12), regulation 1 and regulation 8A(2)(c) of the Safety Regulations (SA, 2006) echo the *in loco parentis* link between educators and learners in their call on educators to supervise and organise learners not only on the school grounds, but also at school activities wherever these take place. In order for educators to ensure the protection of the learners in their care, it is necessary that their rights to maintain authority should be protected by fair measures in order to create an environment reflective of order, coordination and harmony in which effective education can take place (Roos *et al.*, 2009a:126).

2.5.2 The duty of care principle

Duty of care is a common law principle which is also contained in legislation (SA, 2002b:reg.6.5). According to this principle the educator should take care of learners as a *diligens paterfamilias*, i.e. a careful father who would take care of his family (Prinsloo & Beckmann, 2000:325–326), ensuring their safety and physical and psychological well-being (SA, 2002b:reg.3.4; Joubert, 2009d:145) as they are impressionable, immature beings (Roos *et al.*, 2009a:126).

A special relationship exists between an educator and learners. Due to this special relationship, the legal duties of educators and learners are viewed within this context (Joubert, 2009d:145). The *Rusere v the Jesuit Fathers* 1970 (4) SA 537 (R)[42] case can be considered an illustration of the afore-mentioned. In this instance the court made two profound statements relating particularly to the duty of care of an educator. Firstly, the court held that the duty of care school authorities, including educators, owe learners to take care of them as a careful father would take care of his children, indicating that the standard of care an educator takes of his charges should be similar to that which a reasonable, prudent man would exhibit in such a

[42] This case was brought before the court by the minor plaintiff, assisted by his father to claim damages after the boy sustained an injury which led to the permanent loss of sight of his right eye at a mission school where he was enrolled at the time.

situation. There is no doubt that duty of care places a great responsibility on the educator and the question arises – can one expect an educator to watch over each and every learner and ensure that no learner is harmed? In this matter the court held secondly, that the duty of care to keep learners under constant supervision depends essentially on the risks they are exposed to in a particular environment and that there is no law that requires of the educator to keep his/her learners under supervision for every moment of their school lives.

In *Wynkwart NO v Minister of Education* 2002 (6) SA 564 (C) the case was brought before the court by the father on behalf of his son who had allegedly been seriously injured when he fell off an unused, locked gate at the school he attended. In his judgment, Ngwenya focused on the fact that educators are better trained than most parents in child development and psychology. Therefore they should have a better understanding of children. This means when an educator is judged on the test for negligence it should be considered that they are trained to care for learners (*cf*. 5.4.5). The judge ruled that the defendants were liable for the damages suffered.

On appeal another aspect which comes into play regarding the educator's duty of care is the duty of such an educator to act when necessary. In the *Minister of Education and Another v Wynkwart* 2004 (3) SA 577 (C)[43] matter the inquiry was not strictly about foresee-ability, but rather about reasonable steps which should have been taken by the appellants, and whether these steps could have averted the harm. As in the *Rusere v the Jesuit Fathers* 1970 (4) SA 537 (R) case, the court held that the degree of supervision needed in a particular case is dependent on a variety of circumstances. In this instance, the court made particular reference to the age of the learner as an influencing circumstance.

One of the most influential factors in determining if there is contributory fault on the side of the learner and if the learner can be held liable in any way, is the age of the learner involved (Joubert, 2009d:143). The Child Justice Act (75 of 2008) deals with, among others, the provision of a minimum age for criminal capacity of children (*cf*. 2.2.1.1). According to section 7(1) of this Act (75 of 2008), a child under the age of 10 years does not have criminal capacity, indicating that the child does not have the

[43] The matter was at first brought before the court by the father on behalf of his son who had allegedly been seriously injured when he fell off an unused, locked gate at the school he attended. The defendants appealed and the decision was reversed.

capacity to act or legal accountability. Section 7(2) states that a child older than 10, but under the age of 14, is presumed to lack criminal capacity unless the State proves without reasonable doubt that the child was able to appreciate the difference between right and wrong and was able to act with that appreciation at the time of the commission of the offence (75 of 2008:sec.11(1)).

It is clear that educators' duty of care and the accompanying responsibilities are far greater when the learner is younger, as the court will consider their age in its decision regarding contributory fault of learners. It is obvious that learners of 14 years of age will be held more accountable for their actions than a twelve-year old and that a child under the age of 10 cannot be held accountable at all. Thus, educators have to consider the age of learners they are dealing with when deciding what a reasonable person would do in a particular situation. However, learners between the ages of 15 and 17 will still have limited capacity increasing with age, but the law is quiet on the matter.

When legal liability has to be determined in case of injury it becomes a public law matter, more specifically a law of delict matter. According to Loubser (2004:280), law of delict is in essence directed at private interests and the provision of compensation in cases where loss or harm occurred. In order to ascertain the extent of an educator's responsibility and liability in a case where a learner is injured, it is necessary to measure the actions of the educator in terms of five requirements, namely wrongfulness, action, damage, causality and fault (Oosthuizen & De Wet 2004:68; Joubert, 2009d:146). Each of these elements must be present in the assessment of liability.

The focus of the educator's duty of care seemed to refer to the protection of learners against physical injuries. However, it has increasingly also become a duty of the educator to protect learners against psychological and emotional injuries (Oosthuizen & De Wet, 2004:71; Joubert, 2009d:158). Two specific areas educators have to take cognisance of, which directly bear on the need for psychological and emotional protection of learners, are bullying and peer victimisation and sexual harassment[44]. As stated by Oosthuizen & De Wet (2004:72) there is no doubt that bullying and peer victimisation, as well as sexual harassment in any form, is

[44] Both bullying and peer victimisation and sexual harassment can take many forms. However, a discussion thereof is beyond the scope of this study.

detrimental to the safety and well-being of any learner and therefore it is imperative that educators find ways to deal with this effectively (Joubert, 2009d:158), as they might find that there are certain circumstances where they are held liable for the psychological and emotional injuries sustained by learners if they did not intervene (Oosthuizen & De Wet, 2004:71-75; Joubert, 2009d:158).

From the above-mentioned discussion it becomes clear that the duty of care as common law principle places a legal obligation on an educator according to civil law, as the educator, as well as the educational institution, will be held liable for any harm or disadvantage a learner suffers at school or during a school activity (Joubert, 2009d:150).

To the same extent that educators have a duty of care towards the learners in their care, the employer has a duty of care towards employees: a matter which becomes clear in the ruling of the *Jacobs v Chairman, Governing Body, Rhodes High School* 2011 1 SA 160 (WKK) case. In this tragic incident, an educator, Jacobs, was attacked by a Grade 8 learner with a hammer in front of other learners and suffered severe physical and psychological injuries. She instituted a claim against the principal of the school for unlawful and negligent omission of duty and against the MEC for Education in terms of section 60(1) and 60(3) of the SA Schools Act. The court ruled in favour of the applicant, although decreasing the claim, due to contributing fault on her part (*cf*. 5.4.6).

2.5.3 Rules of natural justice

The rules of natural justice regulate educators' actions in any disciplinary actions and are usually applied when there is an investigation which might lead to the rights, freedoms and privileges of a person being affected (Joubert, 2009c:110). Rossouw (2010:37) points out that the words *lawful, reasonable and procedurally fair* as found in section 33 of the SA Constitution (1996) embody the common law principle of the rules of natural justice as the rules of natural justice regulate procedural fairness (Roos *et al.*, 2009a:110). The enactment of the Promotion of Administrative Justice Act 3 of 2000 (*cf.* 2.3.2.1) led to the rules of natural justice being included in legislation. However, these common law rules still remain relevant in the interpretation of legislation (Roos *et al.*, 2009a:110; Rossouw, 2010:29). It is noteworthy that section 3(2) of the Promotion of Administrative Justice Act (3 of 2000) stipulates that fairness depends on the circumstances of an individual case,

but that common law should also still be considered in determining the content of the concept.

Two basic principles personify the rules of natural justice, namely:

- *audi alteram partem* , i.e. to hear the other side (Rossouw, 2010:29), and
- *nemo iudex in sua causa,* i.e. no one may be a judge in his/her own case (Squelch, 1999:363; Roos *et al*., 2009:119).

The *audi alteram partem* principle indicates that in short the legal subject should be given the chance to present his/her version of the case (Roos *et al.*, 2009a:112; Rossouw, 2010:30). Over the years the South African courts have interpreted the concept to mean *the opportunity to be heard* as well as the person whose rights have been infringed must be informed of any aspect considered that could be held against him (Roos *et al.*, 2009a:118; Rossouw, 2010:30).

It can be said that the rules of natural justice comprise of different aspects. Firstly, the person who is affected by the action, or intended action, must be given an opportunity to present his/her version of the case (Malherbe, 2000:453; Rossouw, 2004a:64; Roos *et al.*, 2009a:111; Rossouw, 2010:30). According to Malherbe (2000:453), it may include *fair prior notice*. Secondly, the person affected must be made aware of all facts and considerations which might negatively affect the person and about which the person does not, within reason, have information, in order to allow the affected person to prepare himself against any allegations at a hearing (Malherbe, 2000:453; Roos *et al.*, 2009a:118; Rossouw, 2010:30).

Furthermore, the *nemo iudex in sua causa* principle should be evident (Squelch, 1999:363), indicating that the party instituting the action may not be prejudiced or biased (Malherbe, 2000:453), but the party exercising discretion must be objective (Roos *et al*., 2009a:119) and above suspicion (Rossouw, 2010:30). Rossouw (2010:30) points out that sufficient attention must be given in the consideration of facts and only facts relevant to the particular case must be considered. Lastly, the affected person must be provided with reasons regarding disciplinary measures (Rossouw, 2010:30), unless the reasons are made public (Malherbe, 2000:453).

Apart from the relevance to labour relations, the rules of natural justice also play a role in the educator-learner relationship. Just as educators are entitled to fairness and reasonableness in a disciplinary hearing, learners are entitled to the same consideration when disciplinary measures are instituted against them. As pointed out

by Roos *et al.* (2009a:111), it is important for educators to realize their obligation in determining whether a learner has transgressed the rules to do so in a reasonable and fair manner. In order to do this, the educator has to get a clear picture of the learner's conduct, as well as the circumstances in which the conduct took place (Roos *et al.*, 2009a:111).

2.6 EDUCATION AS PROFESSION

Educators in South Africa are not merely considered to be teachers, but also role models, mentors and life-coaches (Smit *et al*., 2008:191). The term educator, as used in South Africa, symbolizes much more than a mere obligation to teach. It symbolizes a duty and calling to provide a *broad and encompassing education* (Smit *et al*., 2008:191). In the Code of Conduct Guidelines it is stipulated that learners can expect educators to maintain a high standard of professional ethics and that a relationship of mutual trust and respect is established between learner and educator (SA, 1998:art.5.6).

According to Prinsloo (2009a:71), the professional authority of educators originates from their specialised skills and knowledge, while the trust society places in the profession are a result of the high quality of service which is rendered by the profession as a whole, or individual professionals. Prinsloo (2009c:171-172) highlights the following aspects as being characteristic of a profession:

- Developing and maintaining a professional Code of Ethics to ensure the rendering of effective professional services and protects both client and practitioner against possible malpractice and mutual exploitation.
- Service orientation with practitioners putting their clients' interests first, i.e. through professional conduct, educators are obliged to protect and respect the rights of their learners.
- Integrity and competence are the two characteristics both parent and learner search for in their educators, leading to a high level of performance.
- Acceptance of accountability is a characteristic crucial to public acceptance of education as a profession.

In order to establish education as a profession in South Africa, the SACE Act (31of 2000) was enacted.

2.6.1 SACE Act 31 of 2000

The objects of the South African Council of Educators' Act 31 of 2000 (31 of 2000) is to provide registration for educators, promote the professional development of educators and maintain and protect ethical and professional standards for educators by means of the functioning of the council (31of 2000, sec.2; *cf*. 5.4.7).

According to section 5 of the SACE Act (31of 2000) the council:

- must determine minimum standards for registration;
- keep a register of all applications for registration;
- formulate a Professional Code of Conduct for educators;
- develop an even-handed disciplinary enquiry procedure; and
- appoint a disciplinary committee.

Minimum requirements for registration with the Council are:

- minimum post Matriculation teacher education qualification of 3 years;
- a two year certificate in teacher education for the pre-primary phase; or
- any other recognised qualification (SACE, 2011).

In certain instances an educator can obtain provisional registration, such as during the final year of education study. When registering, the Council requires proof of registration, while educators are required to disclose details of disciplinary action taken by previous employers or pending disciplinary actions, previous convictions or pending criminal cases, as well as any disciplinary hearings or action taken by the Council (SACE, 2011).

Section 27 (31 of 2000) gives the Council the authority to strike the names of offending educators from the register if it is warranted. The SACE Code of Ethics formulated by the Council guides educators to professional conduct, particularly in their relationship with other role players. The SACE Code of Ethics requires of educators to acknowledge the education profession as a noble calling, to practise self-discipline and dedication and uphold and promote the constitutional rights of all, among others (SA, 2000d; *cf*. 5.4.3; 5.4.7). Furthermore, the SACE Code of Ethics contains required conduct of educators in relation to the different role players within the education sector. Educators should model their conduct on the stipulations found in the SACE Code of Ethics (SA, 2000d).

The SACE Code of Ethics require of educators in their dealing with learners to:

- respect the constitutional rights of learners while enabling them to develop a set of values mirroring the fundamental rights enshrined in the SA Constitution;
- realize learners are different and allow and encourage all of them to develop to the best of their abilities;
- care for learners by maintaining authority, avoiding humiliation, abuse and exploitation;
- refrain from unprofessional conduct such as harassment, improper physical contact and improper language usage; and
- recognise learners as partners in education while ensuring their safety and well-being to earn the respect of learners (SA, 2000d:item3).

At the same time, educators are not only required to respect the authority and status of colleagues, but also the responsibilities assigned to them in order to ensure that the school runs efficiently (SA, 2000d:item 6.1 & 6.2). The conduct among colleagues should be professional and exclude any forms of harassment, infringement of rights and poor use of language (SA, 2000d:item 6.3-6.6). Incompetence or misbehaviour of colleagues must be addressed using the proper procedures (SA, 2000d:item6.3). The SACE Code of Ethics requires of educators to consider parents as partners in education while respecting differences in values, customs and norms 9SA, 2000d:item 5).

The South African Council of Educators, thus acts as regulatory body of the profession and has the statutory right in terms of the SACE Act (31 of 2000) to regulate the conduct, discipline and work ethics of educators, as well as the right to discipline educators who make themselves guilty of unprofessional conduct (Smit *et al*., 2008:191; *cf*. 5.4.3). According to section 5(c)(ii) of the SACE Act (31 of 2000), consequence of offences may include being cautioned (31 of 2000:sec.5(c)(ii)(aa)), fined by a maximum of one month's salary (31 of 2000:sec.5(c)(ii)(bb) or removal from the register, either indefinitely or for a specified period, or subject to specific conditions (31 of 2000:sec.7(1)(3)).

De Waal (2010) points out a clear shortcoming in the SACE Code of Ethics – although the document repetitively refers to professional and profession, it offers no clear definitions of the two terms. According to De Waal (2010), it would appear as if

the document expects educators to have an instinctive understanding of what makes education as profession different from just a job.[45]

From the discussion above, the researcher of this study has made it clear that through the enactment of the SACE Act (31 of 2000) and the establishment of a professional Code of Conduct for educators, education in South Africa is considered a profession. However, at the same time the Labour Act (66 of 1995) has led to educators being considered normal, government employees. This divergence results in unprofessional conduct of educators and a lowering of their esteem within the South African society (*cf.* 1.4).

2.7 SUMMATIVE REMARKS

This chapter provides a detailed discussion of the framework for the legal status of the South African educator. Both the public law and private law status of educators were expounded upon by considering legislation, common law and case law (*cf*. 1.1).

Over the last two decades the South African education system underwent many changes which impacted extensively on educators. Therefore the researcher considered a need to discuss some of these changes and the resulting impact. The literature revealed that the focus on human rights, without a counterbalancing focus on the responsibilities accompanying rights, brought about fundamental changes to the experiences of educators at schools, particularly in the classroom. Work stress experienced by educators greatly arises from an abuse of rights by learners and parent/caregivers (*cf*. 2.1.1). The situation is exacerbated by a lack of knowledge among educators regarding their own rights (*cf*. 2.2).

By discussing the different statutes relevant to educators' legal status, an in-depth view was obtained of the responsibilities as well as the legal rights of educators in South Africa (*cf*. 2.2 – 2.5). In the following chapter, a view of legislation and other relevant documents providing insight into the legal status of educators in Belgium and England/Wales will be given, with the aim of a comparative view of the legal status of the educators in the three countries in Chapter Five.

[45] As suggested by De Waal (2010) the researcher will compile a definition from the document and test the definition in the questionnaire used in the empirical study.

CHAPTER THREE
LEGAL STATUS OF EDUCATORS: BELGIUM AND ENGLAND/WALES

3.1 INTRODUCTION

During the discussion of the legal status of educators in Chapter Two, the concept legal status was delineated. In this chapter the discussion will focus on the legal status of educators in the different countries selected for the study. Both the public law status and the private law status of educators will be taken into consideration (*cf*. 2.1). The substantiation for the selection of the countries is provided in Chapter One (*cf*. 1.2.1), but in short: three differing legal systems were decided upon.

South Africans use the terms learners and educators, while the other countries all refer to pupils and teachers or teaching staff. In this chapter, the terms used in the country will be used in the discussion of that country.

3.2 BELGIUM, THE FLEMISH COMMUNITY

Belgium has two education systems: public and private (Varin, 2006:13). As in the case of South Africa, in this study the focus will be on the public school system. Unlike South Africa where schools are either public or private, the public school system of Belgium is organized into municipalities, provinces and communities. Schools within the three major networks will be considered as public schools as they all receive public funding or subsidies (*cf*. 3.2.1). There are very few private schools that receive no funding from government (National Centre on Education and Economy (NCEE), 2006:4), which can be seen as similar to the private schools in South Africa (*cf*. 5.2).

3.2.1 Overview of the Belgian education system

Section 24 of the Belgium Constitution not only guarantees parental freedom of choice of where they enrol their children (NCEE, 2006:3) according to their philosophical and religious convictions (Varin, 2006:13), but also freedom for the organisation of education (1993:sec.24; OECD, 2011b:18). Belgians are guaranteed the right to establish and run non-state or free schools and choose such schools for their children (De Groof, 2008:8; De Ro, 2008:14; *cf*. 5.2.2).

These schools, however, have to meet the quality standards set by public authorities (De Groof, 2008:8). Therefore Belgium schools established and managed without

government connection, thus privately run schools within the free subsidised education network (*cf*. 3.2.1.1), must ensure that they comply with the legal provisions and regulations in order to obtain subsidies from the government, as well as present officially recognised diplomas or certificates (OECD, 2011b:16-17).

Such approved non-state schools (*cf*. 3.1.2.1) receive public funding at quasi-parity with the schools operated by community (*cf*. 3.1.2.1), provincial and municipal governments (*cf*. 3.1.2.1ii) to ensure that the afore-mentioned right may be exercised without limitations based on wealth (De Groof, 2008:8). It is the role of the Ministry of Education of the Flemish Community to set the broad aims and objectives in the community (OECD, 2011b:11; *cf*. 5.2.2).

3.2.1.1 Educational networks

There is significant autonomy to organise schools by the three main education networks[46] – GO! education (community education), *Gesubsidieerd Officieel Onderwijs* (Subsidised Official Education) and *Gesubsidieerd Vrij Onderwijs* (Free Subsidised Education) (Devos & Vanderheyden, 2002:19; NCEE, 2006:4; Varin, 2006:13; De Ro, 2008:15; Holz, 2008:36; OECD, 2011b:11, De Vries, 2010a:2; *cf*. 5.2.2).

GO! education (community education)

This network is publically run by the Flemish Community under the auspices of the public body called het *GO! onderwijs van de Vlaamse Gemeenschap*. GO! education comes under the authority of the relevant ministry of education, is funded by the Flemish Community and is organised by a central board called Raad GO! (De Vries, 2010a:2) GO! education is required to be neutral by the Constitution. The requirement to be neutral implies respecting the religious, philosophical and ideological convictions of parents and pupils (NCEE, 2006:4; Varin, 2006:13; De Ro, 2008:15; Holz, 2008:36; De Vries, 2010a:2; *cf*. 5.2.2).

Subsidised official education

Officially subsidised education refers to publically funded, publically run education. In this instance schools are run by provinces and municipalities and subsidised by the

[46]An education network can be described as a representative association of governing bodies, which draw up their own curriculum and timetables. Some of the autonomy of school governing bodies is surrendered to the networks (De Ro, 2008:15).

Flemish Community. Organisation of these schools is done by local authorities in the case of municipalities and provincial authorities in the case of provinces (NCEE, 2006:4; Varin, 2006:13; De Ro, 2008:15, Holz, 2008:36; De Vries, 2010a:2).

Free subsidised education

Free subsidised education is publically funded, privately run schools. Education is organised by a private person or organisation, while subsidised by the Flemish Community. Governing bodies are mostly non-profit organisations. Although the majority of these schools are Catholic schools, there are also schools with no affiliation to a particular religion, but rather to a particular educational methodology (NCEE, 2006:4; Varin, 2006:13; De Ro, 2008:15; Holz, 2008:36; De Vries, 2010a:2).

The Flemish Community carries all costs for community schools (*cf*. 3.2.1.1) and the costs for maintaining and running other schools (*cf*. 3.2.1.1), except non-subsidised private schools (*cf*. 3.2.1). The community also pays all teaching staff (NCEE, 2006:4; *cf*. 5.3).

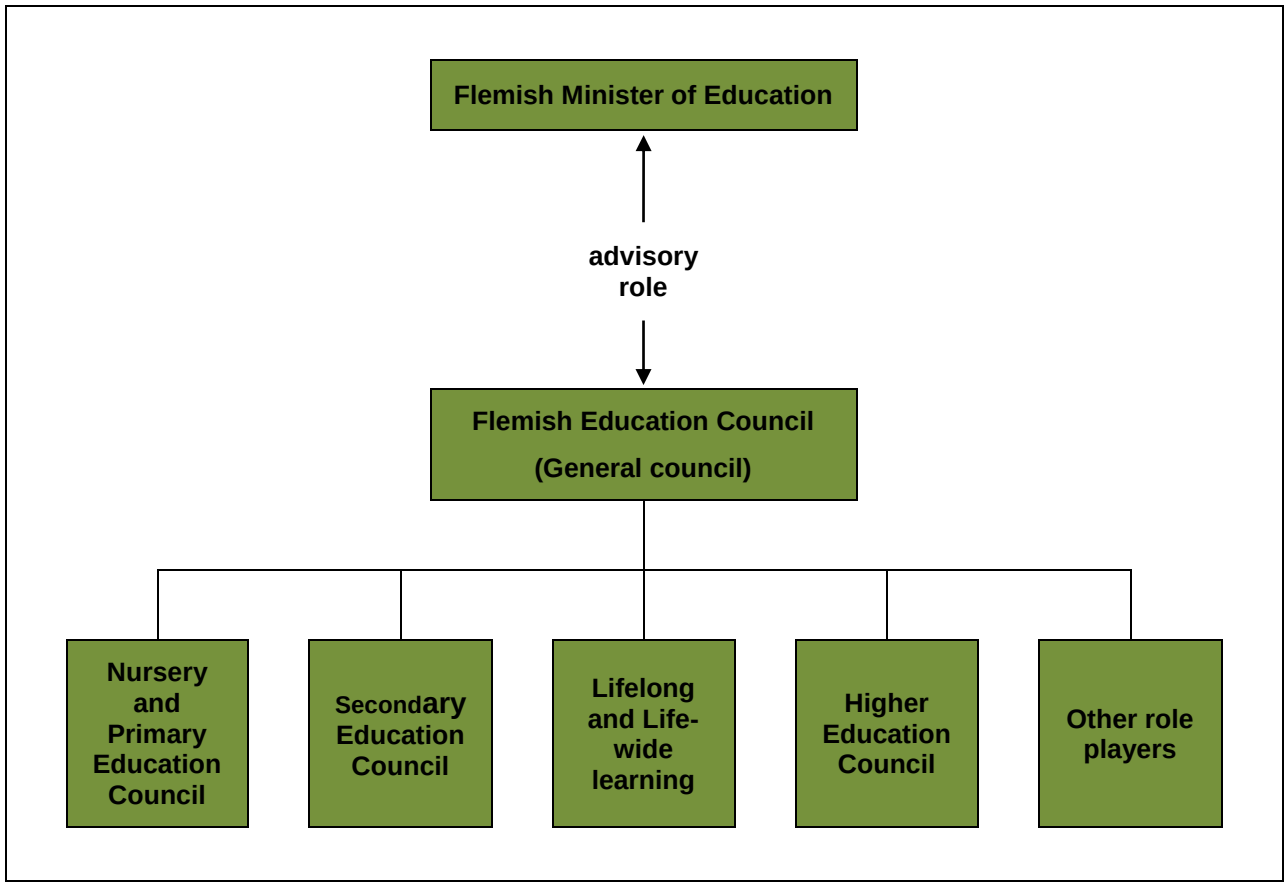
3.2.2 Organisation of the education system

According to section 59bis(2)[47], the only education powers the Belgian federal government has in the Flemish Community concern the ages of compulsory education, minimum requirements for obtaining qualifications and the pensions of teachers (McKenzie Emery, Santiago and Slikwa, 2004:6). All other education affairs are organised at community level (NCEE, 2006:3).

Figure 3.1 provides a visual representation of the central participation structures found in the Belgian education system. The figure illustrates where the responsibility for education lies, as well as the roles played by different councils.

[47] According to http://www.ejustice.just.fgov.be it is article 59bis(2), but article 127 in http://www.senate.be

Figure 3.1: Central participation structures of the Belgium education system

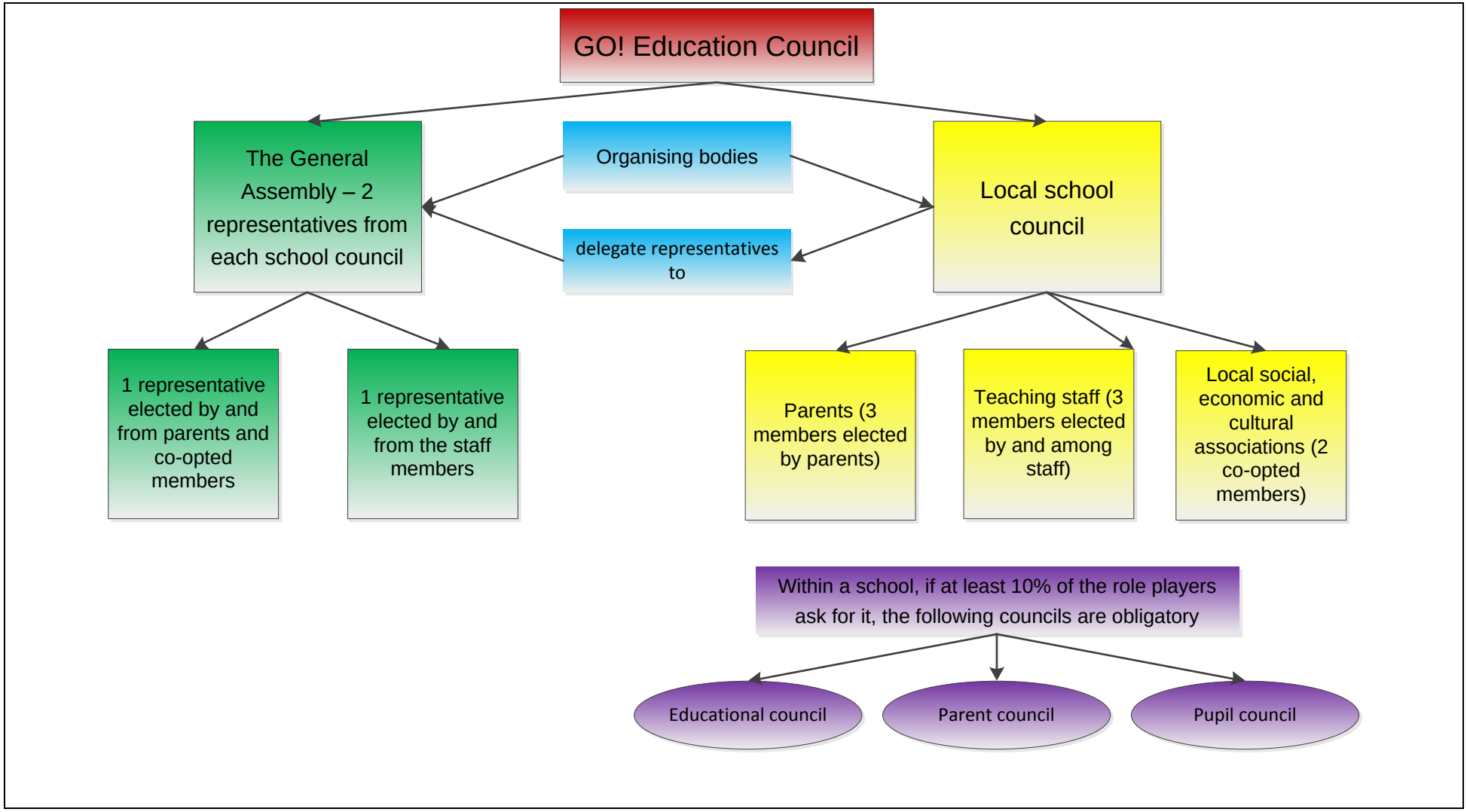


(De Ro, 2008:21)

The responsibility for education lies with the Flemish Minister of Education, while the Flemish Education Council acts as an advisory and consultative body on all educational matters, as illustrated by Figure 3.1 (De Ro, 2008:21). The council consists of a general council and four sub-councils representing each level of education. Furthermore, the council comprises representatives of, among others:

- officials from the education department,
- school boards of the different educational networks,
- school management teams,
- staff,
- pupils, and
- parents (NCEE, 2006:3; De Ro, 2008:21).`

Figure 3.2: Local participation structures in GO! education



(De Ro, 2008:21-22; De Vries, 2010b:76-80)

From Figure 3.2 it becomes clear that within the Flemish GO! education, the organisation of schools lies with the GO! education Council that comprises of a General Assembly and individual local school councils. The General Assembly is formed by two representatives from each of the local school councils. One is elected from among the parents and co-opted members by these members and the second from among the staff by the staff (De Vries, 2010b:80). Local school councils consist of parents, local social, economic and cultural associations, as well as teaching staff. The Central Council of GO! education is responsible for the appointment of staff in the education network, while the local boards decide, among others, on educational and staffing policies (UNESCO, 2007).

Furthermore, since the promulgation of the Decree of 2 April 2004[48], if at least 10% of staff members at a school ask for the establishment of an educational council, it becomes obligatory to form such a council (De Ro, 2008:21; De Vries, 2010b:101). Members of the council are elected (De Ro, 2008:21) for a period of four years (De Vries, 2010b:101). The educational council, as well as the parent and pupil council, have large advisory powers (De Ro, 2008:21). It is possible to delegate representatives from the educational-, parent- and pupil councils to the local school council (*cf*. Figure 3.2; De Ro, 2008:22). De Vries (2010b:101) indicates that the powers of the three councils, including the rights to information, to view documents and to advise, are exercised through representation in the local school council.

In subsidised education, organisation of schools is very similar to the way schools are organised in GO! education. The main difference lies in the absence of a General Assembly. Subsidised education is organised through compulsory participation councils, which consist of representatives of the organising power, the parents, staff and local community (UNESCO, 2007; De Ro, 2008:22). Whereas one can speak of co-management in GO! education, subsidised education allows for co-participation. Thus, the councils in subsidised education have a certain degree of participation, but their powers are less far-reaching than the local school boards in GO! education (UNESCO, 2007).

Organising bodies may choose, recruit and promote their own teachers, as long as they act in accordance with the prevailing statutory provisions (Be, 1991a:sec.42; Be, 1991b:sec.38(1); De Vries, 2010a:1; *cf*. 5.4.1), but the salary scales are

[48] Act on Participation of 2 April 2004

determined by government and they are paid by government (Devos & Vanderheyden, 2002:22; De Vries, 2010b:375). However, the autonomy of schools in this matter is also limited as the job security enjoyed by more senior teachers binds them to a great extent (*cf*. 3.2.2; 3.2.5.1).

Relations between the staff in GO! education and subsidised education and the organising powers have, since 1974, been regulated by the union agreement for government personnel. The agreement provides unions with broad powers of participation relating to measures concerning the status and working conditions of staff (UNESCO, 2007; *cf*. 5.4). Before taking any decisions regarding measures which have repercussions on the staff, the 1974 union agreement obliges the government to conduct negotiations in advance with the representative trade unions (Devos & Vanderheyden, 2002:35).

3.2.3 An introduction to the Belgium legal order

According to Tschentscher (2010) and Van Heule (2000:143), the first Belgian Constitution dates back to 1831, with reforms in 1893, 1899 and 1921. The 1970 revision of the Belgian Constitution included section 4 which recognizes the four linguistic communities and different regions, while the revisions of 1980 and 1988 empowered these communities with autonomy including responsibility for education in section 24 (Van Heulen, 2000:144; Tschentscher, 2010). The 1980 revision led to the founding of the Court of the Arbitration, which developed into the Constitutional Court (1993:sec.142; Tschentscher, 2010). The 1993 revision, which was signed on 17 February 1994,[49] redefines Belgium as a federal state in section 1 (Tschentscher, 2010).

According to the Belgian Constitution (1993), Belgium is a federal state which comprises of three Communities: the Flemish Community, the French Community and the German-speaking Community (1993:sec.2), and three Regions: the Flemish Region, the Walloon Region and the Brussels Region (1993:sec.3). Section 4 of the Belgian Constitution (1993) states that Belgium comprises of four linguistic communities: the Dutch-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region, and each municipality

[49] The 1993 revision is the one used in the discussion following.

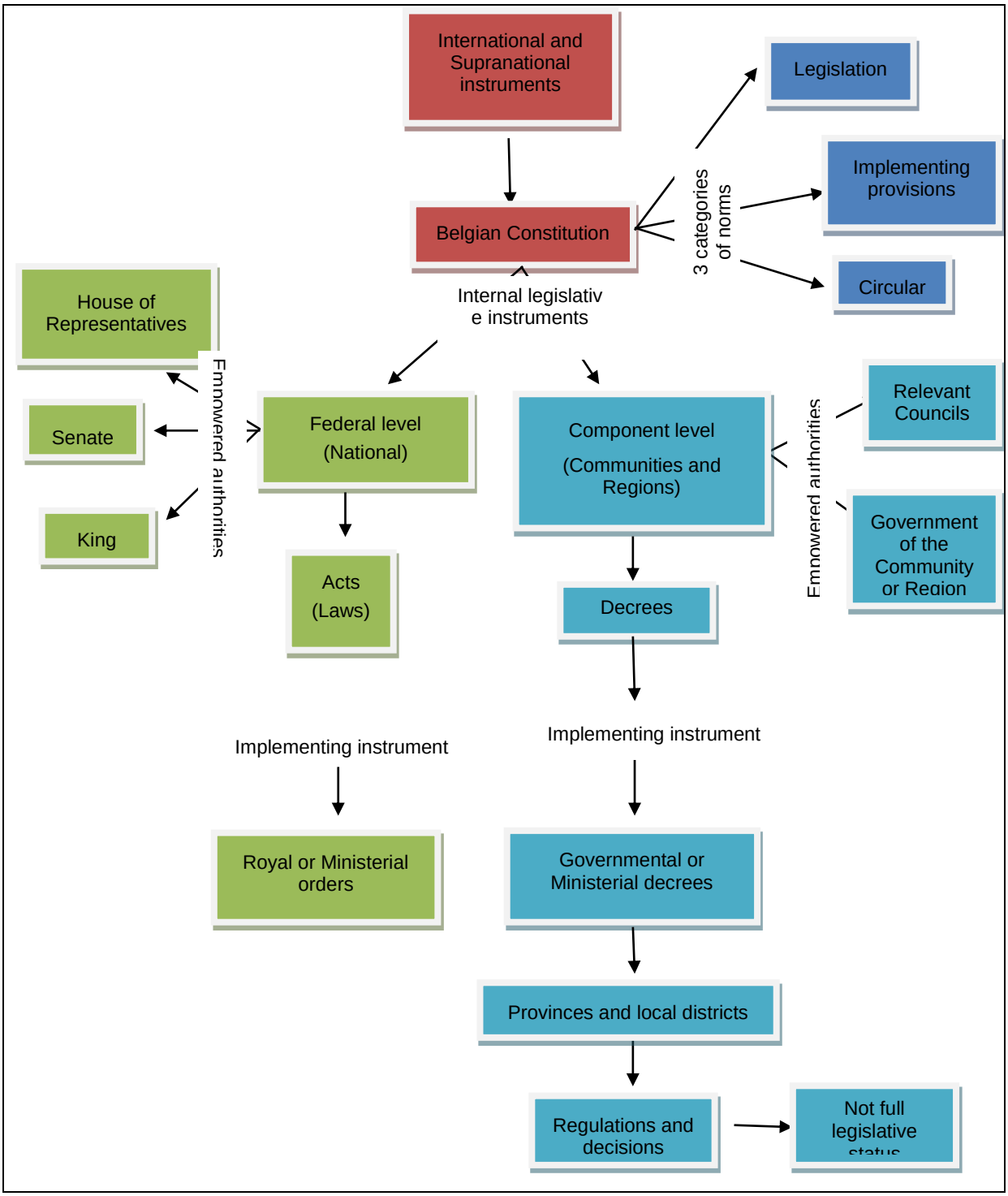
of the Kingdom forms part of these linguistic regions. In this study, the focus of the discussion will be on the Flemish Community.

In the Belgian Constitution[50] a distinction is made between the terms law and federal law. Law refers to the Acts issued by government and adopted by the House of Representatives and Senate (the federal legislative assemblies), while federal law refers to decrees issued by the regions and communities and adopted by the legislative assemblies of the Regions and Communities – the Flemish Parliament, Parliament of the French Community, Parliament of the German-speaking Community and Parliament of the Walloon Region (De Vries, 2009:6; Malliet, 2010).

In the diagram below, the researcher will make an attempt to summarise the legal order in Belgium visually.

[50]As per footnote added to section 11 of the translated Belgian Constitution approved by the Belgian House of Representatives, April 2012

Figure 3.3: Belgian legal order



(Tilleman & Allen, 1992:42; Allen, Tilleman & Vander Stichele, 1992:71-72; European Commmission, 2006; De Vries, 2009:4)

Belgium has accepted the jurisdiction of the European Union and the European Court of Human Rights, therefore its jurisdiction prevails over national law (Tilleman & Allen, 1992:42; *cf*. 5.3), as illustrated by Figure 3.3. Unlike the SA Constitution (*cf*. 2.1.1), the Belgium Constitution does not have constitutional supremacy stipulated, but Belgium is qualified as an Etat de droit, a concept approximately equivalent to

the English rule of law, which means that its Constitution is the overriding authority (*cf*. Figure 3.3; 5.3) when it comes to internal law (Tilleman & Allen, 1992:41). Hereafter, there is no hierarchy of legislation. The decrees of the region and communities have the same status as the Acts of the Federation (Anon, 2010).

Belgian education is regulated by both law and federal law (De Vries, 2009:6). As stated above, section 24 of the Belgium Constitution makes education the responsibility of the communities. The Federal government only has authority to regulate ages of compulsory education, the minimum requirements to obtain qualifications and pensions of teachers (McKenzie *et al*., 2004:6). The legal status of teachers is predominantly regulated by decrees (*cf*. 3.2.5) and therefore the component level of the Belgian legal order, as illustrated in Figure 3.3, will be discussed in relation to education (*cf*. 5.4). Figure 3.3 indicates that the relevant councils and/or governments of the community or region have the authority to promulgate legislation (decrees), implementing provisions and circulars. Circulars are binding on authorities, but not on citizens. Furthermore, the provinces and local districts within the communities and regions promulgate regulations and decisions, which do not have full legislative status (Allen *et al*., 1992:70-72; Eurydice, 2009).

In a country riddled with language and religious conflict the School Pact of 1958, enacted as School Pact Act of 29 May 1958, laid to rest the political conflicts over the independence and public funding of Catholic schooling during the 19th and 20th century by no longer protecting the rights of the church (De Groof, 2008:7; Loobuyck & Franken, 2009:47). The School Pact was an interparty agreement that put a permanent end to the school wars as it gave equal status to Catholic and State schools at all levels while proclaiming the right of the parent to freedom of choice of enrolment (Evans, 1999: 249; De Groof 2004:159). According to De Groof (2008:7), the School Pact of 1958 focused on free choice, introduced the principle of non-discrimination and the democratisation of education through free admission to compulsory education (*cf*. 5.2), while safeguarding the rights of parents to decide on the philosophical basis of their child's education.

The School Pact of 1958 still continues to serve as the law and policy framework in the non-university education sector (De Groof 2004:159). The guarantees laid down in the School Pact Act were recorded in the Constitution in the 1988 amendment (Eurydice, 2009:14).Therefore the revised Constitution now forms the legal basis of

educational freedom and justice in section 24, previously section 17 (De Groof, 2008:8; De Ro, 2008:14; Loobuyck & Franken, 2009:47; *cf*. 5.2).

3.2.4 Constitutional principles relevant to the legal status of teachers

As the Constitution is the overriding authority in the legal order of Belgium, it is the first point of departure in the discussion on the legal status of teachers in Belgium.

3.2.4.1 Equality

Section 10 of the Belgian Constitution (1993) deals with equality and stipulates that no class distinctions exist in the State. Furthermore, all Belgians are equal before the law, while equality between genders is guaranteed and the Belgian Constitution (1993:sec.11) guarantees that the enjoyment of the rights and freedoms recognised by the Constitution is provided without discrimination. According to section 11, laws and federate laws, among others, guarantee the rights and freedoms of minorities, both ideological and philosophical, in order to ensure non-discrimination. No distinction is made between fair and unfair discrimination in the Belgian Constitution. Only the word discrimination is mentioned (*cf*. 2.2.1.3; 5.3.3).

With regard to equality in education, the *Decreet betreffende Gelijke Onderwijskansen- I*[51] (Be, 2002) contains three provisions. Firstly, the right to enrolment, which ensures that pupils have the right to enrol in the school of their choice and there are a strictly limited number of cases where the school may refuse enrolment. Secondly, the establishment of local consultation platforms, which has a threefold task, namely to:

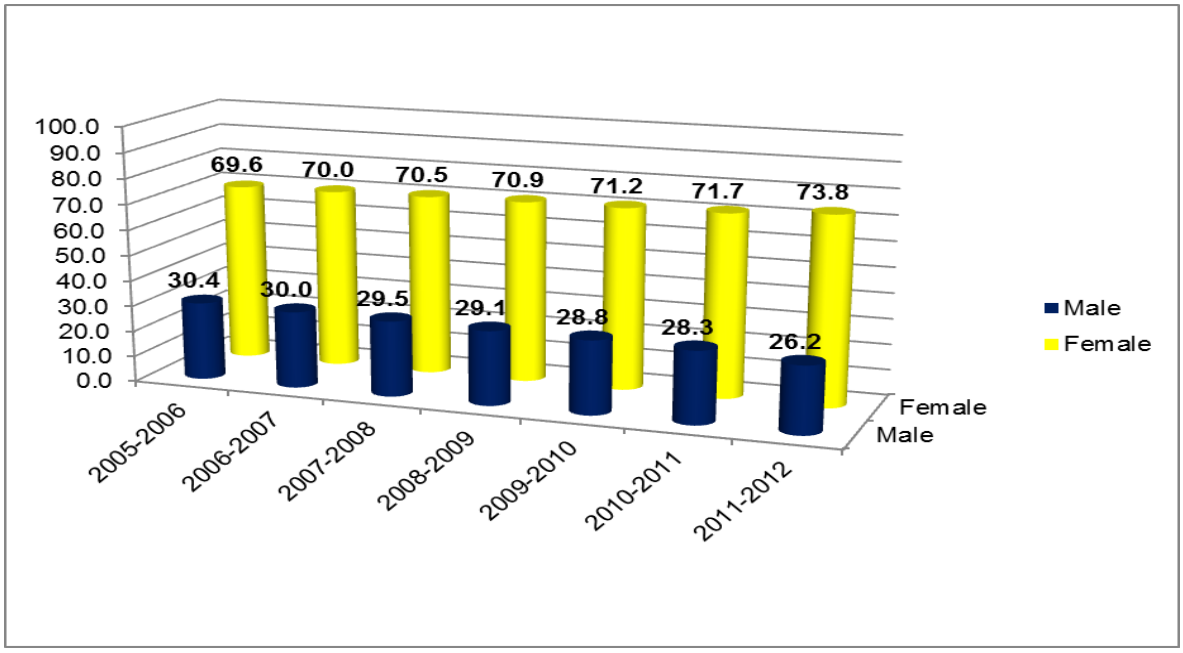
- ensure the right of enrolment;
- act as an intermediary should conflict arise; and
- co-operate in implementing a local policy on equal opportunities in education.

The third provision ensures extra support for additional needs provision to schools with a large number of pupils who meet certain socio-economic indicators (De Ro, 2008:14) and place a responsibility on teachers to ensure equal opportunities for all by accommodating the afore-mentioned pupils (*cf*. 5.3.3).

[51]Act on equal opportunities in education

Rots, *et al*. (2002) report that education statistics show a significant increase in the number of female teachers in Flanders, a point substantiated by Devos and Vanderheyden (2002:31), who indicate that the difference is greater in primary than in secondary education (*cf*. 2.2.1.3). Rots *et al*. (2002) mention that this phenomenon is often seen as problematic, leading to loss of quality, a lack of male role models for male pupils and a decrease in the social status of teaching. To the other extent, the feminization of the profession is seen as a consequence of the lowering of status ascribed to the social status of teaching (Rots *et al*., 2002; *cf*. 3.2.6; 5.3.3).

Figure 3.4: Gender distribution of teachers in the Belgium Flemish Community

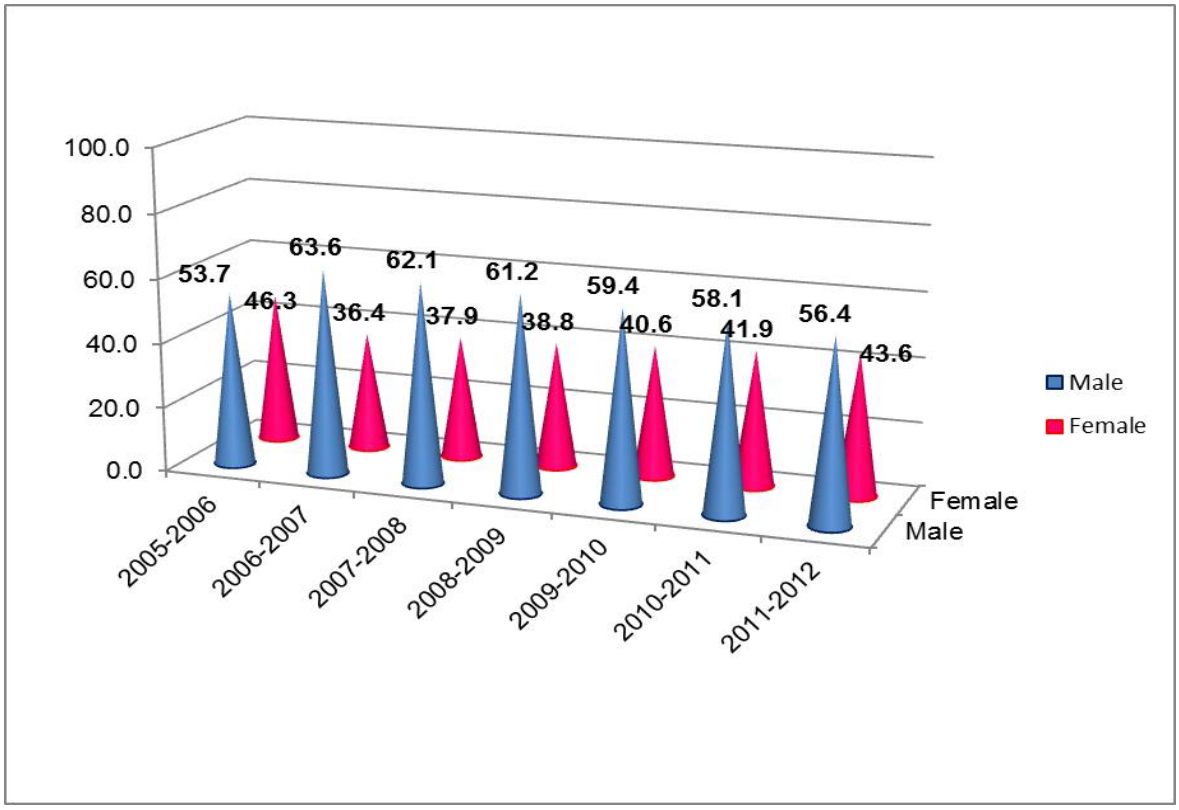


(Vlaams Ministerie van Onderwijs en Vorming (VMOV), 2006:599; VMOV, 2007b:577; VMOV, 2008:569: VMOV, 2009:537; VMOV, 2010:581; VMOV, 2011:585: VMOV, 2012b)

The official statistics of the *Vlaams Ministerie van Onderwijs en Vorming* (VMOV) as portrayed in Figure 3.4 clearly support the afore-mentioned authors. Since the 2005-2006 school year, female teachers constitute approximately 70% of the teaching population, while male teachers only constitute approximately 30%. Figure 3.4 also illustrates an increase in the gap between male and female representation. In 2005-2006 there were 69.6% female teachers as opposed to 30.4% male teachers (VMOV, 2006:599). Each year the difference increases and in the 2011-2012 academic year 73.8% of all teachers in the Belgium Flemish Community were female and only 26.2% were male (VMOV, 2012b; *cf*. 2.2.1.3; 3.3.4.1).

Although the majority of teachers are female, there is a clear underrepresentation of females in management positions, with only 25% of management positions in secondary education in 2001-2002 being female (Rots *et al*., 2002; *cf*. 2.2.1.3; 3.3.4.1). Galgóczi and Glassner (2008:19) mention that the proportion of temporary female teachers (*cf*. 3.2.5.1) in secondary schools is particularly high, at 25%.

Figure 3.5: Gender distribution of managerial positions in Belgian Flemish education



(VMOV, 2006:622; VMOV, 2007b:600; VMOV, 2008:592; VMOV, 2009:560; VMOV, 2010:605; VMOV, 2011:609; VMOV, 2012b)

Figure 3.5 indicates that progress has been made since the data reported by Rots *et al*. (2002) as female representation in managerial positions increased to an average of approximately 40%. During the 2005-2006 academic year the distribution of male (53.7%) and female (46.3%) representation in managerial positions (VMOV, 2006:622) was nearly equal. However, over the next few years there was a slight increase in male overrepresentation with the biggest difference being in the 2006-2007 academic year with 63.9% of the managerial positions filled by males and 36.4% filled by females (VMOV, 2007b:599).

Thereafter, the difference slowly shrank to a 56.4% male representation as opposed to a 43.6% female representation (VMOV, 2012b). When one considers the vast

difference in the number of female teachers as opposed to male teachers, the gender distribution reflects clear inequality concerning management positions in education in the Belgium Flemish Community (*cf*. 2.2.1.3; 3.3.4.1; 5.3.3). This matter is mentioned by Van Heule (2000:147) who not only points out the decrease in the proportion of female teachers as one moves up the education structure, but also the difficulty of finding women at the level of policy-making.

McKenzie *et al*. (2004:22) mention that the compensation system raises concerns regarding fairness, In this regard it is necessary to clarify that there are four basic types of teacher qualifications in Belgium obtained at different institutions and with different study durations. Pre-school -, primary school – and lower secondary school teachers obtain their qualifications from a *Pedagogische Hogeschool*, while upper secondary school teachers obtain their qualification from a university, but also need a teaching diploma (Soetaert & Van Heule, 1996: 49, 68; *cf*. 5.3.3).

Belgian teachers' salaries are linked to their initial training, meaning that remuneration varies according to qualifications (Michielsens, 1995:24). This implies that teachers teaching at the same secondary school with the same tasks have different salary scales based on the type of tertiary education institution they attended (McKenzie *et al*., 2004:22). Apart from difference in payment received based on tertiary education, teachers at the different levels of education work different hours (*cf*. 3.2.5.1) and receive different salaries (Sclafani & Tucker, 2006:44). In fact, the difference between the salary of a teacher with 15 years' experience at the upper secondary level and one at the primary level is at least 25% (OECD, 2011a:74; *cf*. 5.3.3).

Another aspect regarding equality concerns the concept of coeducation as opposed to gender separation in education. Unlike other countries where coeducation has been an accepted practice for as long as can be remembered, this is not the case in Belgium. According to Van Heule (2000:145-146), coeducation was provided for the first time in Belgium in 1969 on a limited basis, while it took until 1 September 1994 for a decree to be passed stipulating that boys and girls had the right to register in any school for the second level of secondary education. In 1997, this was changed to include all years of general secondary education (Van Heule, 2000:146, De Ro, 2008:12).

The matter of coeducation as opposed to gender separation in education is relevant to the legal status of teachers as there are pleas towards the reintroduction of

gender segregation in education. It is argued that a more constructive atmosphere leading to better performances is created by single-gender classes (Van Heule, 2000:147). Van Heule refers to a number of authors, such as Biddulp (1999) and Pollack (1999) who report negative changes in the behaviour of boys as well as a decrease in academic performance since the introduction of coeducation.

Van Heule (2000:149) is of the opinion that in Flanders coeducation is actually understood as co-instruction. Thus, little thought is given to the differences between the needs of boys and girls during their education (Van Heule, 2000:149). Research studies reported on by Van Heule (2000:148) have found that gender plays an important role when it comes to the interaction between teachers and pupils. It has been indicated that male teachers give less attention to girls and that girls receive less critique from male teachers but also less instruction. Furthermore, more attention is paid to boys by both male and female teachers (Van Heule, 2000:148).

In fact, Flemish parents find it disturbing, not only that their daughters are teased or called degrading names, but also the fact that teachers, both male and female, do not seem to know how to react to these incidences and therefore remain silent on the matter. The lack of reaction by teachers leads to the offenders feeling they may continue, while the victims feel abandoned and humiliated (Van Heule, 2000:149).

It would appear as if teachers in Flanders are not prepared properly to teach in a coeducation setting. The basic competences of teachers (*cf*. 3.2.5.8) and the professional profile of teachers (*cf*. 3.2.5.8) provide descriptions of the knowledge, skills and attitudes a teacher needs to progress to a complete professional profile. However, especially when it comes to gender issues and coeducation these two documents have been criticised, as it is difficult to find the connection between the competences and profile as found in the documents and gender issues and coeducation (Van Heule, 2000:152).

3.2.4.2 Freedom of religion

In Belgium the freedom of worship, its public practice and freedom to demonstrate opinions on all matters are guaranteed (1993:sec.19; *cf*. 2.2.1.11; 3.3.4.2; 5.3.7; 5.3.10). However, should offences prohibiting a person from exercising the freedom to worship, practice and demonstrate their beliefs be committed while using this freedom, such a person may be punished. At the same time section 20 of the Belgian Constitution (1993) stipulates that no one can be obliged to contribute to

acts and ceremonies of a religion, or to observe the days of rest of a religion. The Belgian Constitution thus supports philosophy-of-life pluralism (Eurydice, 2009:22).

The afore-mentioned guarantees separation of Church and State, which leads to certain matters, among others, education being organised according to the principle of subsidiarity. The principle of subsidiarity means that the government of Flanders has no direct influence on the individual curricula of a school, but has the right to inspect the curricula (Eurydice, 2009:22). In the neutrality declaration (*cf*. 3.2.5.3) which teachers are required to sign when they are recruited, teachers acknowledge that they may make public their personal views if it fits into the teaching situation, but it must be done in a thoughtful and distinguished manner. They may not try to indoctrinate or convert pupils (GO, 2007b).

3.2.4.3 Children's rights

According to section 22(1) of the Belgian Constitution (1993), the private and family life of everyone should be respected, except in cases and circumstances determined by law (*cf*. 5.3.6). Furthermore, children are entitled to have their moral, physical, mental and sexual integrity respected (1993:sec.22*bis*). Section 22bis of the Belgian Constitution (1993) provides each child with the right to freedom of expression in matters concerning the child, taking into consideration the child's age and power of discrimination when the opinion of the child is considered. Children also have the right to preventative measures and services which promote their development (1993:sec.22*bis*; *cf*. 5.3.1).

The interest of the child should be the first consideration in each decision concerning the child (1993:sec.22*bis*; *cf*. 2.2.1.1; 3.3.4.3). The researcher finds it disconcerting that, even though the rights of children have received a lot of attention over the last three decades, the translated version of the Belgian Constitution[52] only mentions children's right to respect of moral, physical, mental and sexual integrity. The rest of section 22bis is omitted from the translated version (*cf*. 2.2.1.1; 3.3.4.3; 5.3.1).

[52] The translation was done under the guidance of the Legal Department of the House of Representatives, with the collaboration of Mr A MacLean. The Adviser to the President of the Constitutional Court, Mr R Ryckeboer, made suggestions and appraised the translation.

3.2.4.4 Education

Section 24 of the Belgian Constitution (1993) deals with the right to education and stipulates that education is free, and measures to prevent education are forbidden while punishment of offences is regulated only by law and federate law (*cf*. 2.2.1.2; 3.3.4.4; 5.3.2). Furthermore, the community offers free choice of education to parents and organises non-denominational education which implies particularly the respect of the philosophical, ideological or religious beliefs of parents and pupils (1993:sec.24(1)). Lastly, section 24(1) also stipulates that schools run by public authorities offer a choice between the teaching of one of the recognised religions and non-denominational ethics teaching until the end of compulsory education (1993; *cf*. 3.2.1; 5.3.2).

Section 24(3) stipulates that everyone has the right to education honouring fundamental rights and freedoms, while such education is free until the end of compulsory education and all pupils of school-going age have the right to moral or religious education funded by the community (Loobuyck & Franken, 2009:47). The responsibility to ensure that children attend their classes until the age of 18 lies with the parent (UNESCO, 2007; De Ro, 2008:13). Furthermore, all pupils, parents, teaching staff or institutions are equal before the law or federate law, which should consider objective differences, particularly the characteristics of each organising authority that warrant appropriate treatment. Lastly, the organisation, the recognition and the subsidising of education by the community are regulated by law or federate law (1993:sec. 24(5); *cf*. 3.2.1).

From the above, it is clear that section 24 not only includes mandatory neutrality of State education, but also freedom of choice of parents, particularly freedom of choice between religious or non-religious schools (De Groof, 2008:9; De Ro, 2008:14; Loobuyck & Franken, 2009:47). According to Devos and Vanderheyden (2002:19) and De Ro (2008:14), freedom of choice as embedded in section 24 implies that parents and pupils must have access to a school of their choice in terms of philosophy within a reasonable distance from their home. Furthermore, section 24 ensures free compulsory education as well as equality between pupils, parent/caregivers, teachers and schools (*cf*. 2.2.1.2; 3.2.1; 3.3.4.4; 5.3.2).

3.2.4.5 Other fundamental rights relevant to the legal status of teachers

According to the Belgian Constitution everyone has the right to lead a life consistent with human dignity (1993:sec.23; *cf*. 2.2.1.4; 5.3.4). The laws, federate laws and

rules guarantee cultural, social and economic rights, while considering corresponding obligations and determining the conditions for exercising them (1993:sec.23). Section 23 stipulates that these cultural, social and economic rights include, among others:

- the right to employment (1993:sec.23(1); *cf*. 2.2.1.8; 5.3.8);
- freedom to choose an occupation, within the framework of a general employment framework designed among others at guaranteeing a stable and high level of employment (1993:sec.23(1); *cf*. 2.2.1.8; 5.3.8);
- the right to fair employment terms and fair remuneration (1993:sec.23(1); *cf*. 2.2.1.8; 5.3.8);
- the right to information, consultation and collective negotiation (1993:sec.23(1); *cf*. 2.2.1.8; 5.3.8);
- the right to social security, healthcare as well as social, medical and legal aid (1993:sec.23(2));
- the right to decent accommodation (1993:sec.23(3));
- the right to the protection of a healthy environment (1993:sec.23(4); *cf*. 2.2.1.10; 5.3.9); and
- the right to cultural and social fulfilment (1993:sec.23(5).

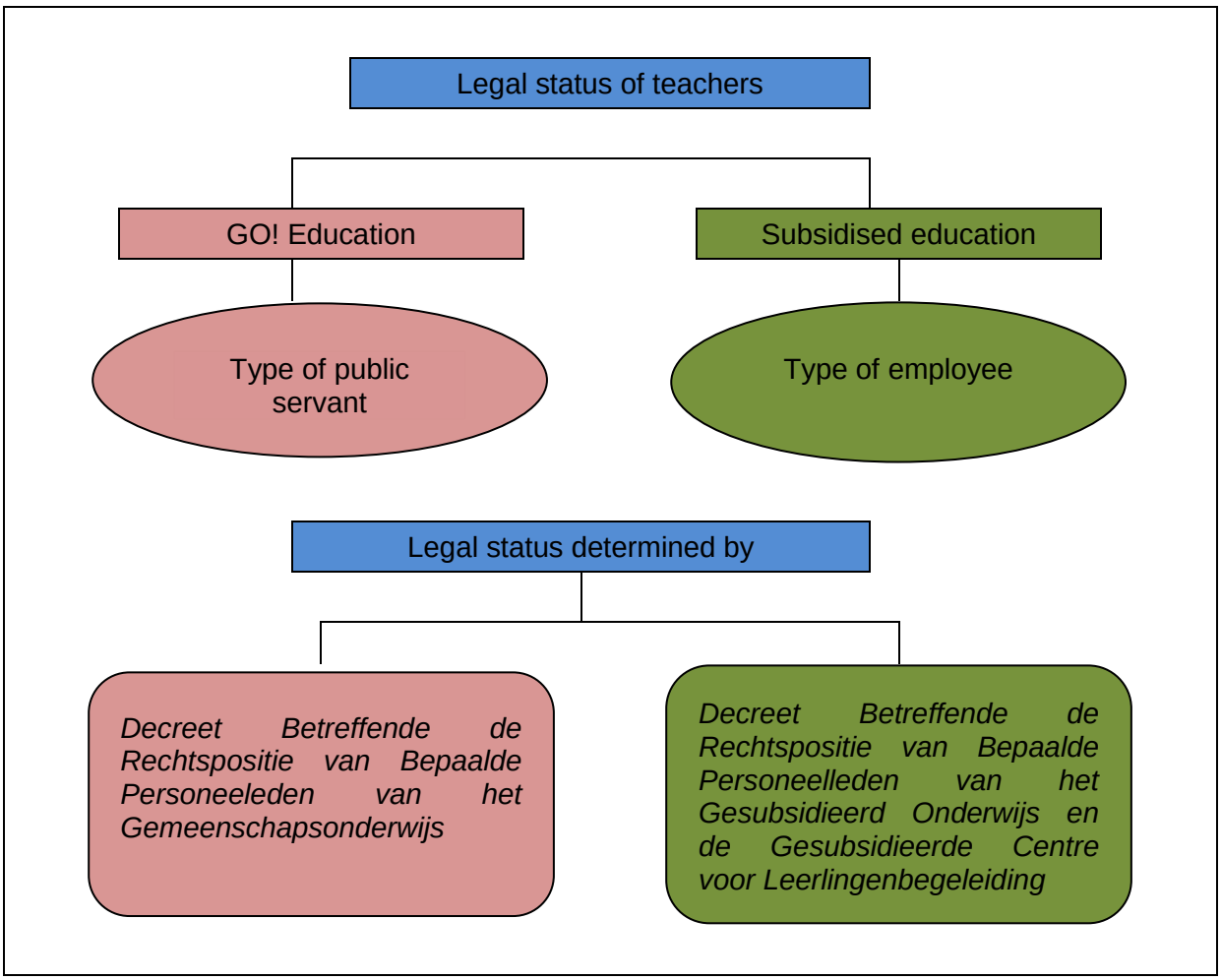
Section 26 of the Belgian Constitution awards Belgians the right to gather peacefully and without arms, in accordance with the law, without submitting an application prior to the gathering for authorisation, although section 26 does not apply to open-air meetings, which are entirely subject to police regulation. Belgians have the right to freedom of association as stipulated in section 27 of the Belgian Constitution. Section 27 further stipulates that this right cannot be subjected to any preventative measure (1993:sec.27). This means Flemish teachers have the right to strike and to choose the trade union they belong to.

According to section 32 of the Belgian Constitution (1993), everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by laws, federate law or rules (*cf*. 3.2.3.1).

3.2.5 Legislation regulating the legal status of teachers

According to De Vries (2010a:14), teachers in Belgium are not civil servants, but have their own status, which varies according to whether they are teaching within GO! education or subsidised education.

Figure 3.6: Legal status of Flemish teachers



As illustrated in Figure 3.6, a teacher in subsidised education is considered a type of employee and in official education a type of public servant (De Vries, 2010b:365). The status of teachers differs from other staff in the public or private sector due to the specific nature and needs within the field of education (Eurydice, 2009:332; De Vries, 2010b:365; *cf*. 5.4).

The *Decreet Betreffende de Rechtspositie van Bepaalde Personeelsleden van het Gemeenschapsonderwijs*[53] (hereafter referred to as GO! Decree of 1991; Be, 1991a) determines the legal status of teaching staff in GO! education (Be, 1991a:sec.1; *cf*.

[53]Decree on the legal status of certain personnel in education organized by the Flemish Community

Figure 3.6; 3.2.5), while the legal status of staff in subsidised education is determined by the *Decreet Betreffende de Rechtspositie van Bepaalde Personeelsleden van het Gesubsidieerd Onderwijs en de Gesubsididieerde Centra voor Leerlingenbegeleiding*[54] (hereafter referred to as Subsidised Education Decree of 1991; Be, 1991b; *cf*. Figure 3.6; 3.2.5). The decrees of 1991 provide legal security to staff, as they provide for a certain degree of job security and contain basic regulations on recruitment, appointment, selection, promotion and discipline (UNESCO, 2007, De Ro, 2008:19; Eurydice, 2009:327; De Vries, 2010b:365; *cf*. 5.4).

Furthermore, collective labour agreements resulting from collective consultation lay down conditions of service. These agreements remain in effect for periods varying from 2-5 years (De Vries, 2010a:14; De Vries 2010b:107). A general principle of staff participation is followed in Flanders (De Ro, 2008:19). Within education institutions under public law, and thus within GO! education, unions bargain according to the dialogue rules between government and its staff, while in education institutions under private law, thus subsidised education, appropriate participation rules apply. In this instance school boards are required to discuss decisions affecting staff in advance.

For cohesion within the chapter, the discussion following below will not be done focussing on a specific Act, but rather focussing on a specific aspect of employment.

3.2.5.1 Appointments - GO! Degree of 1991 and Subsidised Education Decree of 1991[55]

The career of a teacher in the Flemish community starts with a number of years of temporary teaching. According to Devos and Vanderheyden (2002:31), one in three educators in Flanders works part time. A teacher's status is called *temporary appointment for a limited period of time*, which allows for teachers to be appointed for a definite time period not exceeding more than one school year, either in a vacant position or as a temporary replacement (Be, 1991a:sec.21(2); Be, 1991b: sec.23(2); VMOV, 2003; Eurydice, 2009:330; De Vries, 2010b:363-365; *cf.* 2.3.4.1; 3.3.5.2; *5.4.1*).

[54]Decree on the legal status of certain personnel in subsidised education and subsidised Centres for Pupil Guidance

[55]The researcher has decided to discuss both decrees together when the only difference in stipulations is the numbering.

Such a teacher can ask for a *temporary appointment for a continuous period of time* (TADD) after a minimum of 720 days, thus three school years, of seniority[56] during which he has worked 600 days effectively in the position concerned[57] and the last evaluation done did not have a result of *insufficient*.[58] TADD gives a teacher more job security (Be, 1991a:sec.21(3); Be, 1991b:sec. 23(3); Devos & Vanderheyden, 2002:31 & 48; VMOV, 2003; McKenzie *et al*., 2004:12; Eurydice, 2009:330; De Vries, 2010b:363; *cf*. 2.3.4.1; 3.3.5.2; 5.4.1).

The teacher can now apply for a *permanent position*, having held a TADD position on the 31st of December preceding the permanent position, a number of person-related conditions are met and the teacher must have accumulated at least 720 days of service of which 360 days has been in the office the teacher is to be permanently appointed[59], leading to more social benefits, such as a government pension and job security (BE, 1991a:sec.36; Be, 1991b:sec.31; Eurydice, 2009:330; Devos & Vanderheyden, 2002:31,48; De Vries, 2010b:363; *cf*. 2.3.4.1; 3.3.5.2; 5.4.1).

De Ro (2008:19) and De Vries (2010:365) mention that a permanent position not only guarantees job and salary security, but also provides access to a wide range of leave arrangements, paid sick leave and a state pension. State pensions are more advantageous as they are seen as postponed salaries. Permanent positions also guarantee the teacher the benefit of being placed on a reserve list in case of redundancy, with the subsequent right to reassignment and re-employment (Eurydice, 2009:333; De Vries, 2010b:365).

Calculation of seniority - GO! Decree of 1991 and Subsidised Education Decree of 1991

Section 4 of the GO! Decree of 1991 and section 6 of the Subsidised Education Decree of 1991 specify how the calculation of seniority, an aspect that greatly influences the career of a Belgian teacher, should be done. The section postulates that calculation is based on the number of calendar days a teacher worked uninterrupted in a temporary full service position including holidays, but excluding the

56 Devos & Vanderheyden, 2002:48; VMOV, 2003; McKenzie et al., 2004:12; Eurydice, 2009:330

57 Be, 1991a:sec.21(3); Be, 1991b:sec. 23(3); Devos & Vanderheyden, 2002:31

58 De Vries, 2010b:363

59 Be, 1991a:sec.36; Be, 1991b:sec.31; Eurydice, 2009:330, De Vries, 2010b:363

summer holiday should it fall within the period multiplied by 1.2 days worked in a capacity different from a full service temporary position calculated from the beginning to the end of one uninterrupted period of work, including holiday periods[60]. In calculating the 720 days required for a TADD position, the number of days are not calculated with 1.2, but in calculating the 600 days of effective performance, the number of days is multiplied with 1.2. Some leave types, such as sick leave, are not taken into consideration when the 600 days of effective performance are calculated (Be, 1991a:sec.4(a); Be, 1991b:sec.6(1)(a); VMOV, 2003; *cf*. 5.4.1).

Furthermore, days worked in a part service position, which comprises at least half the hours required for a full service position, are taken into consideration in the same ways as days performed in a full service position. The number of days worked in a position that does not comprise half the total number of hours required for full service employment is halved.[61] According to section 4(c)[62] and section 6(1)(c)[63], the total number of days worked in two or more simultaneous occupations, performing full service or part service, may never exceed the number of days worked in one full service position performed during the same period (*cf*. 5.4.1). Lastly, section 4(d)[64] and section 6(1)(e)[65] stipulate that 30 days constitutes one month and services rendered include leave allocated (Be, 1991a; Be, 1991b).

Promotion - GO! Decree of 1991 and Subsidised Education Decree of 1991

There are very few opportunities for promotion for teachers in elementary and secondary education, although promotion is possible through appointment to a selection office, such as the office of vice principal, or to a management level, such as secondary education principal (Eurydice, 2009:346; De Vries, 2010b:379). Transfers of permanently appointed teachers between schools do not happen often (Eurydice, 2009:348; De Vries, 2010b:380).

60 Be, 1991a:sec.4(a); Be, 1991b:sec.6(1)(a)

61 Be, 1991a:sec.4(b); Be, 1991b:sec.6(1)(b)

62 Be, 1991a

63 Be, 1991b

64 Be, 1991a:sec.4(e)

65 Be, 1991:sec.6(1)(f)

A longstanding goal towards which negotiators in Belgium have striven is to eliminate detrimental effects on career prospects and salaries due to pregnancy by means of collective agreements (Galgóczi & Glasssner, 2008:28). These negotiations have led to certain gender-specific clauses being included in collective agreements.

3.2.5.2 Requirements for appointment as teacher - GO! Decree of 1991 and Subsidised Education Decree of 1991

In this instance, the minimum requirements for temporary staff will be done first and thereafter the appointed staff, TADD and permanent staff will follow.

Temporary appointment for a limited period of time

As stated above, teachers in Belgium start their careers in the capacity of temporary employment. Section 17(1) of the GO! Decree of 1991 (Be, 1991a) and section 19(1) of the Subsidised Education Decree of 1991 (Be, 1991b) stipulate a number of conditions aspirant teachers should comply with, which include proof of qualification and proof of being of irreproachable character, corroborated by a certificate of positive conduct issued within the past 12 months, while teachers in GO! education also have to provide a medical certificate of good health no older than one year[66]. The rest of section 17 (Be, 1991a) and 19 (Be, 1991b) specifies different requirements regarding language proficiency and require, among others, proof of language proficiency of both the language of teaching and learning, the administrative language, as well as proof of proficiency of a second language if appointed in such a position[67]. Staff members who do not comply with the linguistic requirements cannot qualify for permanent appointment ((Be, 1991a; Be 1991b; De Vries, 2010b:361-362).

TADD and permanent appointments

When it comes to being appointed, teachers can only get an appointment if a number of conditions have been met. These include general legal requirements such as being a citizen of a European Union Member State or one of the countries affiliated to the European Free Trade Association, compliance with the language

66 Be, 1991a:sec.17(2)

67 Be, 1991a:sec.17bis;17ter; 17quateri;17quinquies; Be 1991b:sec.19bis; 19ter; 19quateri; 19quinquies; De Vries, 2010b:361

laws and proving thorough knowledge of the teaching language Dutch and a certificate of positive conduct (Be, 1991a: sec.17; Be, 1991b:sec.19).

Other conditions to be met are:

- the teacher must have the correct official qualification for the position (Be, 1991a:sec.17(1)(3);Be 1991b:sec.19(1)(1));
- on the 30th of June of the school year in which the teacher is to be appointed the teacher must have 720 days of seniority of which he worked 360 days effectively in the position concerned (Be, 1991a:sec. 36(1)(1); Be, 1991b:sec. 31(1)(1));
- the teacher's last evaluation report (if any) must be positive (Be, 1991a:sec.36(1)(4); Be, 1991b:sec.31(1)(4));
- on the 31st of December of the year before he is permanently appointed, the teacher must have a temporary appointment for a continuous period of time for the job in which the teacher will be permanently appointed (Be, 1991a:sec.36(1)(3); Be, 1991b:sec. 31(1)(3)); and
- teaching must be the teacher's main profession (Be, 1991a: sec.17; Be, 1991b: sec.19 and 40(3); Eurydice, 2009:329; De Vries, 2010a:95; De Vries, 2010b:361).

3.2.5.3 Conditions of service

The discussion below will deal with a number of aspects regarding the employment of teachers in Belgium.

Duties - GO! Decree of 1991 and Subsidised Education Decree of 1991

The tasks and specific duties of teachers in Belgium are defined at school level and are set out in the employment contracts and job descriptions of each teacher, according to the relevant labour regulations (Eurydice, 2008:41). Belgian teachers enjoy a high degree of autonomy and have the freedom to choose what instruction will take place, how the instruction will take place, as well as which textbooks will be used (Eurydice, 2008:28 & 53). Although Belgian teachers indicate that they experience being assigned tasks far beyond the scope of their profession, these tasks relate to the requirements placed on schools to manage general social issues, such as integration of special needs pupils and immigrant children, resulting from economic, social and cultural changes experienced across Europe (Eurydice, 2008:13; *cf*. 5.4.3).

ii) Job description -GO! Decree of 1991 and Subsidised Education Decree of 1991

According to these two Decrees, it is the responsibility of the school's organising body to ensure that each teacher appointed for at least 104 days during a school year has an individual job description[68]. Teachers appointed for a shorter period may also get job description, but it is not compulsory[69] (Be, 1991a; Be, 1991b; VMOV, 2007b; De Vries, 2010b:369; *cf*. 5.4.3).

Job descriptions are development-orientated, aiming at motivation and support in order to ensure professional development, while the local context and needs are taken into account[70]. In some case the job descriptions relate to both the school community and individual school[71] (*cf*. 5.4.3). Job descriptions have to be agreed upon with the trade unions (OECD, 2011b:55). A job description must be drawn up for each office held by a person by the institution the person works for; consequently a teacher may have several job descriptions (Be, 1991a; Be, 1991b; Eurydice, 2009:336; De Vries, 2010b:370).

Each job description consists of three parts, tasks and institution-related assignments as well as the manner in which these should be carried out, the school-specific objectives and rights and obligations regarding further training and continuing education[72]. The fundamental focus of each job description is teaching which does not only cover presentation, but also planning and preparation, within-class student counselling, student assessment, professional development and cooperation with other role players[73] (*cf*. 5.4.3). When an individual's job description is formulated, relevant general agreements made at the organising body and/or school community level, the requisites of the school rules must be taken into account[74] (Be, 1991a; BE, 1991b; Eurydice, 2009:337; De Vries, 2010b:370).

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68 Be, 1991a:sec.73ter(2); Be, 1991b:sec.47ter(2); VMOV, 2007a; Eurydice, 2009:336;De Vries, 2010a:94; De Vries, 2010b:369; OECD, 2011b:54

69 Be, 1991a:sec.73ter(2); Be, 1991b:sec. 47ter(2); VMOV, 2007; De Vries, 2010b:369

70 Be, 1991a:sec.73ter(1) and (7); Be, 1991b:sec.47ter(1); De Vries, 2010a:94

71 Be, 1991a:sec.73ter/1; Be, 1991b:sec.47ter/1; OECD, 2011b:55

72 Be, 1991a:sec.73ter(7); Be, 1991b:sec.47ter(8); Eurydice, 2009:337; De Vries, 2010b:369

73 Be, 1991a:sec.73quinquies; Be, 1991b:sec.47quinquies

74 Be, 1991a:sec.73ter;BE, 1991b:sec.47ter(8) & 47quinquies(2); Eurydice, 2009:337; De Vries, 2010b:370

Furthermore, apart from the main teaching responsibilities, a limited number of specific assignments may be included[75] (*cf*. 5.4.3). After a performance interview or on the basis of agreements made after an evaluation period personal and development objectives can be added to a job description[76] (Be, 1991a; Be, 1991b; Eurydice, 2009:337; De Vries, 2010b:370).

The Decision of the Flemish government of 10 June 1997 introduced a negative list of tasks which may not form part of a job description[77], such as, among others:

- home visits;
- organisation of bus transport and ensuring supervision on buses;
- doing any maintenance and reparations of equipment or the school;
- taking part in religious or philosophical or socio-cultural activities outside school;
- assisting pupils to catch up on free afternoons and school holidays;
- giving extra classes before or after school hours; and
- supervision after school (Be, 1997a: sec 4; Be, 1997b; Eurydice, 2009:337; *cf*. 5.4.3).

1. Subsidised Education Decree of 1991

In the case of subsidised education, the terms and conditions of employment must be considered in a job description (Be, 1991b:sec.47*ter*(8); Eurydice, 2009:337; *cf*. 5.4.3).

Since 2009, the afore-mentioned negative list has been incorporated in the Decision of the Flemish government concerning the assignment of elementary-education staff of 17 June 1997. The job descriptions of teachers working in elementary education may not include tasks from the afore-mentioned list, while the performance arrangements specified in the elementary education decree must be taken into consideration (Eurydice, 2009:337; De Vries, 2010b:370).

75 Be, 1991a:sec.73quinquies(2); Be, 1991b:sec.47quinquies(2); De Vries, 2010a:94

76 Be, 1991a:sec.73ter(7) & 73sexies(3); Be, 1991b:sec.47ter(8) & 47sexies; Eurydice, 2009:337; De Vries, 2010b:370

77 Be, 1991a:sec.73quater; Be, 1991b:sec. 47quater; Eurydice, 2009:336

According to De Vries (2010a:100), job descriptions were enforced on primary education from 2007. During an assessment on the implementation of job descriptions by the Inspectorate in 2008/09 it was found that:

- The majority of schools used job descriptions based on one of the available models.
- Approximately 75% of the teachers reported that they were not involved in the drafting of the job descriptions.
- Only a third of the job descriptions were individualised.
- Teachers were experiencing stress due to a high number of tasks listed in their job descriptions (De Vries, 2010a:100).

a. Secondary schools

In secondary education the job description focuses on the main assignment, teaching, while teachers may also be asked to perform a limited number of school-related tasks, such as organising cultural activities, welcoming new pupils, replacing absent teachers, providing extra supervision and representing the school in certain bodies outside school[78] (BE, 1991a; Be, 1991b; Eurydice, 2009:338; De Vries, 2010b:370; *cf*. 5.4.3).

A teacher's job description is normally drafted by the first evaluator and must be signed by the person appointed the first evaluator, while the teacher then signs an acknowledgment[79] (*cf*. 5.4.3).Should the first evaluator and the relevant teacher not reach a consensus regarding the job description, the local board decides, after hearing both parties first, in the case of GO! education[80]. In the case of subsidised education the decision lies with the organising authority[81] (Be, 1991a; Be, 19991b).

Working hours

Minimum and maximum teaching times are prescribed and vary from teaching group to teaching group (UNESCO, 2007). Teaching time refers to the total number of

[78] Be, 1991a:sec.73*quinquies*(1)(2); Be, 1991b:sec.47*quinquies*(1)(2); Eurydice, 2009:338; De Vries, 2010b:370

[79] Be, 1991a:sec.73*sexies*(2): Be, 1991b:sec.47*sexies*(2); De Vries, 2010b:371

[80] Be, 1991a:sec.73*sexies*(1)

[81] Be, 19991b:sec.47sexies(1)

hours a full-time appointed teacher is obliged to teach during a school year, as specified in the official education policy (UNESCO, 2007). Teaching time does not include time devoted to activities such as preparation, staff meetings and in-service training (UNESCO, 2007; OECD, 2010:94). The working time of Belgian teachers is defined by their employment contracts, as are their duties, in terms of the number of hours they are required to teach (Eurydice, 2008:40; *cf*. 3.2.5.3i). Belgian teachers required to supervise pupils after schools must receive extra remuneration (Eurydice, 2008:43).

Salaries - GO! Decree of 1991 and Subsidised Education Decree of 1991

The salaries of teaching staff are paid by the Flemish Community (*cf*. 3.2.2) as long as the staff member complies with the conditions laid down by law, observes certain regulations regarding qualifications, knowledge of language and physical conditions, and the appointment is possible under the subsidy provision[82] (Devos & Vanderheyden, 2002:26). According to McKenzie *et al*. (2004:17), teacher salaries are comparatively high, while pupil-teacher ratios are relatively low and schools are well resourced. Ladd (2007:210) points out that Belgian teachers earn middle-range salaries on an international average (*cf*. 5.4.3).

Flemish teachers have a special salary status as they are paid according to the number of teaching periods[83] taught, but they cannot choose the number of teaching periods they wish to teach (Eurydice, 2009:343; De Vries, 2010b:375; *cf 5.4.3*). Mainstream elementary teachers teach between 24 and 28 teaching periods a week and mainstream secondary teachers teach a minimum of 20 teaching periods and a maximum of 29 periods (Be, 1997a:sec.9; Eurydice, 2009:344; De Vries, 2010b:377). Each member of staff teaching a class is required to form part of the class committee, which takes all decisions and responsibilities regarding the evaluation of pupils (Devos & Vanderheyden, 2002:22).

[82]Subsidy norms entail that a school is allocated a specified number of hours in the case of primary and special education and a certain number of hours for secondary education depending on the number of pupils (Devos & Vanderheyden, 2002:26; De Vries, 2010b:376).

[83]Teacher's working hours are expressed not in hours of work, but in teaching periods of 50 minutes (Eurydice, 2009:343).

Resources - GO! Degree of 1991 and Subsidised Education Decree of 1991

Section 12*sexies* (Be, 1991a) and 17*sexies* (Be, 1991b) place the responsibility on the local school board to provide teachers with the resources needed to fulfil their duties (*cf*. 5.4.3). Teachers who have made extra outlays with the permission of the headmaster, must be reimbursed by the local school board (*cf*. 5.4.3). Resources paid for by the local school board remain the property of the school group (Be, 1991a; Be, 1991b). According to McKenzie *et al*. (2004:17), there is a good level of resources available to schools, but teachers express concern regarding professional expenses as in most cases they have to fund their own books and teaching materials (Eurydice, 2009:343; De Vries, 2010b:375; *cf*. 5.4.3).

Required conduct - GO! Decree of 1991 and Subsidised Education Decree of 1991

Section 7 of the GO! Decree of 1991 (Be, 1991a) and section 10 of the Subsidised Education Decree of 1991 (Be, 1991b) require of staff members to fulfil entrusted tasks personally and diligently, taking into consideration the obligations required by law or service agreement. In conjunction with section 7 and 10, section 8 (Be, 1991a) and section 11 (Be, 1991b) require of teachers to act in the correct manner in their relationships with pupils, parents, colleagues and the public, to do everything to avoid damaging the trust placed in them by the public or doing anything that will bring their function in education into dishonour. No teacher, or any intermediary, may accept any gifts, rewards or anything that may benefit such a teacher (De Vries, 2010b:366; *cf*. 5.4.3).

1. Subsidised Education Decree of 1991

Apart from the afore-mentioned stipulations regarding the type of conduct required of teachers, section 9 of the Subsidised Education Decree of 1991 also calls on teachers to promote the interests of education, the institution where they work and pupils (Be, 1991b).

2. Subsidised Education Decree of 1991

In subsidised education, teachers must strive to fulfil the duties resulting from the specificity of the pedagogical project (Be, 191b:sec. 15; Eurydice, 2009:334; De Vries, 2010b:366).These duties are included in the employment contract (Be, 1991b: sec.15).

Obligation to service – GO! Decree of 1991 and Subsidised Education Decree of 1991

Both Decrees place an obligation of service on teachers. This obligation stipulates that teachers are not allowed to use their authority for political or commercial purposes (Be, 1991a:sec.9; Be, 19991b:sec.12). Section 10 (Be, 1991a) and 13 (Be, 1991b) specify that teachers may not disrupt their duties without the permission of the direct hierarchical superiors. Furthermore, teachers are obliged to maintain professional secrecy (Be, 1991a:sec.11; Be 1991b:sec.14), thus, ensuring confidentiality (De Vries, 2010b:366; *cf*. 5.4.3).

Neutrality

In this instance, the two decrees differ from one another and will be discussed separately.

1. GO! Decree of 1991

Section 9 of the GO! Decree of 1991 (Be, 1991a) requires of teachers to consider their neutrality in exercising their duties and to shape the pedagogical mission of GO! education. In this regard, teachers in GO! education are required to sign three documents when they are recruited. They are required to sign the *pedagogische project (PPGO), the neutraliteitsverklaring and the Verklaring de Gehechtheidaan het GO! Onderwijs van de Vlaamse Gemeenschap* (GO, 2007a; De Vries, 2010b:366). In signing the PPGO, the teachers acknowledge their dedication to the projects. The PPGO contains the fundamental principles, values and general aims of GO! education, thus of the pedagogical mission (*cf*. 5.4.3). It serves as a source of reference in the holistic development of pupils as individuals and members of a society (GO, 2007c).

Furthermore, in signing the *neutraliteitsverklaring* (neutrality declaration), the teachers acknowledge that GO! education promotes the development and forming of an holistic individual, and therefore, among others, they consider:

- diversity of environments the pupils are exposed to;
- working towards developing understanding for diversity and critical thinking;
- in teaching facts they strive for objectivity and intellectual honesty; and

- use all opportunities to make pupils aware of human rights, particularly the rights of children, their responsibilities, concern for justice and fairness, commitment to the common good, solidarity, democracy, rights of minorities, tolerance, separation of Church and State, gender equality, right to self-determination of individuals and freedom of scientific research (GO, 2007b; *cf*. 5.4.3).

In signing the *Verklaring de Gehechtheid aan het GO! Onderwijs van de Vlaamse Gemeenschap,* teachers acknowledge their realisation of the importance of teaching and education for the development of people, that they particularly value the pedagogical project of GO! education and ensure their cooperation, loyalty and support (GO, 2007d).

Evaluation - GO! Decree of 1991 and Subsidised Education Decree of 1991

The *Freedom of Education* granted by the Belgian Constitution (1993:sec.24) does not only imply freedom of choice (*cf*. 3.2) and organisation (*cf*. 3.2), but also large autonomy for schools regarding personnel policy. This makes schools responsible for teacher evaluation and evaluation (De Vries, 2010a:93). Currently, both the GO! Decree of 1991 and the Subsidised Education Decree of 1991 as well as the *Omzendbrief Functiebeschrijving en Evaluatie*[84] of 29 October 2007 (VMOV, 2007a) stipulate that teachers should be formally evaluated once every four years (Be, 1991a:sec.73*octies*(2); Be, 1991b:sec.47*octies*(2); *cf*. 5.4.3).

According to the *Functiebeschrijving en Evaluatie circular* letter (VMOV, 2007a), evaluation should form a key element of staff policy in current day education as the instrument ensures reasonable evaluation and better evaluation of the performance of staff. The evaluator of a staff member must give an opinion on the manner the staff member performs in a certain position based on an exact and objective observation of the suitability, the input, the achievements and worth of such a staff member. Evaluation may at no point be repressive, but rather positive in that it allows for recognition of input leading to job satisfaction (Be, 1991a:sec.73*decies*(1); Be, 1991b:sec.47*decies*(1); VMOV, 2007a; Eurydice, 2009:336: De Vries, 2010b:369; *cf*. 5.4.3).

1) The link between evaluation and job description

[84]Circular Letter on Job Description and Evaluation

The evaluation process does not consist of only one formal evaluation interview. It is rather perceived as a four year cycle involving planning and improvement comprising of evaluation and evaluation interviews[85] (*cf*. 5.4.3). The reference framework for the evaluation cycle is the individual teacher's job description.[86] This means the job description is valid for four years (VMOV, 2007a; De Vries, 2010a:94). Teachers with a job description must be evaluated, while teachers without a job description may not be evaluated[87] (BE, 1991a; Be, 1991b; VMOV, 2007a; Eurydice, 2009; De Vries, 2010a; OECD, 2011).

i) Unsatisfactory evaluation - GO! Decree of 1991 and Subsidised Education Decree of 1991

A staff member who receives an unsatisfactory evaluation must be evaluated again after 12 months[88] (*cf*. 5.4.3). Sanctions due to unsatisfactory evaluation may only count for the school in which the poor evaluation was received, even though the teacher teaches at more than one school (Eurydice, 2009:338; De Vries, 2010a:98; De Vries, 2010b:371). Although sanctions can be imposed for inefficiency, the evaluation system does not afford any formal reward for efficient teachers who provide quality education (OECD, 2010:97; *cf*. 5.4.3). Distinguishing in practice whether a teacher is merely incompetent or not carrying out his professional duties correctly (disciplinary problems), is not that clear cut (De Vries, 2010a:101).

Staff members appointed in a temporary position are dismissed once they receive an *insufficient* on their evaluation report[89], while TADD and permanently appointed staff members are dismissed after 2 consecutive final insufficient evaluations or if they have received 3 insufficient scores in their career[90] (Be, 1991a; Be, 1991b; Eurydice, 2009; De Vries, 2010b; *cf*. 5.4.3).

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[85] Be, 19991a:sec.73; Be, 1991b:sec.47; VMOV, 2007a; Eurydice, 2009:336; De Vries, 2010a:93; De Vries, 2010b:371; OECD, 2011b:55

[86] Be, 1991a:sec.73*octies*(3); Be, 1991b:sec.47octies(3); OECD, 2011b:55

[87] Be, 1991a:sec.73*octies*(2); Be, 1991b:sec.47*octies*(2); VMOV, 2007

[88] Be, 1991a:sec.73*undecies*(3); Be, 1991b:sec.47*undecies*(3)VMOV, 2007a Eurydice, 2009:338; De Vries, 2010b:371

[89] Be, 1991a:sec.73*quaterdecies*; Be, 1991b:sec.47*quaterdecies*; Eurydice, 2009:349; De Vries, 2010b:371

[90] Be, 1991a:sec.73*terdecies*; Be, 1991b:sec.47*terdecies*; Eurydice, 2009:338, 349; De Vries, 2010b:371

ii) Appeals - GO! Decree of 1991 and Subsidised Education Decree of 1991

A decision taken by a school regarding sanctioning may be appealed by the teacher with the Appeal Board[91] as may teachers who receive an unsatisfactory evaluation.[92] The Appeal Board has to establish whether the teacher's rights were not infringed, whether the school complied with the regulations for teacher evaluation, and whether the final conclusion is supported by objective reasons. The authority to change the final conclusion as outcome of the evaluation process does not lie with the Appeal Board. They may only confirm or nullify the conclusion reached by the school as they rule on the reasonableness of the sanction (Be, 1991a; Be, 1991b; Eurydice, 2009:338; De Vries, 2010a:98; De Vries, 2010b:371; *cf*. 5.4.3).

Should teachers not concur with the decision of the Appeal Board, they may appeal either to the Council of State, in the case of officially financed or officially subsidised education, or the Court of Labour, in the case of privately-run subsidised education. Although schools may not sanction the teacher during the appeal process, teachers may be suspended as a preventative method (De Vries, 2010a:98). Since teachers appointed in a permanent position cannot be dismissed easily, governing bodies who have been dissatisfied with a teacher in a permanent position for a long time, but had no way to act against unfavourable practices, have now been using this newly imposed evaluation cycle to speed up the process towards dismissal (De Vries, 2010a:98).

Leave and career breaks - GO! Decree of 1991 and Subsidised Education Decree of 1991

Teachers may take a career break, thus interrupting their professional activities for a certain period of time while still receiving an allowance (Be, 1991a:sec.76; Be, 1991b:sec.50; Eurydice, 2009:345; De Vries, 2010b:378). Before the age of 55 a teacher is entitled to take up to five years' full time and five years' partial career breaks. After 55 teachers can decide on the length of their career break until they retire. Career breaks are taken on a full time basis, where the teacher does not

[91] Be, 1991a:sec.71; Be, 1991b:sec.25; De Vries, 2010a:101

[92] Be, 1991a:sec.73*septiesdecies*; Be, 1991b:sec.47*undecies*(2) & 47septiesdecies; Eurydice, 2009:338; De Vries, 2010a:98; De Vries, 2010b:371

work, and part time where the teacher works half the time or one fifth of the time that a full time employee works (VMOV, 2012a; *cf*. 5.4.3).

Teachers are entitled to a number of other leave options, apart from the annual holidays. These include:

- leave;
- special leave, in the event of among others a wedding, birth or death of a family member;
- exceptional leave due to events of *force maljeure* such as a family member living under the same roof as the teacher becoming ill or being in an accident;
- absence to fulfil civic duties or assignments, such as local elections;
- absence for childcare commitments when adopting or fostering;
- reduction in work time due to family, health or social circumstances or reasons, and
- absence of leave to hold certain public offices or political leave (De Vries, 2010b:378; *cf*. 5.4.3).

Staff members who are required to become part of the proceedings of trade unions qualify for trade union leave and are pardoned from their normal duties, but may only be absent for the time needed to complete these duties (VMOV, 2000).

Job security – GO! Decree of 1991 and Subsidised Education Decree of 1991

Staff members in permanent employment continue to be employed even if they lose their position. Staff members whose duties have been reduced for reasons beyond their control, such as a decrease in pupil numbers where reallocation is not possible, receive redundancy pay from the government (Be, 1991a:sec.84; Be, 1991b:sec.58; Devos & Vanderheyden, 2002:48; De Vries, 2010b:365-366).

As mentioned above, teachers with permanent positions enjoy job security, which means that redundant teachers are placed on a reserve list (De Vries, 2010b:365). Teachers qualify to be placed on the reserve list up to the age of 58 (Eurydice, 2009:350; De Vries, 2010b:383). Being placed on the reserve list, means such a teacher gets preferential treatment should any vacancies arise. The implication hereof is that governing bodies may not appoint a teacher without a permanent

appointment if one with a permanent appointment is also eligible. Reassignment of a teacher on the reserve list takes place within the same office (De Vries, 2010b:366).

Should it be impossible to reassign a teacher, such a teacher can be re-employed. This means the teacher will be employed in a different office, so a teacher will be employed as a teacher, but for a subject or subjects for which said teacher has not obtained a required qualification (DeVries, 2010b:366). Teachers with TADD status also benefit from priority regulations, because they also enjoy priority over teachers with no or lower seniority (Devos & Vanderheyden, 2002:48; De Vries, 2010a:104).

According to De Vries (2010a:104), the rationale behind the regulatory framework is that teachers should enjoy considerable job security, while seniority offers the right to prioritised employment. However, one of the main disadvantages of this framework is that beginner teachers lack job security for a long time, while at the same time they have to make do with short teaching stints at different schools, as supply teachers.

3.2.5.4 Resignation, dismissal and sanctions - GO! Degree of 1991 and Subsidised Education Decree of 1991

1. GO! Decree of 1991

Section 12(1) stipulates that not diminishing the application of criminal law any offense against provisions mentioned in chapter 1 of the GO! Decree of 1991 by permanently appointed or TADD teachers, will be punished using the disciplinary measures mentioned in section 61. After teachers have had an opportunity to defend themselves, any offenses against the obligations laid down in the chapter will be recorded in the evaluation file of the teacher (Be, 1991a:sec.12(2); *cf*. 5.4.4).

2. Subsidised Education Decree of 1991

No section, similar to section 12(1) discussed above, appears in the decree for subsidised education. However, the decree stipulates that no disciplinary measures may be taken against a teacher if the issue is private and has no bearing on the teacher-pupil relationship (Be, 1991b:sec. 17; Eurydice, 2009:334; De Vries, 2010b:366; *cf*. 5.4.4).

3. GO! Decree of 1991 and Subsidised Education Decree of 1991

Staff in temporary positions can voluntarily resign giving seven working days' notice, while staff members in TADD and permanent positions have to give 15 working days'

notice. In subsidised education a shorter term can be agreed upon (De Vries, 2010b:381).Staff in permanent positions can only be dismissed in a limited number of cases and after following strict procedures[93] (Be, 1991a; Be, 1991b; De Vries, 2010a:95; *cf*. 5.4.4).

However, according to McKenzie *et al*. (2004:12), teachers in permanent positions can be dismissed formally without notice if, for example, they have received two consecutive negative evaluations[94] or as a result of a disciplinary hearing[95], or for urgent reasons (VMOV, 2003). A temporary teacher can be dismissed with a 30 day notice period as a result of disciplinary measures[96] or without notice if it is considered a case of dismissal for urgent reasons[97] (Be, 1991a; Be, 1991b; Eurydice, 2009; De Vries, 2010b; *cf*. 5.4.4).

Urgent reasons are considered serious shortcomings which definitely make the temporary appointment immediately impossible (Be, 1991a:sec.24; Be, 1991b:sec.25). Teachers in a temporary or permanent position can be officially dismissed without prior notice if they fail to resume their duties after a period of legitimate absence and remain absent without any legitimate reason for a continuous period of more than 10 days; (Be, 1991a:sec.86(2) and (3); Be, 1991b:sec. 60(2) and (3); Eurydice, 2009:349; De Vries, 2010b:382; *cf*. 5.4.4).

Schools also have the authority to sanction a teacher in the event of noncompliance with regulations of the profession and may use the following as sanctions:

- official blame;
- wage reduction;
- suspension;
- demotion to a lower function; or
- definite dismissal (Be, 1991a:sec.61; Be, 1991b:sec.64; VMOV, 2007a; De Vries, 2010b:382; OECD, 2010:101; *cf*. 5.4.4).

93 Be, 1991a:sec.86; Be, 1991b:sec.60; De Vries, 2010a:95

94 Be, 1991a:sec.73terdecies; Be, 1991b:sec.47terdecies; VMOV, 2003; De Vries, 2010b:382

95 Be, 1991a:sec.82(e); Be, 1991b: sec.62(3)

96 Be, 1991a: sec.24; Be, 1991b, sec.24(1)

97 Be, 1991a:sec.24; Be, 1991b:sec.25; Eurydice, 2009:349; De Vries, 2010b:381

In each instance stipulations are specific on the extent of the sanction. Wage reduction may only be applied for six months and may not comprise more than one fifth of the last gross salary or redundancy pay[98], neither may it lead to the educator earning a salary lower than the net taxable unemployment benefit amount[99]. Suspension may be for a maximum of one year while the salary is halved without prejudicing section 66 of the GO! Decree of 1991 and section 65(4) of the Subsidised Education Decree of 1991 of 1991[100]. Demotion to a lower function means that a permanent appointment would become a temporary appointment; a promotion position will move back one ranking and a postponement for permanent appointment for a TADD appointee[101], while such a teacher receives a salary according to the salary scale of the position demoted to[102] (Be, 1991a; Be, 1991b; *cf*. 5.4.4).

When a teacher in a permanent position is dismissed in GO! education or made redundant in subsidised education, such a staff member will be removed permanently from office with a notice period calculated to correspond with the number of working days required to qualify for unemployment or disability benefits (Be, 1991a:sec.88bis; Be, 1991b:sec.62bis; Eurydice 2009:349; De Vries, 2010b:382). When teachers are dismissed, they lose any pension rights acquired, meaning that such teachers do not qualify for pensions as specified for teaching staff (De Vries, 2010b:382; *cf*. 5.4.4).

3.2.5.5 Continual professional development (CPD) - GO! Decree of 1991 and Subsidised Education Decree of 1991

Educational and methodological support is provided by the different educational advice departments of the different educational networks (Eurydice, 2009:334; UNESCO, 2007). Allocation of pedagogical study days occurs as follows:

- primary schools have 1½ days, and
- secondary schools 1 day per year (OECD, 2011b:55; *cf*. 5.4.5).

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[98] Be, 1991a:sec.63; Be 1991b:sec.65(1)

[99] Be, 1991a:sec.66; Be, 1991b:sec.65(4)

[100] Be, 1991a:sec.64; Be, 1991b:sec.65(2)

[101] Be, 1991a:sec.61(5); Be1991b:sec.64(5)

[102] Be, 1991a:sec.67(2); Be, 1991b:sec.65(6)

While teachers and schools can choose the content of professional development, the decisions on how pedagogical study days are used are generally made by the school leaders. Should a teacher want to attend a course or other development opportunity, a request must be made, sometimes in writing, which is assessed by the school leader (OECD, 2011b:55). CPD is mostly free of charge when organised by the ministry or the regional or local official authorities (Eurydice, 2008:49).

It is compulsory for schools to have a CPD plan as part of the school development plan (Eurydice, 2008:49). Teachers who do not participate in CPD activities may be penalised or their unwillingness may have a negative effect on the evaluation of the teacher (Eurydice, 2008:53).

3.2.5.6 Duty of care - GO! Decree of 1991 and Subsidised Education Decree of 1991

As in South Africa, there is a civil duty on teachers to protect their pupils from harm and a civil liability arises with regard to injuries sustained by pupils in their care, albeit due to an omission to act or a negligent act. In Belgium the duty to prevent pupils from harm derives from the general law as applied by the courts (Lauwers, 2004:57; *cf*. 5.4.6). Teachers may also find themselves responsible for harm to others because of the acts of pupils. So in Belgium and the UK (*cf*. 3.3.5.8), if a pupil is injured due to an act of violence by another pupil, the teacher in charge may be held liable. In Belgium, the onus of proof lies with the teacher, who will have to prove that the wrongful act was not preventable (Lauwers, 2004:60-61). In the Flemish Community, a claim may be filed against both the wrongdoer and the teacher on the basis of shared responsibility (Lauwers, 2004:61).

Teachers are generally not sued personally (Lauwers, 2004:61) and therefore with regard to liability, section 12*bis*(2) (Be, 1991a) and section 17bis(2)(Be, 1991b) require of the local school board, through the managing director, to insure each teacher by means of a policy providing cover against civil liability and cover for legal assistance should any civil liability case or juridical procedure be instituted against them resulting from the fulfilment of their duties. Should the local school board not comply with the stipulation, the costs from such actions will be carried by the board. The policy should be available to teachers to inspect (*cf*. 3.2.2).

Furthermore, provision is made that the local school board, in the person of the managing director, is responsible for legal assistance, should teachers institute a claim against a third party for physical and/or material damage, as well as

subsequent emotional damage incurred during or as a result of fulfilling their duties[103] (*cf*. 5.4.6). Section 12*bis*/1[104] and section 17*bis*/1[105]direct teachers who cause damage to their employer or a third party to be solely responsible for their deception or debt. Teachers are solely responsible for smaller debts, particularly if these are general occurrences, rather than coincidental. The damages may be withheld from the guilty party's salary after consultation or as ordered by a judge, as long as it is in accordance with section 23 of the Act of 12 April 1965 regarding the protection of wages of employees[106]. According to section 12*ter* [107]and 17*ter*[108], a teacher may still decide to make use of aid or representation by a legal councillor (Be, 1991a; Be, 1991b).

3.2.5.7 Support for teachers

Belgian teachers are supported by a number of programmes when it comes to ill-disciplined pupils. Apart from expulsion there are a number of time-out projects, where pupils are given intensive guidance in or out of school for a period of 5-10 days during a short time-out or taken out of school for separate guidance for a period of 3-6 weeks during a long time-out. Furthermore, suspended pupils or pupils who need guidance because of problematic absenteeism are given the opportunity to take part in caring farmers projects where the pupils have the opportunity to take on worthwhile tasks guided by a farmer or horticulturist (Eurydice, 2009:38).

3.2.5.8 Regulation of the profession

There is no organisation in Belgium regulating the profession, such as SACE in South Africa (*cf*. 2.5.1) and the TTA and GTCW in England/Wales (*cf*. 3.3.5.10; 5.4.7). However, the *Besluit van de Vlaamse Regering Betreffende het Beroepsprofiel van de Leraren* and the *Besluit van de Vlaamse Regering Betreffende de Basiscompetenties van de Leraren* provide teachers with a professional profile.

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[103] Be, 1991a:sec.12*bis*; Be, 1991b:sec.17*bis*

[104] Be, 1991a

[105] Be, 1991b

[106] Be, 1991a:sec.12*bis*/1; Be, 1991b:sec.17*bis*/1

[107] Be, 1991a

[108] Be, 1991b

Besluit van de Vlaamse Regering Betreffende het Beroepsprofiel van de Leraren

The *Besluit van de Vlaamse Regering Betreffende het Beroepsprofiel van de Leraren*[109] of 5 October 2007 contains an official professional profile which describes the knowledge, skills and professional attitudes expected in general from an experienced teacher (Be, 2007b:sec.1; *cf*. 5.4.7).The point of reference of this document is that of an extended approach to professionalism with an open and process-orientated character, steered by reflection and an ability to organise and actualise knowledge within the school and class context (Aelterman, Verhoeven, Rots & Buvens, 2007:7).

Within this document, the teacher's proficiencies are described and it includes the teacher's competency as an educator, as knowledgeable in his/her subject, as a learning coach, and as a professional in seven other characteristic functions (Be, 2007b; De Vries, 2010a:95, OECD, 2011b:54). In a study by Aelterman *et al.* (2007:3) it is indicated that the broader Flemish population support the extended professionalization view which underlies the basic competencies (*cf*. 3.2.3.3) and the professional profile of teachers.

Besluit van de Vlaamse Regering betreffende de Basiscompetenties van de Leraren

The basic or core competencies for starting teachers in nursery-, primary- and secondary education were deduced from the generic professional profile (De Vries, 2010a:95; *cf*. 5.4.7) and can be found in the *Besluit van de Vlaamse Regering Betreffende de Basiscompetenties van de Leraren*[110] of 5 October 2007. There are ten basic competencies or functional units modelled on the functions described in the earlier Decree of 8 July 1996 regarding education VII (Be, 2007a; OECD, 2011b:54). These basic competencies address every aspect of the working life of a teacher and include pedagogical aspects, such as:

- the teacher as facilitator of learning and development processes,
- the teacher as educator, and

[109]Resolution by the Flemish Government concerning the professional profile of teachers

[110]Resolution by the Flemish Government concerning basis competences of teachers

- the teacher as expert of content.

Furthermore, general requirements regarding organisational skills, innovation and research, and social aspects, such as partnership with parents, the teacher as part of a team, relationships with external institutions, the teacher as member of a school community and lastly the teacher as a cultural participant, are also included.

3.2.6 Other aspects in the Flemish community relevant to the legal status of teachers

Rots *et al*. (2002) as well as Verhoeven, Aelterman, Rots and Buvens (2006:482-483) distinguish between social esteem and social status. Esteem refers to the perceptions, ideas and feelings an individual has about the quality of work delivered, while status refers to the position held in the social stratification on a scale of social stature and is closely linked to salary, responsibility, benefit to society and social influence (Rots *et al*., 2002; Verhoeven *et al*., 2006:482). Verhoeven *et al*. (2006:482) mention that the concepts social esteem and social status are not entirely separate and distinct from one another, but can also not be considered synonymous.

3.2.6.1 Experiences of the Belgian society

In their studies, Rots *et al*. (2002) and Verhoeven *et al*. (2006:497) found that participants mainly held teachers in high esteem for their work, although it became evident that the broader community perceived a small decline in esteem for teachers. The wider Flemish population acknowledge that teaching is a demanding career (Aelterman, Engels, Van Petegem & Verhaeghe, 2007:285) which has changed much over the decades(Aelterman *et al*., 2007:3; 15). Furthermore, society expects of Belgian teachers to take up their role as partner in education, especially when it comes to the social forming of children and youths (Aelterman *et al*., 2007:3). Although it does not mean that the teacher is required to take over the task of the parent, the focus is rather on influential social goals (Aelterman *et al*., 2007:15; *cf*. 5.2.2).

Aelterman *et al*. (2007:15) report not only a recognition of the important social role teachers' play, but also that the Flemish community values teachers highly. The authors further found that the broader Flemish population is quite satisfied with the functioning of teachers and feel they fulfil social expectations (Aelterman *et al*., 2007:16). One issue of concern which emerged from the study was the indication by

participants that teachers fall short in the level of support provided for pupils with learning and socio-emotional difficulties (Aelterman *et al*., 2007:16).

3.2.6.2 Education as career choice

Despite the afore-mentioned, Devos and Vanderheyden (2002:9) state that there is a general shortage of teachers in primary education and a drastic shortage of teachers in vocational education, while the shortages in secondary education are within specific subject areas. One of the main causes of the shortage is the low status of the teaching profession (Devos & Vanderheyden, 2002:9). Rots *et al*. (2002) differ in their view regarding teacher status and postulate that the teaching profession is characterised by status inconsistency (Verhoeven *et al*., 2006:497) where participants were all convinced that teachers fulfil an important social role. However, the salary received by teachers and the social prestige of teachers are not in balance with the important social role they fulfil (Rots *et al*., 2002). The results of Aelterman *et al*. (2007:15) indicate that teaching as a career evokes a positive image to the majority of participants in their study (*cf*. 5.2.2).

According to Devos and Vanderheyden (2002:66), whereas education as a profession used to be at the top of the ladder, it is now almost at the bottom of the ladder in the view of society, particularly primary school teachers. Studying education is not a choice the best pupils opt for, teachers are not respected much anymore, and there is no financial support to encourage studying education. In contrast with this, Aelterman *et al*. (2007:15) reports that 65% of their participants indicated that they would recommend teaching as a career to their children. McKenzie *et al*. (2004:27) report that teaching has become a career choice for people with strong altruistic motives, those who found the flexible working hours or job security attractive or those who could not get their more preferred jobs.

Another reason for the decline in status of educators is, according to Devos and Vanderheyden (2002:66), the increase in complexity of the role of the teacher which leads to a deterioration in their working conditions. Among the additional requirements mentioned are:

- an increase in workload due to having to deal with many issues relating to the upbringing of pupils added to their educational tasks leading to an increase in workload;

- additional tasks for primary school educators such as supervising pupils and bus transport (*cf*. 3.2.3.1);
- an increase in difficulty when dealing with pupils on an emotional level;
- an increase in people's likeliness to submit legal complaints against teachers or class committees, for example with regard to decisions on failing pupils[111]; and
- a change in attitude of pupils towards teachers (*cf*. 5.2.2; 5.3.4).

To these five requirements, McKenzie *et al*. (2004:27) add that due to some of the above-mentioned aspects, teaching is viewed by many as difficult and potentially dangerous. Moreover, Galgóczi and Glassner (2008:23) report that in their study, teachers indicated that a major factor in the deterioration in working conditions was a general increase in qualification requirements while they, as teachers, experienced a continuing comparative deterioration of working conditions. Another factor mentioned is the growing ethnic diversity of immigrant pupils (Galgóczi & Glassner, 2008:23). The increase in qualification requirements, deterioration of working conditions and ethnic diversity of immigrant pupils were mentioned not only by the Belgian participants, but also participants from England/Wales.

Apart from the above-mentioned reasons, Devos and Vanderheyden (2002:67-68) also mention the following as reasons provided for the decline in status of teachers:

- The teaching profession has an image of being hemmed in by bureaucracy and restrictions, while young people dream of a dynamic and creative career.
- Teachers are leaving the profession as they are irritated by restrictions, regulations, planning workload and an overload of administrative responsibilities hindering them from carrying out their core task.
- Due to teaching falling in the non-profit sector, starting salaries do not compare favourably in the market, while teachers often have to pay for things like in-service training and material from their own pocket (*cf*. 3.2.5.3).
- A negative image of teaching which is worsened by trade union representatives who constantly broadcast a negative message on the situation of teachers.
- Too little focus on positive aspects of teaching in government media campaigns.

[111] The authors consider this to be the result of increased parental participation and an increase in assertive behaviour.

- The lack of job security for young teachers.

3.2.6.3 Initiatives implemented by the Flemish community

According to Devos and Vanderheyden (2002:9), one of the initiatives implemented to curb the problem was the creation of a new system for the temporary replacements of teachers. Schools and new teachers enrol in the replacement pool, which attempts to match new teachers at a school that needs a replacement on a temporary basis. With this initiative, the government attempts to increase career prospects for new teachers, as this provides financial and employment security. New teachers are employed by the replacement pool for a year and stay at a school until they are needed by another school. However, the programme is deemed to be beneficial for certain teachers and certain schools, but not for all (Devos & Vanderheyden, 2002:9; McKenzie *et al*., 2004:12).

In 2001 the retirement age of teachers was changed from 55 to 58 years, under strong protest from the unions (Devos & Vanderheyden, 2002:10). Burnt-out teachers are given the opportunity to retire at 55, if they accept a lower pension (Devos & Vanderheyden, 2002:10).

Other initiatives of the Flemish government have been to redesign the career opportunities, the workload and roles of teachers, by trying to introduce more flexible job descriptions and create more differentiation (Devos & Vanderheyden, 2002:10-11). However, most of these have failed because of union resistance (Devos & Vanderheyden, 2002:11). In 2000 the minister of education of Flanders developed an action plan comprising of 10 points to increase the attractiveness of the teaching profession, including:

- underlining the importance and professionalism of the teaching profession, in order to enhance the social status of teachers;
- the creation of a replacement pool for teachers, as mentioned above;
- recognition of the professionalism of teachers, by allowing more creativity and less prescriptive curriculums;
- re-examining the administrative pressure; and
- devoting attention to pleasant school environment, attractive school buildings and the necessary educational aids essential to the job satisfaction of teachers (Devos & Vanderheyden, 2002:14-15; *cf*. 5.2.2).

De Vries (2010b:358) mentions that due to the shortage of teachers a major focal point and on-going debate is the job security offered to new teachers, as well as the adjustment of compensation for education-related experience from the private sector.

3.2.7 Concluding remarks

The legal status of teachers in Belgium is well regulated and very clearly detailed in the relevant Decrees. While beginner educators face a problem of job security, the picture changes completely once they have worked a number of years as teachers. From the research discussed, it is also clear that teachers in Belgium are generally respected by the community, although some concerns are raised about the attractiveness of teaching as a career.

3.3 ENGLAND/WALES

England/Wales are constituent parts of the United Kingdom (UK) of Great Britain (UNESCO, 2011a). England has no separate government and English legislation is passed by the UK Government. In 1998, Wales, along with Scotland and Northern Ireland, was granted devolved powers and consequently elected its own National Assembly in 1999 (UNESCO, 2011b; *cf*. 5.2.3). The National Assembly for Wales assumed responsibilities for a number of policies and public services, of which education is but one (European Commission, 2004). However, Wales still holds representation in the UK Parliament, while the UK Parliament, as sovereign parliament (O'Cinneide, 2012:13), keeps the power to legislate on any matter, including decentralised matters. The UK Parliament will normally not take such steps without the agreement of the devolved governments (UNESCO, 2011a; *cf*. 5.2.3).

It is important to the discussion below to take note of the way Acts are amended in the UK legal system. Amendment of an Act may take place in any other relevant Act, for example sections from the Schools Standard and Framework Act 1998 are repealed or amended in the Education Act 2002. Thus, in the discussion below the researcher will attempt at all times to indicate clearly where and how Acts are amended.

3.3.1 Overview of the education system

Education in the UK is funded by government (*cf*. 3.2.2; 5.2). Provision of education is primarily governed by Acts and a large number of secondary legislation, while

some common law principles continue to exist (Feikert, 2007:172). According to UNESCO (2011a; 2011b), the education systems of England/Wales are largely similar. The Education Act 2002 calls for the establishment of the National Curriculum for England[112]/Wales[113] specifies the core and foundation subjects for England[114]/Wales[115], as well as the key stages[116] for England[117]/Wales[118] (UK, 2002).

The curriculum for England/Wales contains the basic principle that school education should provide a balanced and broadly based curriculum suitable to a child's age, ability and aptitude, making provision for any special educational needs a child may have[119] and promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society[120], while preparing pupils for opportunities, responsibilities and experiences they will face in later life[121] (UK, 2002:sec.78 & sec.99).

Both the education systems of England/Wales are largely decentralized with the overall responsibility lying with the central government (UK, 1996a:sec.10 & 11), while the responsibility for the provision of education lies with local government, churches and other voluntary bodies, the governing bodies of educational institutions and the teaching profession (UNESCO, 2011a: UNESCO, 2011b; Eurypedia, 2013a; Eurypedia, 2013c). In the case of England, the Department for Education (DfE) and the Department for Business, Innovation and Skills (BIS) are the government departments responsible for education (Eurypedia, 2013b). While in Wales, the Welsh Assembly Government's Department for Education and Skills (DfES) is responsible for funding and administration of education (Eurypedia, 2013c).

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[112] UK, 2002:sec.87

[113] UK, 2002:sec.108

[114] UK, 2002:sec.78(1)

[115] UK, 2002:sec.105

[116] Key stages refer to the phases a pupil moves through. Key stages 1 and 2 spans three years of schooling (UK, 1996a:sec.355(1)(a)(b)) and key stages 3 and 4 two years of schooling (UK, 1996a:sec.355(1)(c)(d)).

[117] UK, 2002:sec. 82-85

[118] UK, 2002:sec.105-107

[119] UK, 2002:sec.78 & sec.99; Eurydice, 2010a:5; Eurydice, 2010b:4; UNESCO, 2011a; UNESCO, 2011b

[120] UK, 2002:sec.78(1)(a) & sec.99(1)(a)

[121] UK, 2002:sec.78(1)(b) & sec.99(1)(b)

There is a statutory duty on Local Authorities (LAs)[122] to secure the provision of sufficient suitable primary and compulsory secondary education in Wales (UK, 1996a:sec.14(4A); Feikert, 2007:170; UNESCO, 2011b; Eurypedia, 2013c), while in England LAs are legally required to secure sufficient suitable education and training opportunities to fulfil reasonable needs of all young people in the area[123] (UK, 1996a:sec13(1); UNESCO, 2011a; Eurypedia, 2013b). Thus, at local level, LAs are responsible for the organisation, administration and management of education (UK, 1996a; *cf*. 5.2.3).

Every educational institution has a governing body which includes representatives from a number of stakeholders. According to the Education Act 2002, the governing body of the schools acts as the body corporate[124] consists of elected or appointed parent governors[125], elected or appointed staff governors[126], appointed LA governors[127], appointed community governors[128] [129] and other persons as may be prescribed[130]. Foundation schools, foundation special schools and voluntary schools (*cf*. Table 3.1) have to appoint persons to the governing body as foundation or partnership governors[131]. The governing body is responsible for the general direction the institution and its curriculum[132] takes and is expected to promote high standards of educational achievement[133]. School governing bodies decide how the school budget is spent, is responsible for the selection of the head teacher and determines

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[122] LAs correspond to the boundaries of local government such as counties or London boroughs (Ruff, 2008:77).

[123] Young people are defined as those who are over the compulsory school age (16 years) but under 19, or are between 19 and 25 with a learning difficulty (UNESCO, 2011a).

[124] UK, 2002:sec.19(1)

[125] UK, 2002:sec.19(2)(a)

[126] UK, 2002:sec.19(2)(b)

[127] UK, 2002:sec.19(2)(c)

[128] Voluntary aided schools are not required to have community governors (UK, 2002:sec.19(2)(c); *cf*. Table 3.1).

[129] UK, 2002:sec.19(2)(d)

[130] UK, 2002:sec.19(2)(e)

[131] UK, 2002:sec.19(2)(d

[132] Decision regarding the school curriculum is subject to the requirements of the National Curriculum (Eurydice, 2010b:2)

[133] UK, 2002:sec.21(1) & (2); Eurydice, 2010b:2

staff numbers and composition (Eurydice, 2012b:2). The school governing body and head teacher share the responsibility for strategic and financial planning. The day-to-day management is the responsibility of the head teacher (UK, 2002; Eurypedia, 2013b; Eurypedia, 2013c).

One can thus say that education in England/Wales comprises a tripartite relationship made up of the central government department, the DfE (in the case of England) and the DfES (in the case of Wales), Local Authorities (LAs) and schools (Ruff, 2008:76) ensuring the governance of schools, with management of schools mainly happening at school level as a duty of the head teacher. Lauwers (2004:49) describes the UK system as having strong elements of central direction (from government), while also displaying strong elements of school autonomy and school liability.

3.3.2 Organisation of the education system

As in the case of South Africa and Belgium (*cf*. 3.2.1), England/Wales also have a public and private education system. In England, public schools fall into two categories – maintained schools funded through the LA and academies, which are considered government dependent private schools as they are legally independent, although they are funded directly from the government (Eurypedia, 2013b). In Wales, public schools are known as maintained schools and are funded through the LA (UK, 1996a:sec.482(1)(b); DfES, 2010; Eurypedia, 2013c). Once again the focus of this study will be the legal status of teachers in the public sector, i.e. the maintained sector and academies. Although academies are legally established as independent schools they are fully funded by government and may not charge fees (Eurypedia, 2012d). Therefore in this study they will be considered as part of the public school system (*cf*. 5.2.3).

There are a number of categories of maintained schools in England (DfE, 2014c) and Wales (Eurypedia, 2013c). A short summary of these categories will be provided in table form below, in order to contextualise the English and Welsh school system.

Table 3.1: Summary of categories of maintained schools in England/Wales

Category	Description
Voluntary controlled school	All costs are met by the state and the school is controlled by the LA (DfE, 2012e; Eurypedia, 2013c).

Category	Description
Voluntary aided school	Originally the funding of these schools had been split 50-50 between the state and the foundation. Currently, the contribution of the foundation may be only 10%, although LAs may opt to cover this amount (DfE, 2012e; Eurypedia, 2013c).
Faith schools	Faith schools are schools which have chosen a particular religious character. Most Voluntary Controlled and Voluntary Aided schools and some Trust schools are Faith schools (DfE, 2012c; Eurypedia, 2013c).
Community school	These schools are the standard type of maintained school and may not have a designated religious character (DfE, 2012b; Eurypedia, 2013c; *cf*. 5.3.2).
Community special school	This type of school is a community school which caters specifically for pupils with special needs (DfE, 2012b; Eurypedia, 2013c).
Foundation schools	These are schools owned by the school governing body or trustees of the school, but funding is from the LA similarly to a community school (Eurypedia, 2012a; Eurypedia, 2013c). However, these schools have more freedom than a community school (DfE, 2012c).
Foundation special schools	A foundation special school only differs from a foundation school in that it caters for pupils with special needs and may not be designated a religious character (DfE, 2012c; Eurypedia, 2013c).
Trust schools	Trust schools are a form of foundation school, but in this instance a charitable trust is formed with an outside partner, such as an educational charity or business (Eurypedia, 2012a; Eurypedia, 2013c)

It is clear that legal responsibility for schools rests mainly with LAs and governing bodies (*cf*. 3.3.1). Academies are independently managed schools funded directly by central government (BBC, 2014b), without LA involvement. With the establishment of academies there is an indication that government in England wishes to change their role from provider to proprietor of education. However, education at schools mainly remains the legal responsibility of LAs in England/Wales (Ruff, 2008:77; *cf*. 5.2.3).

Publically funded schools are largely autonomous with the responsibility to maintain their own budgets and make their own staffing decisions (Eurypedia, 2013b; Eurypedia, 2013c). The school governing bodies of community and voluntary controlled schools have fewer responsibilities than the school governing bodies of voluntary aided and foundation schools. The latter would, for example, have responsibilities regarding staffing, admission and premises (Eurypedia, 2012c; *cf.* 3.3.5), as the governing body is responsible to employ staff and set entrance criteria (BBC, 2014b). In the case of community and voluntary controlled schools, the LAs employ staff and set entrance criteria (BBC, 2014b). Academies have greater control over their budgets, than the afore-mentioned maintained schools, are not required to follow the national curriculum and thus have more control over the curriculum taught (BBC, 2014b; DfE, 2014c). However, they have to follow the same rules as maintained schools regarding admissions, special education and exclusions (DfE, 2014c). Academies also have more control over teachers' conditions of employment (BBC, 2014b).

3.3.3 Introduction to the legal order

The UK legal order is governed by a combination of statute, common law and constitutional conventions and practice with the main sources of law being legislation, common law based on custom (Anon, 2004) and developed through judicial decisions (European Commission, 2004), European Union law and the ECHR (Anon, 2014). The primary forum to resolve any conflict between different sources of law is the courts (European Commission, 2004). The English/Welsh legal system is a common law system, unlike many other Western European legal systems which are derived from Roman law (Anon, 2004). In a common law system decisions of the senior appellate courts become law (Anon, 2014).

Primary legislation refers to Acts of Parliament, which are the most important pieces of legislation (European Commission, 2004; Anon, 2014). An Act of Parliament is usually changed by passing another Act of Parliament. The UK Parliament is the primary legislator and consists of the House of Commons[134] and the House of

[134] The House of Commons consists of elected members representing specific geographic constituencies (Anon, 2014).

Lords[135]. The UK Parliament is the only body with the power to pass laws applicable to all four countries (Anon, 2014). Many Acts delegate legislative powers to public authorities. Delegated legislation is known as secondary or subordinate legislation. Secondary legislation takes many forms, with the most used types being regulations or orders known as Statutory Instruments (Holdsworth, 2006:7). It is important that subordinate legislation should comply with the terms of the enabling Act.

In England/Wales tribunals deal with disputes in a wide range of areas affecting day-to-day life (Judiciary of England and Wales, 2014). Tribunals form part of the civil law system and have limited power. It is a system that should be accessible to all and does not require legal representation. Disputes regarding employment matters are dealt with by the Employment Tribunal, while matters on appeal from the Employment Tribunal are dealt with by the Employment Appeals Tribunal (Findlaw, 2012).

Since 1999, with the devolving of powers certain law-making powers were transferred to the National Assembly of Wales (European Commission, 2004). The Welsh National Assembly has the power to pass laws on devolved matters, of which education is one, but these laws apply only in Wales (Anon, 2014).

In English law, the concept rights is not often used and has traditionally been phrased in terms of duties and powers. However, these duties and powers can give rise to rights (Ruff, 2008:75). This is perhaps because, in the usual narrow sense of the word, there is no British Constitution (Weber, 1999:1). It is not only the absence of a comprehensive constitutional document, but rather the fact that in the UK no meaningful distinction can be made between constitutional laws and ordinary laws, due to the basic doctrine of parliamentary supremacy which points to the lack of an English Constitution (Weber, 1999:1; European Commission, 2004). Parliamentary supremacy means that parliament is the supreme authority in England/Wales and therefore it is not possible to challenge, repeal or question the validity of an Act in court (European Commission, 2004; *cf*. 5.3).

According to McEwen (2003), it is important to differentiate between codified and un-codified constitutions. Codified constitutions are entrenched and enjoy the protection of a higher or Supreme Court, while special provisions are needed to repeal or

[135] The House of Lords consists of 600 peers appointed by the reigning Monarch, aristocrats who inherited their titles and senior bishops of the Church of England (Anon, 2014).

amend them. Most constitutions are written and codified (McEwen, 2003). So, unlike South Africa (*cf*. 2.1.1) and Belgium (*cf*. 3.2.3), the UK has no written constitution and there is thus no codified constitution and no constitutional supremacy (*cf*. 5.3). Furthermore, the UK has no Constitutional Court or any other institution specifically tasked to guard the constitution (Weber, 1999:6). Unlike Weber (1999), McEwen (2003) considers parliamentary supremacy as the single most important principle of the UK constitution as one parliament is not bound by the decisions of its predecessors, with no higher body constraining the legal authority of parliament.

Holdsworth (2006:2) states that the British unwritten constitutional tradition rests on three pillars, namely parliamentary sovereignty, the separation of powers and the rule of law. O'Cinneide (2012:12) describes the UK as having an un-codified constitutional system, in fact a political constitution (O'Cinneide, 2012:14). Although the UK constitution is often described as unwritten or un-codified, Budge *et al*. (in McEwen, 2003) describe the UK constitution as partly written and wholly codified. In her reasoning, McEwen (2003) provides the following as motivation for the afore-mentioned view:

- the UK constitution is derived from a number of sources;
- the principal source are statute law[136] which is important for determining the powers and scope of government and the conduct of elections;
- the rules of constitutional behaviour is bound by an array of conventions or unwritten understandings and customs considered binding; and
- the last source, common law, remains an important source of constitutional authority, particularly in the sphere of civil liberties and in constitutional principles such as the Royal Prerogative.

In 1973 the United Kingdom joined the European Union (EU). This means as an EU member, the UK is bound by EU legislation and policies based on a series of treaties since the 1950s (Eurydice, 2010c:8; O'Cinneide, 2012:13-14). The decision to ratify treaties is made by the UK Government and cannot be challenged in the courts or by parliament. However, treaties have no force of law until enacted in legislation, but courts take the provision of treaties into consideration when interpreting domestic laws (European Commission, 2004).

[136] Statute law is law passed by the UK parliament (McEwen, 2003).

According to McEwen (2003), the UK's membership of the EU directly challenges parliamentary supremacy as EU membership requires of members to accept sovereignty over areas where member states have agreed to act together. Furthermore, laws passed at the European level are considered superior to the individual country's laws and are protected by the European Court of Justice, a higher constitutional law, while the European Court of Human Rights is considered as a court of last resort in protecting human rights across Europe (European Commission, 2004; Holdsworth, 2006:4; O'Cinneide, 2012:8;18). Since the enactment of the Human Rights Act 1998 (hereafter referred to as HRA (UK1998a) , which incorporated the ECHR into UK law, courts have another power to challenge Acts made by parliament (European Commission, 2004; *cf*. 3.3.4)

Human rights in the UK

In a country with majority rule and parliamentary sovereignty (O'Cinneide, 2012:13-14), concern for the protection of human rights arises naturally. In many countries, including South Africa (*cf*. 2.1.1), provisions in the written constitution give courts the power to overturn legislation deemed to violate fundamental human rights (O'Cinneide, 2012:8; 16). However, the UK opted for a different route. According to O'Cinneide (2012:8; 16-17), the UK has developed its own distinctive system in which courts are given a role in protecting individual rights while at the same time respecting parliamentary sovereignty. In the UK the general viewpoint is that each individual possesses certain basic and inalienable rights and that a democracy should be based on respecting these rights (O'Cinneide, 2012:14).

Protection of human rights in the UK can be found in different layers. Public authorities, including the executive, LAs, the police and other organs of state, are required by common law:

- to have a clear legal basis for their actions;
- to respect the requirements of fair procedure – respect basic principles of justice, fairness and respect for rule of law; and
- to act in a rational manner (O'Cinneide, 2012:8, 13-14; 17).

A second layer of rights protection is the ECHR, which protects core civil and political rights and which the UK was one of the first to ratify (O'Cinneide, 2012:18). As the protection common law offers against the state abusing its power is limited to the above-mentioned procedural requirements, the HRA (UK, 1998a) provides more

substantive legal protection to individual rights (O'Cinneide, 2012:8) and constitutes the third layer of human rights protection (O'Cinneide, 2012:19).

The HRA contains most of the rights and freedoms found in the ECHR (DCA, 2006:12; O'Cinneide, 2012:8; 19). According to O'Cinneide (2012:9-10), the HRA was designed in such a manner that courts play a bigger role in the protection of individual rights, while ensuring that parliament retains its sovereign power to make law (O'Cinneide, 2012:20). In fact, it is considered the primary source of human rights protection through law (O'Cinneide, 2012:19).

Section 3 of the HRA (UK, 1998a) stipulates that UK courts are required to interpret parliamentary legislation as far as possible in such a way that conformity with the ECHR rights is guaranteed (*cf*. 5.3), thus leaving parliamentary sovereignty intact (European Commission, 2004; O'Cinneide, 2012:20). Should such an interpretation seem impossible, a court can issue a declaration of incompatibility (UK, 1998a:sec.4; European Commission, 2004). A declaration of incompatibility sets out the court's legal finding – that the statute in question is incompatible with the right – but has no legal effect. The intention is to trigger a political response to the incompatibility, as a minister can make a remedial order (DCA, 2006:7), but parliament continues to enjoy a final say over the scope and content of human rights (O'Cinneide, 2012:20). This sharply contrasts with the South African situation where any law incompatible with the Constitution becomes null and void (SA, 1996:sec.2).

Section 6 of the HRA (UK, 1998a) stipulates that all bodies performing functions of a public nature, including those in the devolved assembles, such as the Welsh Assembly, are required to act in a way compatible with the rights as found in the European Convention on Human Rights. This means that acts of public bodies which violate the ECHR may be invalidated, except if these acts are required to give effect to legislation enacted by parliament (DCA, 2006:7; O'Cinneide, 2012:20; 37).

3.3.4 Human rights relevant to the status of teachers

In England/Wales, the rights of teachers are no different from the rights of other employees (Ruff, 2008:75), as is the case in South Africa and Belgium (*cf*. 5.3). The difference for all teachers in England/Wales, in fact for all teachers/educators worldwide, lies in the fact that their working lives involve and revolve around working with children and young people. The difference in the rights of teachers as opposed

to other employees is also reflected in the organisational structure in which they are employed (Ruff, 2008:75).

As in the case of South Africa (*cf*. 2.2) and Belgium (*cf*. 3.2.4), teachers need to be aware of certain human rights found in the HRA, as these rights either relate directly to them, as citizens and employees, or to their specific type of employment (*cf*. 5.3).

3.3.4.1 Prohibition of discrimination

Article 14 of the HRA (UK, 1998a:schedule 1) ensures the enjoyment of all rights found in the Convention, without any discrimination on any grounds. Article 14 then sets forth and lists the following grounds: gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The words *or other status* allows for the inclusion of other types of personal status. However, according to the DCA (2006:25), other status is not considered completely unlimited (*cf*. 2.2.1.3; 3.2.4.1; 5.3.3).

Thus, although article 14 allows equal access to rights, it only provides protection against discrimination in terms of other ECHR rights. Unlike South Africa (*cf*. 2.2.1.3) and Belgium (*cf*. 3.2.4.1), in this instance, there is no general right to protection against discrimination in the HRA. Should one want to make use of the non-discrimination protection, one should be able to identify a right contained in the ECHR and show that it can be motivated that discrimination on the grounds of the specific right occurred (DCA, 2006:25; *cf*. 5.3.3).

However, the Equality Act 2010 provides the right to equal treatment to people in the work place and wider society (UK, 2013). This Act combines previous Acts, such as the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995, and came into force on 1 October 2010 (UK, 2010b:1; UK, 2013). According to the Government Equalities Office (2011:2), the Act simplifies the law, removes inconsistencies and is easier to understand and comply with.

The two main purposes of the Equality Act 2010 are to harmonise discrimination law and strengthen the law in order to support progress on equality. The Equality Act fulfils its purpose by placing new duties on public bodies while increasing protection against discrimination (UK, 2010b:2-3) and setting out the different unlawful ways to treat people (UK, 2013). The characteristics protected by the Equality Act 2010 are:

- age;

- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- gender; and
- sexual orientation (UK, 2010a:sec.4; *cf*. 5.3.3).

The Equality Act 2010 is very detailed and clearly distinguishes between direct[137] (UK, 2010a:sec.13) and indirect discrimination[138] (UK, 2010a:sec.19), but also prohibits combined discrimination[139] (UK, 2010a:sec.14). Furthermore, the Equality Act 2010 not only refers to discrimination, but also clearly stipulates other prohibited related conduct, by clearly stipulating that harassment (UK, 2010a:sec.26) and victimisation (UK, 2010a:sec.27) in terms of the relevant characteristics are prohibited (*cf*. 5.3.3).

Specific aspects in the Equality Act 2010 which have a direct bearing on teachers and their legal status are:

- supplying the basic framework provided for protection against direct and indirect discrimination, harassment and victimisation in different fields, education being but one;
- provisions to protect against discrimination purely because of a perception to have been associated with someone who has a protected characteristic;
- providing a uniform definition of indirect discrimination to all protected characteristics;

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[137] This is when the reason for a person being treated less favourably than another is because of a protected characteristic (UK, 2010a:sec.13; UK, 2010b:13).

[138] In this instance, indirect discrimination occurs when a criterion, provision, practice or policy when applied in the same way for all has an effect which particularly disadvantages people with a protected characteristic, or puts a person at a disadvantage should it be applied (UK. 2010a:sec.19; UK, 2010b:17).

[139] This section prohibits direct discrimination because of a combination of two protected characteristics (UK, 2010a:sec..14; UK, 2010b:14).

- extending the protection against indirect discrimination to disability;
- creating circumstances in which it becomes more difficult to screen out disabled people applying for jobs unfairly, by restricting circumstances in which employers may ask questions regarding health and disability; and
- making pay secrecy clauses unenforceable (UK, 2013).

According to the DfE (2014b), when a disability is not visible, a disabled teacher has the choice whether he/ she wants to disclose the disability to management and colleagues. Disclosing a disability, however, has certain advantages. Disabled teachers are entitled to specialist equipment, extra funding and specialised training programmes as trainee teachers. Furthermore, there are specific requirements the employer has to provide to support disabled teachers (*cf*. 3.3.5.9; 5.3.3). Although applicants to initial teacher training may be required to complete a declaration of health in order to be assessed by an occupational health advisor, any information provided about a disability is protected, not only by the Equality Act 2010, but also by the Data Protection Act 1998. Data on disabilities is considered sensitive and may not be passed on to other parties without personal consent (DfE, 2014b).

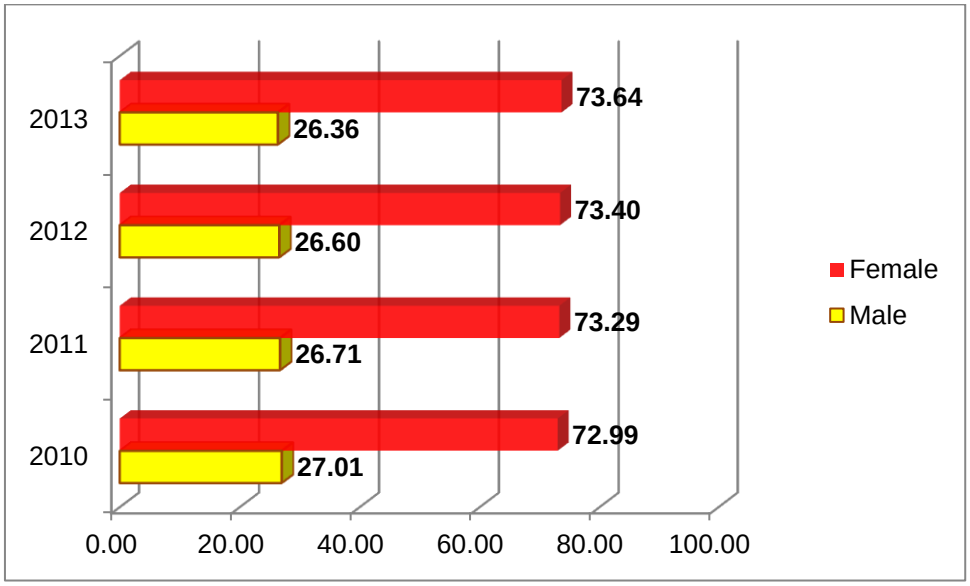
Apart from the above-mentioned aspects, teachers in England/Wales must particularly take cognisance of parts 5 and 6 of the Equality Act 2010. Part 5 of the Equality Act 2010 deals with the employment and provides protection against discrimination or victimisation of employees and applicants (UK, 2010a:sec.39) as well as against harassment of employees or applicants (UK, 2010a:sec.40), while prohibiting Qualifications Bodies from discrimination, harassment or victimisation when conferring relevant qualifications (UK, 2010a:sec.53; *cf*. 5.3.3). Section 61 of the Equality Act 2010 stipulates that any occupational pension scheme must include a non-discrimination rule, which is a provision prohibiting a responsible person from discriminating against, victimising or harassing a member or potential member of the scheme (UK, 2010a; UK 2010b:39; *cf*. 5.3.3).

The provisions found in chapter 3 of part 5 of the Equality Act 2010, aim at achievement of equality between genders in terms of pay and employment where the work of two employees of opposite gender is equal (UK, 2010b:41). This is done by providing for the inclusion of a sex equality clause (UK, 2010a:sec.66) in employment contracts and a gender equality rule into an occupational pension fund (UK, 2010a:sec.67; UK, 2010b:41). Section 64 (UK, 2010a) provides an explanation

that sections imposing the equality rule and equality clause apply where the work of one person is equal to the work of another. In order to establish if work is equal section 65 (UK, 2010a) stipulates that a claimant must establish that like work is done, work is rated as equivalent or of equal value, while stipulating the factors which should be used to determine if a person's work falls within one of these categories (UK, 2010b:41; *cf*. 5.3.3).

In education the work done by the different genders does not differ in type or value. However, as in the cases of South Africa (*cf*. 2.2.1.3) and Belgium (*cf*. 3.2.4.1), female bias is clearly evident with more than 70% of teachers in England/Wales being female, while nine out of ten teaching assistants are female (BBC, 2011; Henshaw, 2013). According to the General Teaching Council for Wales (2013b), their 2010 statistics indicate that the gender gap has increased in the previous four years (*cf*. 5.3.3). The tables below clearly illustrate the female predominance in the teaching sector in both England/Wales.

Figure 3.7: Gender distribution of teachers in England



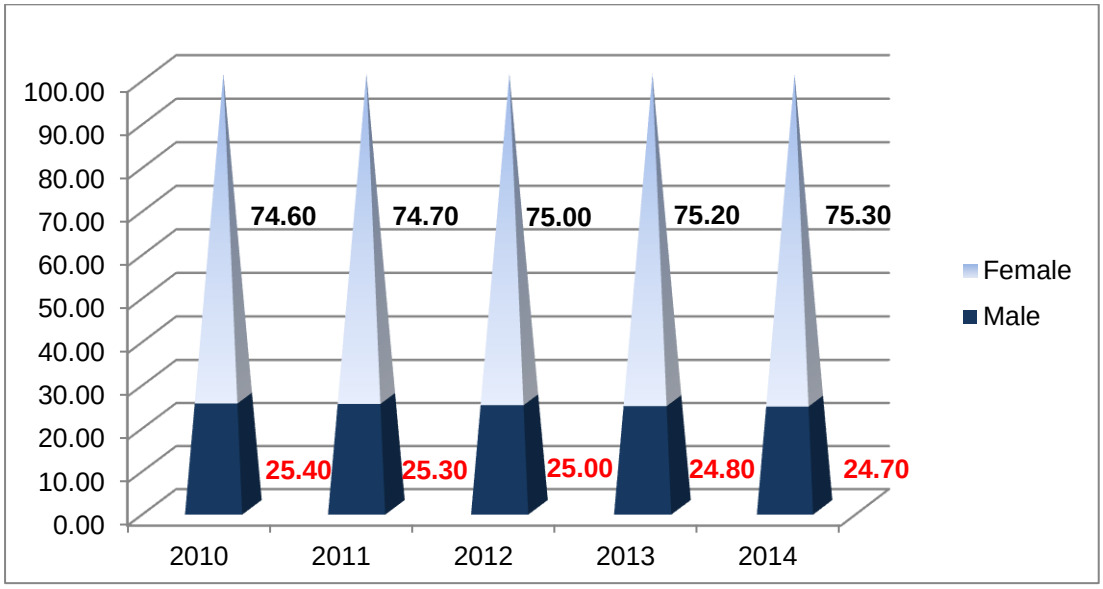
(DfE, 2011a; DfE, 2012d, DfE, 2013d; DfE, 2014a)

Figure 3.7 provides an illustration of the gender distribution at publically funded schools in England. Over the four years between 2010 and 2013, there has been a slight increase in the gender gap. In 2010, 72.99% of the teachers at public schools in England were female, and 27.01% were male (DfE, 2011a). Thereafter, the gap increases yearly with 73.29% female teachers in 2011 (DfE, 2012d) and 73.4% in 2012 (DfE, 2013d), while the male teachers proportionally decrease in 2011 to 26.71% (DfE, 2012d) and in 2012 to 26.6% (DfE, 2013d). In 2013, female teachers

(73.64%) very nearly make up three quarters of the teaching workforce at public schools in England, with only 26.36% of teachers in public schools being male (DfE, 2014a).

The gender gap is particularly predominant at primary schools. In 2011, the BBC reports that only 27.8% of primary schools had any registered male teachers. In England only 12% of primary school teachers were male, as opposed to 38% of secondary school teachers (BBC, 2011). However, between 2010 and 2011 there was a 1.6% increase in the proportion of men entering the teaching profession from 24% to 25.6%.

Figure 3.8: Gender distribution of teachers in Wales



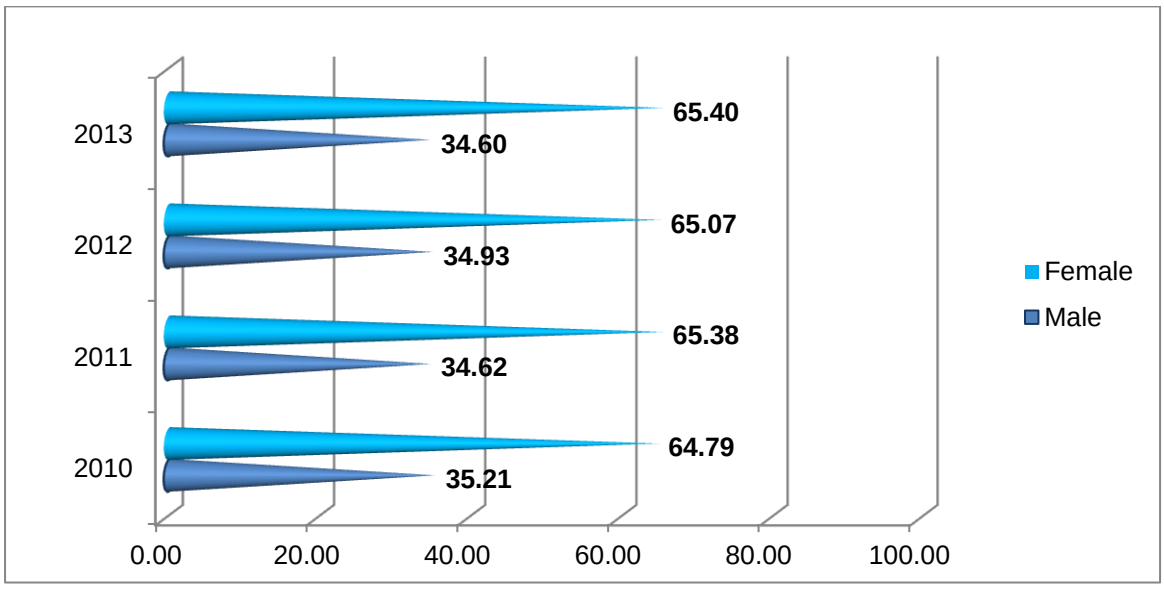
(GTCW, 2014)

Figure 3.8 illustrates the same trend in Wales as in England, regarding the gender distribution of teachers and it supports the statements of the General Teaching Council Wales (GTCW) (GTCW, 2013c; GTCW, 2014). In the 2010 school year, 74.6% of qualified teachers registered with the GTCW teaching in public schools in Wales were female as opposed to 25.4% male teachers. The gap between the genders increased over the next four years, with the female teachers representing 74.7% of the workforce in the 2011 school year, 75% in the 2012 school year, 75.2% in the 2013 school year and 75.3% in the 2014 school year. Correspondingly, the representation of male teachers decreased to 25.3% in the 2011 year, 25% in the 2012 school year, 24.8% in the 2013 and 24.7% in the 2014 school years (GTCW, 2014).

As in the case of England, the representation of Welsh male teachers at primary schools is lower than at secondary schools (BBC, 2011; GTCW, 2013b). It appears as if teaching as a career is becoming more acceptable for males, as there has been an increase of male graduates applying to enrol for a Post Graduate Certificate Education for primary teaching of 47% in Wales and 42% in England (BBC, 2011; GTCW, 2013c). However, the gender distribution of newly qualified teachers registering with the GTCW of Wales does not portray an improved picture, as only 26.4% of newly qualified teachers registering with the GTCW in 2012 were male, 25.5% in 2013 and 24.4% in 2014, once again indicating a decline in the proportion of male teachers in Wales (GTCW, 2014), unlike the situation in England (*cf*. 5.3.3).

As is the case in South Africa (*cf*. 2.2.1.3) and Belgium (*cf*. 3.2.4.1), the gender distribution with the echelons of management is skewed when one considers the representation of females in the teaching workforce. The figures below provide a clear picture of the situation.

Figure 3.9: Gender distribution of head teachers - England

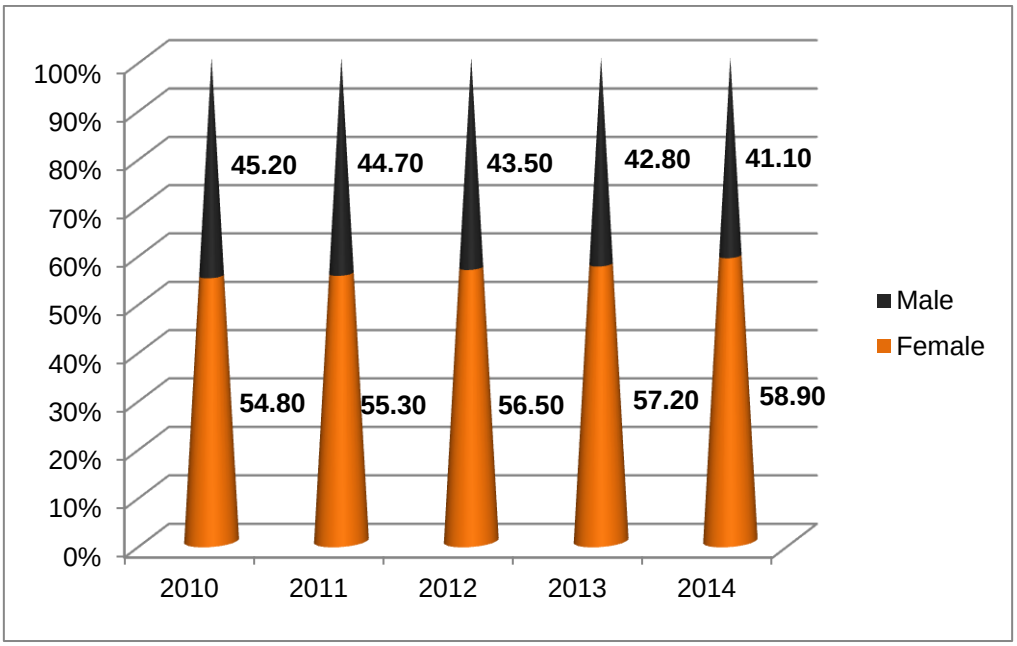


(DfE, 2011a; DfE, 2012d, DfE, 2013d; DfE, 2014a)

When one considers the gender distribution of head teachers at publically funded schools in England, as portrayed in Figure 3.9, in comparison with the gender distribution of teachers in general (*cf*. Figure 3.7), it becomes clear that there is a discrepancy in the representation of females in senior management. Although male representation in senior management slightly decreased from 35.21% in 2010 (DfE, 2011a) to 34.6% in 2013 (DfE, 2013d), it remains clear that females are under-represented in senior management given that females make up nearly three quarters

of the teaching workforce (*cf*. Figure 3.7). The picture is even more disturbing when the situation at primary schools is considered. According to the DfE, only 16% of women working in primary and nursery schools are in senior management, while 32% of the men working at these schools are in senior management - a very disturbing situation, given the fact that only 16% of primary school teachers are men (BBC, 2011). In Wales the situation is very similar, as portrayed in Figure 3.10 (*cf*. 5.3.3) below.

Figure 3.10: Gender distribution of head teachers - Wales



(GTCW, 2014)

As is the case in England, there is a slight decrease annually in the percentage of Welsh male head teachers at public schools. As illustrated in Figure 3.10, in 2010 45.2% of head teachers in Wales were male, which decreased to 41, 1% in 2014 (GTCW, 2014). Thus, in Wales the proportion of female head teachers has risen to approximately 56.5% over the last number of years (GTCW, 2014). However, seen in light of the fact that women represent over 75% of the teaching workforce, as in England, the proportional distribution still illustrates an unfair advantage. What is even more disturbing, is the fact that the rise in the number of Welsh female head teachers is predominantly in the primary school sector, while in the secondary school sector only 26% of head teachers are women (GTCW, 2013b). In their study, Thornton and Bricheno (2000:203) **report** that the primary school milieu is becoming increasingly female and of low status, but that the men entering this environment achieve disproportionate power and status. Male teachers in this environment are

treated with excitement, awe and sometimes fear by pupils, parents, head teachers and other teachers because they are considered a rare commodity (Thornton & Bricheno, 2000:203). It would appear as if little has changed since this study was done in 2000 (*cf*. 5.3.3).

Apart from the disturbing fact that there are definite gender imbalances in senior management within teaching, pay discrepancies are also evident (Henshaw, 2013). There is an average gap of £3300.00 per annum between the salaries received by male teachers and female teachers. When the average salaries received by male teachers across all schools and all qualified teaching staff, including leadership, are compared to that of women, the average salary earned by men is £39,900, while the average salary of women is £36,600 (Henshaw, 2013). This discrepancy in pay is in complete contrast to the provisions found in chapter 3 of part 5 of the Equality Act 2010 (*cf*. 5.3.3).

The teaching workforce in England is predominantly comprised of white British teachers. The November 2012 census indicated that 88.4% of teachers, 94.4% of head teachers and 87.9% of teaching assistants fall within this category (Henshaw, 2013) while other larger ethnic groups are represented as follows:

- White Irish – 1.7%;
- Other white background – 3.5%;
- Indian – 1.6%; and
- Black Caribbean - 1.0 % (DfE, 2014a).

The ethnic picture in Wales is approximately the same. According to the GTWC (2014), 84.5% of all qualified registered teachers are White British, while the other larger ethnic groups are represented as follows:

- 0.3% Asian;
- 0.1% Black;
- 0.5% Mixed race; and
- 1.9% other white (GTCW, 2014).

In a study on the professional experiences of ethnic minority teachers which focused mainly on the views of African Caribbean, Bangladeshi, Indian and Pakistani teachers, Cunningham and Hargreaves (2007:2) indicate that the majority of the

participants reported that wider representation of minority ethnic groups was needed. Most of the participants in the study viewed education as a respectable and desirable occupation providing them with the opportunity to serve their communities, act as role models to pupils from minority ethnic groups while serving the learning needs of these pupils, to address educational disadvantage and to contribute to the educational, as well as social and political progress of their communities (Cunningham & Hargreaves, 2007:22; *cf*. 5.3.3).

However, the ethnic minority teachers not trained and qualified in England reported that they were disillusioned with the profession in England, while feeling unfairly discriminated against on the grounds of their ethnicity when attempting to secure permanent posts (Cunningham & Hargreaves, 2007:4). These teachers reported that despite having the statutory Qualified Teacher Status (QTS) (*cf*. 3.3.5.1) and irrespective of their previous teaching experience, gaining access to permanent positions was difficult (Cunningham & Hargreaves, 2007:22). The participants indicated that they experienced a predisposition by school leaders to keep them as supply teachers for as long as possible, using their expertise at minimal cost (*cf*. 5.3.3).

Career-wise these ethnic minority teachers are not awarded the contractual benefits or career development permanently employed teachers enjoy. The ethnic minority teachers trained and qualified in England reported that as long as they stayed within inner city and urban areas with a diverse teacher and pupil population, their entry into the profession was relatively easy (Cunningham & Hargreaves, 2007:4; *cf*. 5.3.3). Thus, not only do minority teachers trained overseas perceive racially discriminatory practices used by certain schools when it comes to obtaining employment, but all minority ethnic teachers indicated a fear of direct or indirect racism which they might experience in certain parts of England, where the population is more homogenous. The scope of the study did not allow the researchers to determine the legitimacy of their fears, however. By selecting not to apply for positions in less ethnically diverse areas the ethnic minority teachers consciously exercise self-preservation by excluding themselves from teaching opportunities.

The decisions made by ethnic minority teachers to apply for positions in areas with a high number of minority students only, raise questions about the attitude of the teaching profession as a whole (Cunningham & Hargreaves, 2007:23). In the study, the minority teachers also indicated anxiety over the inflexibility of head teachers in

their interpretation of the national curriculum, regarding both content and delivery, leading to minority pupils feeling alienated as they cannot relate to a curriculum designed by white middle class people for delivery by mainly white middle class teachers (Cunningham & Hargreaves, 2007:24, 26 & 34; *cf*. 3.3.6; 5.3.3). Another concern expressed by ethnic minority teachers, especially black Caribbean teachers, was the unwillingness of white colleagues to research and embrace the cultures of minority pupils. A number of the minority teachers felt that the disregard for cultural differences of pupils was an extension of the disregard for cultural differences within the teacher population (Cunningham & Hargreaves, 2007:29 & 34, *cf*. 3.3.8).

Sections 72 to 76 of the Equality Act 2010 focus on provisions protecting pregnant women against pregnancy and maternity-related inequality. These sections apply to all employed women in public or private capacity[140] and require that a woman's employment contract has to include a maternity equality clause[141]. This maternity equality clause includes protection during maternity leave by the insertion of a maternity equality clause[142] against any situation where maternity leave may lead to adverse effects on pay, such as deferment of bonuses and increases in pay[143]. As with the gender equality rule in the case of employment contracts[144] a maternity equality rule is considered to be included in all occupational pension schemes[145] (UK, 2010a; UK, 2010b; *cf*. 3.3.5.9).

Section 77 of the Equality Act 2010 is a new concept to equality legislation in the UK and also not a concept that emerged in the cases of South Africa (*cf*. 2.2.1.3) and Belgium (*cf*. 3.2.4.1). The intent of section 77 is to ensure greater transparency and dialogue within the workplace regarding pay (UK, 2010a). In this section, it is stipulated that any terms of employment, appointment or service preventing or restricting an employee from disclosing or seeking to disclose particulars about his/her pay to others, or any terms seeking to prevent employees from asking colleagues about their pay with the purpose of establishing if there is a connection

140 UK, 2010a:sec.72; UK, 2010b:46

141 UK, 2010a:sec.73; UK, 2010b:46; cf. 5.3.3

142 UK, 2010a:sec.73

143 UK, 2010a:sec.74; UK, 2010b:46-47

144 UK, 2010a:sec.67

145 UK, 2010a:sec.75; UK, 2010b:47

between differences in pay and a protected characteristic, are unenforceable (UK, 2010a; UK, 2010b:48).

Part 6 of the Equality Act 2010 deals with education and chapter 1 of this part refers particularly to schools. Teachers in England should take cognisance of three sections in this chapter. Section 84 (UK, 2010a) prohibits discrimination, harassment and victimisation at schools, but does not apply to discrimination, harassment or victimisation at schools due to age, marriage or civil partnership (UK, 2010a:sec.84(a)(b)). Section 84 replicates previous legislation, but extends protection because of gender reassignment, pregnancy and maternity in schools (UK, 2010b:51). According to section 85, no discrimination, harassment and/or victimisation on any of the protected characteristics in the admission and treatment of pupils is allowed (UK, 2010a). As in the case of section 84, the effect of provisions found in current legislation is replicated by this section. However, it extends to protection from discrimination of transsexual and pregnant pupils, not provided for in other stipulations of current legislation (UK, 2010b:51).

In order to encourage parents to raise issues of discrimination at a school, section 86 protects pupils from being victimised as a result of a parent or sibling making or supporting a complaint of discrimination. This section provides parents with the security that they need not worry that their child[146] will suffer retaliation as a result of their actions (UK, 2010a; UK 2010b:52). As long as a child acts in good faith, such a child will be protected from victimisation, even where the parent or sibling makes or supports an untrue complaint maliciously (UK, 2010a:sec.86(4); UK, 2010b:52).

The last section which requires discussion is section 149. This section refers to the public sector's equality duty and requires of a public authority to have due regard[147] for:

- the need to eliminate any conduct prohibited by this Act; [148]
- the need to advance equality of opportunity in terms of people sharing relevant protected characteristics and those who do not share them[149]; and

[146] Children are persons under the age of 18 (UK, 2010a:sec.86(5)).

[147] Having due regard means having a conscious awareness of the three aims of the Equality Duty as part of the decision-making process (Government Equalities Office, 2011:4).

[148] UK, 2010a:sec.149(1)(a); UK, 2010b:3; Government Equalities Office, 2011:4

- the need to foster sound relationships[150] between people sharing relevant protected characteristics and people who do not share them[151] (UK, 2010a; UK, 2010b; Government Equalities Office, 2011).

According to schedule 19, schools in England (UK, 2010a:schedule 19:part 1) and Wales (UK, 2010a:Schedule 19:part 2) are considered public authorities. Ttherefore, teachers in England/Wales need to have due regard for the above-mentioned in the execution of their duties, as they exercise public functions (UK, 2010a:sec.149(2)). The practical effect of this provision is that public bodies, and their employees, have to consider how their policies, programmes and service delivery affect people with protected characteristics (UK, 2010b:3).

Section 3 of said Act postulates that having due regard for the need to advance equal opportunities, refers to being aware of the need to remove or minimise disadvantages suffered by certain groups of people (UK, 2010a:sec.149(3)(a)), taking steps to meet the differencing needs of certain groups of people (UK, 2010a:sec.149(3)(b)) and encouraging people who share a relevant protected characteristic to participate in public life or other activities in which participation by such people are disproportionately low (UK, 2010a:sec.149(3)(c)). Furthermore, section 6 recognises that in order to comply with the duties imposed by the Act, it may be necessary to treat some people more favourably than others, but stipulates that this does not permit conduct that would otherwise be prohibited by or under said Act (UK, 2010a:sec.149(6)). This means that since the equality duty clearly recognises that people's needs differ, when making decisions regarding policies and services, public bodies must take into account how different needs can be met (Government Equalities Office, 2011:4 & 9). To a certain extent this mirrors the concept of fair discrimination found in the SA Constitution (*cf*. 2.2.1.3; 5.3.3).

3.3.4.2 Freedom of thought, conscience and religion

As in South Africa (*cf*. 2.2.1.11) and Belgium (*cf*. 3.2.4.2), the right to freedom of thought, religion and conscience is protected (UK, 1998a:schedule 1(art.9.1)). The right to hold a chosen belief, conscience or religion is considered absolute, as the

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[149] UK, 2010a:sec.149(1)(b); UK, 2010b:3; Government Equalities Office, 2011:4

[150] Fostering good relations requires tackling prejudice as well as promoting an understanding between people who share protected characteristics and others (Government Equalities Office, 2011:4).

[151] UK, 2010a:sec.149(1)(c); UK, 2010b:3; Government Equalities Office, 2011:4

State can never interfere with your views. Yet, article 9.1 also provides for interference by the State concerning the right to manifest thoughts and the position of conscience or religion, (UK, 1998a:schedule 1). As in the case of article 8, interferences by the state can only be justified if they meet the very specific requirements mentioned above (UK, 1998a:sec.13, schedule 1(art.9.2); DCA, 2006:22; *cf*. 3.3.4; 5.5.10).

A recent example of such balancing of article 8 and 9 rights is reflected in the court case *Azmi v Kirklees Metropolitan Council* [2007] IRLR 484 (hereafter referred to as *Azmi*). The matter of contention was whether a teaching assistant employed as a bi-lingual support worker is entitled to wear full face veils while working with pupils. The court held that an LA, who suspended a Muslim teaching assistant for refusing to remove her veil when working directly with children, had not discriminated against her and did not breach UK or EU law. Similarly, the wearing of full-length loose jilbabs by Muslim teachers may lead to questions asked about the health and safety issues they create (Ruff, 2008:83), but no evidence of cases in this regard could be found (*cf*. 5.5.10).

Within the education environment, the right to freedom of religion has an implication when it comes to the choices parents have regarding their children's education (*cf*. 3.3.4.4; 5.5.10) and the actions of employers and schools to accommodate these rights, especially when it comes to issues such as time off for religious activities and holidays and the wearing of religious garb (DCA, 2006:23).

The Human Rights Act 1998, as well as article 9 of the ECHR provide for freedom of thought, conscience and religion, including the freedom to manifest one's religion or belief in worship, teaching, practice and observance. According to UK regulations, it is not lawful to discriminate against job applicants or employees, where being of a particular religion or belief is not a genuine and determining occupational requirement (Ruff, 2008:83). However, this freedom is subject to limitations, including the protection of the rights of others. This implies that even if statutory provisions in UK law do breach article 9.1, the limitations in article 9.2 may protect the position of schools with a religious character, allowing them to give preference to teachers who are sympathetic to the religious denomination of such schools (UK, 1998a:schedule 1; Ruff, 2008:83; *cf*. 5.5.10).

Controversial topics such as religious education (UK, 1996a:sec.375; UK, 1998b:sec.69 & schedule 19; UK, 2002:sec.80(1)(a) & sec.101(1)(a)), and sex and

relationship education are addressed by secondary schools (UK, 2002:sec.80(1)(c)(d) & sec.101(1)(b)). According to the Employment Equality (Religion of Belief) Regulations 2003, implementing the EU legislation, discrimination against people at work on the basis of their religion or belief is unlawful. This would mean that teachers who do not wish to teach aspects of sex education with which they disagree, such as sex before marriage or homosexuality, would be protected from disciplinary actions. However, it is lawful for religious schools to give preference to teachers who practise the school's faith, according to provisions found in the School Standards and Framework Act, 1998 as agreed to by the EU (UK, 1998b; Ruff, 2008:83; *cf*. 5.5.10).

When a maintained school is non-denominational, or does not have a religious character, teachers at that school have a legal right to select not to teach religious education based on their religious opinions (UK, 1998b:sec.59(3)). Furthermore, teachers may not be disqualified from employment due to their religious opinions, attendance or non-attendance at religious worship or their refusal to provide religious education (UK, 1998b:sec.59(4); Ruff, 2008:82). However, teachers at a school with a religious character are not protected in the same way, despite legislation on religious discrimination (*cf*. 5.5.10).

Teachers at a voluntary aided school may not be disqualified for a position on the grounds of religious convictions[152], but preference regarding appointment, remuneration and promotion may be given to teachers who share the religious opinion of the school, practise the religion and are willing to teach religious education[153]. Foundation and voluntary controlled schools with a religious character may not require of teachers to give religious education[154] or benefit any teachers due to their religious convictions[155]. However, a teacher appointed, or reserved, to specifically teach religious education may be dismissed without the consent of the LA should such a teacher fail to provide efficient and suitable religious education[156] (UK, 1998b; *cf*. 5.5.10).

[152] UK, 1998b:sec.60(6)

[153] UK, 1998b:sec. 60(5)

[154] UK, 1998b:sec 60(1); sec.59(3)

[155] UK, 1998b:sec.60(1); sec.59(4)

[156] UK, 1998b:sec.59(6)(7)

Although it is normally unlawful to discriminate against homosexual applicants or employees on the grounds of sexual orientation, as a consequence of EU legislation, there is an important exception in UK regulations applicable to foundation and voluntary aided schools, as well as academies, with a religious character. According to the afore-mentioned exemption, where employment is for the purposes of an organised religion, and employers can argue a genuine and determining occupational requirement is sexual orientation, in order to comply with the doctrines of the religion or to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers, the employers are free to act in accord with their beliefs (UK, 1998b:sec.60(5); Ruff, 2008:83-84; The Archbishops' Council, 2010; *cf*. 5.5.10).

According to Ruff (2008:84), these provisions were thought possibly to be in breach of the Human Rights Act (UK, 1998a), as well as articles 8[157]and article 14[158] of the ECHR. The matter has been tested in court numerous times. The High Court, in *R (ota) Amicus – MSF Section and 6 Others v Secretary of State for Trade and Industry*; *Christian Actions Research Education; Evangelical Alliance; Christian Schools Alliance (Interveners)* [2004] EWHC 860 (Admin)[159] held that this exception was compatible with the EC Council Directive 2000/78 and with the ECHR 1950 articles 8 and 14 and can be considered real occupational requirements (Ruff, 2008:84).

Section 70 of the School Standards and Framework Act requires of pupils at maintained schools to attend daily collective worship as arranged by the LA, school governing body and head teacher (UK, 1998b) and that the collective worship will be wholly or mainly of a broadly Christian character (UK, 1998b:schedule 20 item 3(2)) without being distinctive of any particular Christian denomination (UK, 1998b:schedule 20 item (3)(3)). However, parents have the right to request that their children be excused from such worship, as well as from religious education (UK, 1998b:sec.71; *cf*. 3.3.4.4; 5.5.10).

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[157]Article 8 provides for the right to respect for private and family life (UK, 1998a; Ruff, 2008:84).

[158]Article 14 prohibits discrimination in the exercise of conventional rights (UK, 1998a; Ruff, 2008:84).

[159] The case refers to six separate claims by trade unions before the court seeking the annulment of certain provisions of the Employment Equality (Sexual Orientation) Regulations 2003. The Regulations deal with discrimination on the grounds of sexual orientation and the contended provisions allow for exceptions for occupational requirements including exceptions in relation to employment for purposes of organised religion.

3.3.4.3 Children's rights

Children's rights are not mentioned in the HRA (UK, 1998a). Feikert (2007:167) postulates that the UK has a large number of laws protecting the rights of children, both in areas where children need their rights to be protected, such as in the criminal justice system, and in areas where there is an entitlement, such as education. Some of the laws protecting children were specifically promulgated to protect children's rights, such as the Children's Act 1989, while other laws contain a few sections pertaining to children (Feikert, 2007:167). Furthermore, the UK has undersigned numerous UN and EU treaties regarding the rights of the child (Feikert, 2007:168; *cf*. 5.3.1).

3.3.4.4 The right to education

Education in publically funded primary and secondary schools in England/Wales is free (Eurydice, 2010a:3; Eurydice, 20120b:3; *cf*. 5.2; 5.2.3). However, it is important to take note of the fact that the right to education, or basic education in the case of South Africa (*cf*. 2.2.1.2), is not considered an absolute right to learn whatever you want, wherever you want (DCA, 2006:27), in any one of the three countries included in this study (*cf*. 2.2.1.2; 3.2.4.4; 5.3.2. The UK undersigned a number of conventions which provides for the right to education (Feikert, 2007:173). Furthermore, the right to education can be found in Protocol 1, article 2 of the HRA (UK, 1998a:schedule 2). According to this article, no person shall be denied the right to education. In the case of the UK, the government has made a special restriction to the ECHR in that the State has the responsibility to provide efficient education within public spending limits (DCA, 2006:27; *cf*. 5.3.2).

The negative formulation of this right is important to note. The formulation leaves one to ponder the obligation of the State in the provision of education, as stated by Lord Bingham of Cornhill in *A v Head Teacher and Governors of Lord Grey School* (2006) 2 WLR 690. The court ruled that the right to education was imposed on the State and not on a particular school. Thus it did not create a right to be educated at a specific school or in a specific manner (DCA, 2006:27; Liberty, 2008). The ruling in this instance meant that an expelled pupil was able to have access to efficient education at another school, meaning there would be no breach of the ECHR right (DCA, 2006:27). In this case, Lord Bingham points out that the negative formulation of the right to education implies that there is no obligation on the State to establish education at their own expense, or to subsidise education of any particular type or at

any particular level. However, one has to take into consideration that at the signing of the Protocol, the member states had, and still do have a general, official education system. The aim of this provision is, therefore, to guarantee persons the right to make use of the education system in place (DCA, 2006:27; *cf*. 5.3.2).

The court's ruling implies that despite the negative formulation, there is a right and therefore an obligation placed on the State (Liberty, 2008). The Education Act 1996 also places a duty on the Secretary of State to promote the education of the people of England/Wales (UK, 1996a:sec.10; Feikert, 2007:173). The right to education requires access to education, as well as the right to obtain official recognition of studies completed. Additionally, the nature of the right to education as formulated in the first sentence of the Protocol calls for State regulation, which may vary according to the needs and resources of the community and individuals (para 5). Neither South Africa (*cf*. 2.2.1.2) nor Belgium (*cf*. 3.2.4.4) has a negative formulation of the right to basic education (*cf*. 2.2.1.2) or education (*cf*. 3.2.4.4). In both instances there is a clear duty placed on the State to ensure access to education (*cf*. 2.2.1.2; 3.2.3; 3.2.4.4; 5.3.2).

In England/Wales compulsory education starts for children when they are five years old and continues until the end of the year the child turns sixteen[160] and is free[161]. However, the duty for ensuring that children obtain an education falls upon both the LAs, who have to provide the schools, and the parents of a child falling within the compulsory education age range, who have to ensure that their children attend school[162]. Parents who fail to ensure that their children are enrolled and attend school, commit an offence[163] and may be fined for failing to do so[164] (UK, 1996a; UK, 1996a; Feikert, 2007:172).

There is also an obligation on the State to respect the right of parents to ensure that any functions the State assumes in relation to education and to teaching, ensure conformity with the religious and philosophical convictions of the parents (UK,1998a:schedule 2(art.2)), which is compatible with the Convention for the

[160] UK, 1996a:sec.8(2)(a)(b); Feikert, 2007:172

[161]UK, 1996a:sec.451

[162] UK, 1996a:sec.7

[163] UK, 1996a:sec.443(1); UK, 1996a:sec.444(1)

[164] UK, 1996a:sec.443(4); UK, 1996a:sec.444(8); Feikert, 2007:172

Protection of Human Rights and Fundamental Freedoms undersigned by the UK (Feikert, 2007:173) and reiterated in the Education Act 1996 (UK, 1996a:sec.9). According to the DCA, education can be defined as a complete process wherein adults try to transmit their beliefs, culture and other values to children, while teaching is seen as the transmission of knowledge and intellectual development. This means the right to education is not necessarily confined to education at school (DCA, 2006:27). Therefore the Education Act 1996 stipulates that education of children should be in accordance with the wishes of the parent when compatible with the provisions of efficient instruction and training, and avoids unnecessary public expenditure (Feikert, 2007:173; *cf*. 5.3.2).

It is clear that parents have the right to ensure that their religious and philosophical beliefs are respected (UK 1998b:sec.71). This requires of authorities to ensure that balance is achieved and that minority views are treated fairly and properly. However, parents cannot stop schools from teaching topics deemed reasonable for a school to teach, such as sex education or religious education, as long as it is not trying to indoctrinate the pupils, but they have the right to remove their children from such classes (DCA, 2006:27; Feikert, 2007:173; *cf*. 5.5.10).

According to the DCA (2006:27), schools may punish pupils, provided that these penalties do not amount to ill-treatment, as described in article 3 (*cf*. 3.3.4.5). However, the onus lies with the school imposing the penalty to show that such penalty was necessary and proportionate to the infringement (*cf*. 5.3.2).

3.3.4.5 Prohibition of torture

Article 3 of the ECHR (UK, 1998a:schedule 1[165]) prohibits torture or inhumane or degrading punishment or treatment. According to the DCA (2006:14), this is an absolute right and includes certain forms of corporal punishment. Teachers, or any other member of staff, have no right to use any form of corporal punishment, as it cannot be justified in any circumstances (UK, 1996a:sec.548(1); UK, 1998b:sec.131; Feikert, 2007:173). A positive obligation rests on the state to prevent contraventions of article 3 (UK, 1998a:sec.6) by one person against another, particularly in the case of children and other vulnerable persons. Furthermore, a public authority, such as a school or LA, can be held responsible for the actions of their employees even if they are unaware of such acts or do not approve thereof (DCA, 2006:15; *cf*. 5.3.4; 5.3.5).

[165] Schedule 1 of the HRA contains the rights and freedoms as found in the ECHR (UK, 1998a).

The afore-mentioned principle has been reiterated in *Z v United Kingdom* (2001) 34 EHRR 97 (hereafter referred to as *Z v UK*). The case heard in the European Court of Human rights originated in an application against the United Kingdom of Great Britain and Northern Ireland by the European Commission of Human Rights. The applicants in the case, five children between the ages of 8 and 13, alleged that the LA failed to take precautionary measures to protect them from the severe neglect and abuse due to the ill-treatment by their parents even though this was known to the authorities. The court ruled in favour of the applicants and awarded pecuniary damages to be paid by the UK Government. Teachers in England/Wales need to take cognisance of this court ruling as it places a responsibility on them, not only to refrain from using corporal punishment, but also to ensure that they report any possible cases of neglect and abuse to the relevant authorities (*cf*. 3.3.4.3; 5.3.1).

Discipline at English and Welsh schools is mainly achieved through the use of school detention and sanctioning under common law, with the ultimate sanction being exclusion from the school, either temporarily or permanently, for repeated bad behaviour. Parental consent is typically required for sanctioning (Feikert, 2007:174).However, detention outside school hours does not require parental consent (UK, 1996a:sec.550(1)) if the head teacher has insured that parents are aware that detention is a possible punishment measure (UK, 1996a:sec.550(3)(a)), the person imposing the detention is authorised to do so (UK, 1996a:sec.550(3)(b)), and the detention is reasonable (UK, 1996a:sec.(3)(c); *cf*. 3.3.4.4; 5.3.2).

The Education Act 2011 amends many provisions from previous Education Acts regarding discipline and expands the authority of teachers in order to discipline pupils with the aim to provide teachers with the powers needed to establish safe and ordered places of teaching and learning (Paton, 2011; *cf*. 1.1). One such an amendment deals with the matter of parental consent for detention. In the Education Act 1996 parental consent was originally required before a pupil could sit in detention. In the Education Act 2006 this was changed and parents had to be given 24 hours written notice prior to the detention (UK, 2006a:sec.92). The Education Act 2011 now removes this requirement, allowing teachers in England to issue same-day detentions (UK, 2011a:sec.5; Paton, 2011). By issuing same day detentions instead of providing 24 hours warning, an attempt is made to establish a direct link between bad behaviour and the consequent punishment (Paton, 2011). The requirement for

24 hours written notice stays in place for teachers in Wales (UK, 2011a:sec.5; UK, 2011b).

3.3.4.6 Right to privacy

In the UK, no specific statutory stipulation on the right to privacy was found. However, aspects protected by the right to privacy in the SA (*cf*. 2.2.1.6) and Belgian (*cf*. 3.2.4.3) Constitutions were included in Article 8 of the ECHR (UK, 1998a:schedule 1). Article 8 includes respect concerning private life and correspondence[166] (*cf*. 5.3.6). Article 8 also protects aspects found in the right to freedom of expression in section 16 of the SA Constitution, such as the freedom to choose how to dress and look, among others (*cf*. 3.3.4.7).

Furthermore, this right also includes the right to have information about oneself, such as official records, kept private and confidential (DCA, 2006:21). Issues that may be raised are the employee's right to privacy, including the monitoring of e-mails and telephone calls, and the imposition of unreasonable mandatory dress codes (*cf*. 3.4.4.2) or drug testing at work (DCA, 2006:22).

Public authorities may interfere with article 8 rights, but a clear legal basis must be shown. Interference must be with the aim to protect, albeit national security, public safety, prevention of crime, protection of health or morals or protection of the rights and freedoms of others (UK, 1998a:schedule 1(art.8.2)). Furthermore it must have been necessary to interfere with the right. The interference must not just be reasonable. It has to be proportionate, only going as far as required to meet the aim. Weighing and balancing of rights in this instance is often required (DCA, 2006:22; *cf*. 5.3.6).

Amendments made to the Education Act 1996 by the Education Act 2011, allow teachers leeway regarding searches and seizures of pupils. Based on a 2010 Education White paper,[167] the Education Act 2011 includes measures to increase teachers' authority in order to warrant good pupil behaviour. The Education Act 2011 stipulates that subsection 4A is to be added to section 550ZA(5) of the Education Act

[166] Correspondence in this instance is widely defined and can include communication by letter, email, fax or telephone (DCA, 2006;22)

[167] The importance of teaching (CM-7980)

1996[168], which includes in the definition of 'offence' any behaviour by younger pupils that would be an offence if they had reached the age of criminal responsibility[169]. Furthermore, according to said Act, teachers have a general power to search pupils for any items banned according to the school's rules (UK, 2011a; UK, 2011b).

According to section 550ZA of the Education Act 1996, the head teacher or an authorised staff member may, according to law, search pupils or their possessions if there is reasonable suspicion that the pupils are in possession of weapons, alcohol, illegal drugs, stolen property and/or other prohibited items as specified by law. Section 2 of the Education Act 2011 extends the afore-mentioned list by amending section 550ZA(3) of the Education Act 1996 (UK, 2011a). A paragraph is added to section 2 allowing that any item members of staff reasonably suspect has been, or may be, used to commit an offence, cause personal injury to any person or cause damage to the property of any person, including the pupil searched, be added to the list (UK, 2001a:sec.2(2)(a); UK, 2011b; *cf*. 5.3.6).

Apart from the above-mentioned, subsection 2(b) of the Education Act 2011 also allows for any other items which school rules identify as an item for which a search can be undertaken to be added to the prohibited item list (UK, 2011a:sec.2(2)(c); UK, 2011b). The afore-mentioned legal aspects imply that teachers are now able to search pupils without consent for any banned items believed to be used by ill-disciplined pupils to disrupt lessons. Moreover, teachers are allowed to frisk pupils' clothing or search their lockers or bags for electronic gadgets such as mobile phones, iPods and MP3 players (Paton, 2011). According to Paton (2011), the allowance for teachers to frisk pupils arises from a series of incidents where pupils have taken photos and videos of teachers and then uploaded compromising images onto the Internet (*cf*. 5.3.6).

Staff members of schools may use reasonable force to restrain pupils in circumstances where it is deemed necessary, such as when the pupil is about to commit an offence, cause personal injury or damage property, as well as to prevent a pupil from extremely disruptive behaviour (UK, 1996a:sec.550; Feikert, 2007:174). Section 550ZB (UK, 1996a) allows for reasonable force to be used by teachers when searching for items on prohibited items list. However, the use of reasonable force

[168] UK, 2011a:sec.2(2)(c)

[169]UK, 2011a:sec.2(2)(c); UK, 2011b

does not extend to items the school rules identify as items for which a search may be made (UK, 2011a:sec.3(a); UK, 2011b).

With regard to searches, the Education Act 2011 amends section 550ZB(6) and (7)[170] by enabling searches to be carried out by a member of staff who is of the opposite gender to the pupil being searched and searches of a pupil or his/her possessions to be carried out without another member of staff being present[171]. However, section 2(3)(c)[172] inserts subsection (6A) and (7A) to the Education Act 1996, which stipulates the conditions above-mentioned searches must meet. The conditions in subsection (6A) and (7A) require of the staff member conducting the search to believe that if the search were not conducted immediately, there would be a risk of serious harm being caused to a person and that it would not be reasonably practicable for the search to be carried out by a member of staff of the same gender as the pupil or to have another staff member witness the search[173] (*cf*. 5.3.6). Section 550ZC (UK, 1996a) gives the power to seize items resulting from a search conducted under section 550ZA. The section is amended in that items found which are on the prohibited list, must be handed over to the police, returned to the owner, retained or disposed of (UK, 2011a:sec.4; UK, 2011b). New subsections provide staff members with specific powers when electronic devices are seized during searches (UK, 2011a:sec.4(b)(6D)–(6G)). According to the amendments, the person who has seized the item may:

- if he/she believes there is good reason to do so, examine any data or files (UK, 2011a:sec.4(b)(6E); UK, 2011b); and
- should the person decide to return the seized item to its owner, retain it or dispose of it and believe there is good reason to do so, allow data or files from the device to be erased (UK, 2011a:sec.4(b)(F); UK, 2011b).

Furthermore, section 2(5)[174] amends section 550ZD[175] in order to safeguard staff members conducting searches who lawfully seize, retain, dispose or erase items

[170] UK, 1996a

[171] UK, 2011a:sec.2(3)(b); UK, 2011b

[172] UK, 2011a

[173] UK, 2011a; UK, 2011b

[174] UK, 2011a; UK, 2011b

under the provisions discussed above. According to the subsection the person conducting the search shall not be liable for the seizure, loss or disposal, or any damage arising (UK, 1996a; UK, 2011a; UK, 2011b; *cf*. 5.3.6).

3.3.4.7 Freedom of expression

Freedom of expression includes the right to hold an opinion and to receive and impart information, without interference by a public authority (UK, 1998a:schedule 1 item10.1)). Article 10.2 stipulates that the exercise of these freedoms may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and needed in a democratic society, as such a freedom carries with it duties and responsibilities (UK, 1998a:schedule 1; *cf*. 5.3.7).

Academic freedom within the right to freedom of expression

Teachers in the school sector in England/Wales have no express right to academic freedom as individual teachers (Ruff, 2008:81). In the maintained sector, teachers may express their views within certain constraints (UK, 1998a:schedule 1(art.10.1). The Education Reform Act 1988 has increased the levels of flexibility available to schools and teachers (Desurmont, *et al*., 2008:11) providing teachers with more freedom.

The National Curriculum provides an outline of core knowledge, while teachers are required to develop exciting and stimulating lessons accommodating all types of pupils (DfE, 2013b). Although schools and teachers cannot change the compulsory minimum curriculum, they do have the ability to decide which subjects might be added to the minimum curriculum, which subjects are taught separately or combined with other subjects, how the curriculum is distributed across the key stage, and the time allocated to each subject (Desurmont *et al*., 2008:19; Eurydice, 2010a:5; Eurydice, 2010b:4).There are no regulations on teaching methods (Desurmont *et al*., 2008:26; Eurydice, 2010a:5; Eurydice, 2010b:4) and no specific constraints on choice of teaching materials (Desurmont *et al*., 2008:2; Eurydice, 2010a:5; Eurydice, 2010b:48). Wilson and Stewart (2014) are of the opinion that teachers have very limited freedom and are instructed by government not only what to teach, but also how to teach it (*cf*. 5.3.7).

[175] UK, 1996a

At the same time, the effectiveness of teaching and learning, as well as the adequacy and suitability of learning resources and how well these promote learning and meet course requirements while addressing the full range of pupil needs, are evaluated by school inspectors (*cf*. 3.3.8; Desurmont *et al*., 2008:26 & 28). Classroom teachers are supported through extensive non-statutory guidance in the implementation of the curriculum (Eurydice, 2010a:5; Eurydice, 2010b:4; *cf*. 5.3.7).

It is required that the school curriculum should be balanced and broadly based, while LAs, the governing bodies and head teachers are required to forbid any promotion of biased political views in any subject (UK, 1996a:sec.406(1)(b)), while taking reasonable steps to ensure that when political matters have to be taught, this is done in a balanced way with presentation of all opposing views (UK, 1996a:sec.407; Ruff, 2008:81).

3.3.4.8 Freedom of assembly and association

According to article 11.1 (UK, 1998a:schedule 1), everyone has the right to peaceful assembly and the freedom to associate with others. This right includes the right to form and join trade unions for the protection of an individual's interests. However, it also includes the right not to join an association or trade union (DCA, 2006:24). Article 11.2 (UK, 1998a:schedule 1) once again contains the possibility of limitations to this right referring to lawful restrictions necessary in a democratic society in the interest of national security or public safety, in order to prevent disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (*cf*. 5.3.8).

3.3.5 Legislation regulating the legal status of teachers

Teachers in England/Wales are not civil servants (Eurydice, 2010a:8; Eurydice, 2010b:7). The rights and duties of teachers in England/Wales originate from legislation and case law and differ according to their employment. Teachers are either employed in the maintained sector, which refers to publically funded schools, or by independent schools, which refers to private schools where parents pay school fees (Ruff, 2008:75; Eurydice, 2010a:8; Eurydice, 2010b:7). Since 1987, terms and conditions of teacher employment have been regulated by statute, while teachers' employment rights are also directed by their contracts of employment meaning that the ordinary rules of English contract and employment law also apply (Ruff, 2008:76; *cf*. 5.3.8; 5.4).

The Employment Rights Act 1996 stipulates that all employees should receive a written statement containing the particulars of the employment [176] within two months of starting in the position[177]. This written statement may be in the form of a contract of employment or a letter of appointment[178] and should provide detailed particulars regarding the employment, including, among others, remuneration rates and frequency, terms and conditions regarding working hours, terms and conditions regarding incapacity, holidays and pension, relevant collective agreements and disciplinary procedures[179] (UK, 1996b; *cf*. 5.4.3).

A controversy arose with the introduction of statutory terms and conditions of teacher employment. Instead of the traditional idea of employment contracts based on negotiation and agreement between trade unions and employers, the central government imposed, after consultation, terms and conditions of employment on a large sector of the public workforce (Ruff, 2008:76;cf*. 5.4*). According to Ruff (2008:76), the Education Act 2002 contains the relevant primary statutory provisions and is supplemented by a document called the Conditions of Service for School Teachers in England/Wales. Annually, the School Teachers' Review Body (STRB), as established by the School Teachers Pay and Conditions Act of 1991, receives submissions from teachers' organisations, LAs, organisations of governing bodies and the Secretary of State regarding teachers' pay levels and structure, conditions of employment relating to professional duties and/or working hours (UK, 2002:sec.121; Ruff, 2006:76). The recommendations of the STRB are implemented by the Secretary of State by way of statutory orders (UK, 2002:sec.122(1)) and the Conditions of Service for School Teachers in England/Wales. The employment contract of a teacher may contain nothing that is prohibited by, or inconsistent with, afore-mentioned orders (UK, 2002:sec.122(2)(c); Ruff, 2008:76 *cf*. 5.4).

The conditions of service of teachers, including head teachers, employed at schools and who are remunerated on a full-time or part-time basis (NEOST, 2000:3), are regulated by the Conditions of Service for School Teachers in England/Wales (NEOST, 2000:3) which was first published in 1979 and reflects the outcomes of

[176] UK, 1996b:sec.1(1)

[177] UK, 1996b:sec.1(2)

[178] UK, 1996b:sec.7A(1)(a)

[179] UK, 1996b:sec.1(4) and sec.3

collective bargaining agreements over many years (Ruff, 2008:76). It remains the foundation of many important terms and conditions for teachers in the maintained sector (Ruff, 2008:76), as it takes into consideration any developments in the conditions of employments nationally, as well as in the legislative framework governing the employment of school teachers (NEOST, 2000:1). Only some of the stipulations found in the Conditions of Service for School Teachers in England/Wales are relevant to teachers employed on a day to day or other short notice basis (NEOST, 2000:3).

According to Desurmont *et al*. (2008:13), teachers' pay and career structures have undergone a period of reform, with the goal of being able to recruit, retain and motivate high quality teachers by rewarding good performance and improving career progression opportunities, through the signing of a national agreement on workforce reform called the Raising Standards and Tackling Workload, in 2003 by school workforce unions, local government employers and the government. In the agreement it is acknowledged that the pressure on schools to raise standards has led to serious problems regarding teacher workload, which in turn had a marked effect on recruitment, retention and teacher morale (Desurmont *et al*., 2008:56). The agreement includes:

- routine delegation of administrative tasks;
- the guaranteed professional time for planning, preparation and assessment;
- introduction of new limits on covering for absent colleagues; and
- the development of new roles in schools to support teachers (Desurmont et al., 2008:13 & 56).

The Acts regulating the employment of teachers do not only deal with employment, but rather with a number of different aspects. These Acts refer to employment rights in general, not just that of teachers or education matters including employment of teachers.

3.3.5.1 Qualified teacher status (QTS)

Teachers can be classified as either qualified or unqualified in specified circumstances. Qualified teachers are persons who satisfy requirements specified in regulations (UK, 2002:sec.132(1)). Unqualified teachers include overseas trained teachers, instructors or persons following the Graduate or Registered Teachers Teacher programme routes (Ruff, 2008:77-78). QTS is explained in legislation and

the Secretary of State, or the National Assembly for Wales, has the authority to require that specified activities may only be carried out by a qualified teacher (UK, 2002:sec.133(1); *cf*. 5.4.1).

All newly trained teachers in the UK have to complete an induction period of no less than three school terms and pass an assessment in order to establish whether the teacher has completed the induction period satisfactorily (UK, 1998c:sec.19). A newly qualified teacher cannot be employed as a teacher within the public school system if a statutory induction period has not been completed (DfE, 2013d:7). Teachers intending to work only in the independent sector, including academies, do not have to complete the induction period. The statutory induction is considered a bridge between initial teacher training and a teaching career (DfE, 2013d:6).

Teachers cannot start their induction period until they have received QTS (DfE, 2013d:10) and although there is no set time limit regulating the start and end of an induction period, newly qualified teachers are encouraged to start as soon as possible (DfE, 2013d:7). The statutory induction period is one school year. Thus a newly qualified teacher is required to serve the full time equivalent of a school year, thus three school terms. Newly qualified teachers can either be employed full time, part time or work as supply teachers, but the minimum period counting towards the completion of the induction period is a school term. This is to ensure that the newly qualified teachers work in a stable environment in which they receive a personalised, imported and pre-planned induction programme. Furthermore, the stability of at least one semester allows for a fair and reasonable assessment of performance (DfE, 2013d:15).

During induction, it is important that the post is suitable for induction (DfE, 2013d:11) and the teacher has to have a reduced timetable of no more than 90% of the time table of other teachers in the school (DfE, 2013d:12) and experience monitoring, support and guidance from a designated tutor (DfE, 2013d:16). During this time, the designated tutor has to observe the teaching of the newly trained teacher at regular intervals and provide prompt and constructive feedback, while the tutor should review the new teacher's progress frequently in order to avoid any surprises (DfE, 2013d:17).

Newly qualified teachers can only serve in one induction period and should they fail the assessment of performance at the end, they will not be allowed to repeat the induction (DfE, 2013e:7 *cf*. 5.4.1). Appealing against the decision is possible.

Amendments to the Education Act 1996 by the Education Act 2011 transfers existing provisions on induction as far as these relate to England from the General Teaching Council for England to the Secretary of State (UK, 2011a:sec.9; UK, 2011b). Amendments to the Teaching and Higher Education Act 1998 by the Education Act 2011 allows for teachers aggrieved by an induction decision to appeal as well as allow a newly trained teacher to serve more than one induction period under special circumstances (UK, 2011a:sec.9; UK, 2011b; *cf*.3.3.5.4) Teachers who failed induction do not lose QTS, but may not be legally employed as teachers in the public school system, while their names will be included on the list of people who have failed to complete induction satisfactorily (DfE, 2013d:7; *cf*. 5.4.1).

In Wales, teachers with qualified status are also required to hold full registration with the General Teaching Council for Wales (GTCW) as stipulated in the Education Act 2002 (GTCW, 2013c; *cf*. 3.3.6). Registration is required for every qualified full time, part time and supply teacher in Wales. Until 31 March 2012 the same requirement applied to teachers in England, but the General Teaching Council for England was replaced by The Teaching Agency (TTA) from the 1st of April 2012 (UK, 2011a:sec.7; UK, 2011b; ATL, 2012:3; *cf*. 3.3.*6*). The TTA forms part of the DfE and has three key responsibilities:

- the supply and retention[180] of the workforce;
- quality of the workforce; and
- regulation of teacher conduct (ATL, 2012:3; DfE, 2012f:16; *cf*. 3.3.5.5 & 3.3.6).

No indication could be found that teachers in England are currently required to register with the Agency. The replacement of the General Teaching Council for England with the TTA has been a controversial decision by the government, leaving many unanswered questions (GTCE, 2012; *cf*. 3.3.8).

i) Supply teachers

Newly trained teachers in England cannot rely on short term[181] supply placements to count towards their induction period, as the experience, support and assessment

[180] This responsibility is a shared one with others (ALT, 2012:3; DfE, 2012f:16), although no indication who the other comprises are could be found.

[181] Short term supply work refers to periods of less than one term (ATL, 2012:8).

gained does not suffice to demonstrate that they have met the relevant standards. Supply placements of a term, however, do qualify the newly trained teacher to start the induction period (*cf*. 5.4.1). This must be agreed to with the head teacher in order to ensure that an induction will be in place at the start of employment. Qualified teachers who do not complete their induction periods may do short term supply teaching for five years from the time they would have qualified for QTS with no discretion to extend the period (ATL, 2012:8; DfE, 2013e:11).

In Wales, supply teachers may complete their induction period while doing short term supply work. It is required that a newly trained teacher doing short term supply work should comply with the same requirements as a part time or full time teacher with a temporary contract, namely 380 school sessions. As in the case of England, there is no flexibility regarding the requirements of induction and no school or individual may request a shorter period. Unlike England, teachers in Wales have no time limitation to complete their induction period. After September 2012, the five year limitation was lifted (DfES, 2013:5 *cf*. 5.4.1).

3.3.5.2 Appointment

Teachers teaching at voluntary aided schools, foundation schools and foundation special schools are employed by the school governing bodies (UK, 2002:sec.36(1) & (2); UK, 1998b:sec.55). The contracts of teachers employed by governing bodies incorporate the conditions of service as stipulated in the Conditions of Service for School Teachers in England/Wales (UK, 2002:1). LAs are entitled to advise such governing bodies on matters relating to governing body functions regarding appointments, engagements and dismissals (UK, 2002:shedule 2; Ruff, 2008:77) to the extent agreed to between the parties in a relevant agreement[182] (Wales, 2006:reg.13; UK, 2009:reg.26(1)).

Teachers are employed by LAs to work in community, voluntary controlled or community special schools (UK, 2002:sec.35(1) & (2); UK, 1998b:sec.54). Governing bodies are entitled to attend and offer advice at proceedings relating to the selection of teachers of maintained schools, only to the extent that the LA allows (UK, 2002:schedule 2). Furthermore, teachers can be transferred from one school to another in the area by the LAs (Ruff, 2008:77). Teachers employed permanently can

[182] A relevant agreement is defined as a written agreement between the LA and school governing body which determines the extent to which advice may be provided (UK, 2009:reg.26(2)).

either be employed in a full time or a part-time capacity under the statutory terms and conditions by LAs and governing bodies.

While the governing bodies of these schools are not the teachers' employers, they have specific statutory powers regarding appointment, suspension, discipline and dismissal. However, the precise scope of their powers can be unclear as illustrated by *Governing Body of Victoria Road Primary School and Kent County Council v Green* [2004] 2 All ER 763(CA) (hereafter referred to as *Green*), *Murphy Slough Borough Council and Another* [2005] EWCA Civ 122 (hereafter referred to as Murphy) and *Northamptonshire County Council and Abington Vale Middle School v Gilkes* (unreported) UKEAT/0579/05/CK (hereafter referred to as *Gilkes*; *cf*. 5.4.1).

Each of the three cases were dealt with whether the LA or the governing body had to act as respondents to employment claims. In each instance the schools were community schools, which meant that the contracts of employment of the respective teachers were with the LA. However, in each case reference was made to the extensive employment powers of the governing bodies of school and that schools may be considered the respondents in cases where the actions of the schools led to the claim. In *Green*, the court held that the governing body must answer to the claim of unfair dismissal as the actions taken as part of employment powers are the actions which lead to the claim. In *Murphy*, the court once again held that the governing body was the proper respondent in the disability discrimination case. In *Gilkes*, the school carried the liability for the unfair dismissal claim as they did not follow the protocol of the LA regarding the movement of teachers in an education reorganisation (*cf*. 5.4.1).

i) Supply teachers

The Education Act 2002 does envisage the possibility of teachers being employed at schools other than under contracts of employment (UK, 2002:sec.35(5)(b) & sec.36(5)(b)). This implies that staff can be employed at schools as temporary teachers for short terms and they are colloquially known as supply teachers (Ruff, 2008:79; *cf*. 5.4.1). Schools in England/Wales have four main sources of supply teachers who are available for short-terms for a fixed period of time. These sources are:

- A pool of names maintained by a LA.
- Schools keeping their own record of contacts.

- Part-time teachers currently working at the school, or locally, who are prepared to work extra hours for a short fixed term.
- Employment agencies (ATL, 2012:3).

The statutory definition of a school teacher applies only to teachers who have contracts of employment for services with governing bodies of maintained schools or LAs. Therefore, teachers employed by teacher supply agencies do not fall within this statutory definition as found in the Education Act 2002 (UK, 2002:sec.122(3); Ruff, 2008:79), but are included in the definition of a teacher in the School staffing (England) Regulations 2009 (UK, 2009:reg.3(b)) and the Staffing of Maintained Schools (Wales) Regulation 2006 (Wales, 2006:reg.3(1)). Supply teachers not appointed through employment agencies and business, thus appointed from the LA maintained pool, as part of the school's contact list or part-time teachers willing to temporarily increase their teaching hours, are considered employees of the school or LA (ATL, 2012:4; *cf*. 5.4.1).

Many employment agencies have found a lucrative market in the supply of teachers with little consistency in the contractual agreements often not paying the teachers employed in this manner the statutory pay rates (Ruff 2008:79; ATL, 2012:3). This is due to the fact that these teachers are considered to be employees of the agency rather than of the governing bodies or the LAs (ATL, 2012:3). Supply teachers employed by LAs or schools are protected in a number of ways and qualify for a number of benefits arising from their employment status (*cf*. 3.3.5.4; 5.4.1)

According to the Association of Teachers and Lecturers (ATL)[183](2012:2), the employment of supply teachers are at times more complex than the employment of permanent staff members, as the legal terms governing their employment are sometimes ambiguous. Teachers who are listed with an employment agency or business often find themselves in weaker positions than teachers employed in other categories (ATL, 2012:2). In all instances, supply teachers may be employed full-time or part-time and may be required to work at very short notice (*cf*. 5.4.1). Through means of recent legislation, teachers on part-time or fixed-term temporary contracts should not be treated differently from full-time colleagues on permanent contracts (ATL, 2012:6; *cf*. 5.4).

[183] ATL is a union for education professionals across the UK.

3.3.5.3 Requirements for appointment as teacher

It is the responsibility of the LAs, or the employment agency, to ensure that any proposed person meets the requirements to qualify for appointment, including qualifications, registration, health and physical capacity or fitness on educational grounds or any other respect; that the prospective teacher is not barred from working with young children; and complies with the detailed regulations relating to health and criminal records checks (UK, 1998b:schedule 16 item 1(3); UK, 1998b:schedule 17 item 1(3); DfE, 2006:37; Wales, 2006:reg.3(3); Wales, 2007:reg.4(5); Ruff, 2008:77; UK, 2009:reg.12, 18 & 24).

The Education Act 2002 reinforces requirements regarding fitness and suitability. Furthermore, certain identified activities may only be carried out by a person who satisfies the specified conditions to health or physical capacity (UK, 2002:sec.141(1)). It lies within the power of the Secretary of State in England and the National Assembly in Wales to provide directions prohibiting named persons from carrying out specified work on the grounds of unsuitability, past records of misconduct or health problems (UK, 2002:sec.142(1) & sec.142(4); Ruff, 2008:78), thus, barring or restricting a person's employment. A person barred by the Secretary of State from being employed as a teacher may appeal to the Care Standards Tribunal (UK, 2002:sec144).

The Rehabilitation of Offenders Act 1974 stipulates that any offenders who have not been reconvicted for a stipulated period of time will be considered rehabilitated and the conviction shall be considered spent (UK,1974:sec.1)[184]. However, it is required from certain individuals applying for exempted positions as found in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, to disclose all information about previous convictions, spent or unspent (DfE, 2006:39; Lipscombe & Beard, 2014:3). Teaching is considered an exempted position (The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023; ATL, 2012:4; Lipscombe & Beard, 2014:4).

Apart from the above-mentioned requirements regarding convictions, an extensive, centralised scheme for the maintenance and checking of criminal convictions of

[184] The Act specifies the different types of convictions relevant to the scope of the Act, as well as the period required before a conviction becomes spent. These are not relevant to the scope of the study and will therefore not be discussed.

persons seeking posts to work with children by the Disclosure and Barring Service (DBS)[185] has resulted from a greater emphasis placed on the suitability of persons working with children, due to concern over child abuse cases, the focus on the legal status of the child, as well as the implementation of the Human Rights Act 1998 (Ruff, 2008:78). The need for an improved system of checks was reinforced by the murder of two primary school pupils by the school caretaker who lived next to the school in 2003, known as the Soham murders,[186] and the Bichard report[187] as well as concerns relating to the employment of a small number of teachers who had been cautioned or convicted of sexual offence relating to children or persons under the age of sixteen (Ruff, 2008:78; Home Office, 2009:2).

Given the responsibilities placed on LAs and school governing bodies by the Children's Act 1989[188], the Children's Act 2004[189] to fulfil the duties relating to the welfare of children as part of their common law *duty of care*,[190] the Secretary of State introduced new legislation in 2006, in order to establish a new screening and barring scheme (Ruff, 2008:78). The enactment of the Safeguarding Vulnerable Groups Act 2006 introduced measures to safeguard children under eighteen as well as vulnerable adults, by introducing the new Vetting and Barring Scheme (hereafter referred to as the VBS (Home Office, 2009:2)).

The VBS aims to ensure that any person who is considered a risk to a vulnerable group be barred from working with such as group by increasing the safeguards to enhance the protection of pupils and other vulnerable groups (Home Office, 2009:5). The safeguards utilised by the VBS include:

- two lists containing the names of barred individuals (UK, 2006b:sec.3);

[185] Previously known as Criminal Records Bureau (CRB) checks.

[186] In 2003 a school caretaker, Ian Huntley, previously accused 9 times of sexual offences, including rape and having sex with underage girls, was found guilty of the murders of 2 Soham schoolgirls (BBC News, 2003).

[187] After the Soham murder an inquiry was ordered by the Secretary of State into the matter looking into the child protection procedures of the Humberside Police and the Cambridgeshire Constabulary resulting in the Bichard Inquiry Report (Institute of Technology (INTEC), 2004:1).

[188] UK, 1989:sec.17, 27 & 47

[189] UK, 2004:sec.10, 11 & 13

[190] UK, 2002:sec. 175

- placing a duty on employers to refer information regarding persons considered to pose a potential threat to a vulnerable group;
- introducing criminal penalties for barred persons attempting to work with vulnerable groups; as well as
- the employers who knowingly employ such barred persons; and
- requiring enhanced criminal record certificates where a newly person works in a regulated activity[191] (UK, 2006b:sec.5 & 6; DfE, 2006:35; Wales, 2007:reg.4(5); UK, 2009:5-6).

Teachers, including supply teachers, and support staff are required to undergo the highest level of VBS checks, namely an enhanced disclosure (DfE, 2006:35; ATL, 2012:4). This allows the police to disclose all relevant information, including child protection matters, as opposed to mere information about a person's actual or potential criminal activities. In *R (ota L) v Commissioner of Police for the Metropolis and Secretary of State for the Home Department* [2007] EWCA Civ 168, the Court of Appeal ruled in this regard in a matter relating to an enhanced criminal record certificate for a midday assistant working at a secondary school supervising pupils over lunchtime. The Court ruled that the police were entitled to disclose all relevant information including child protection matters (Ruff, 2008:78)

A current matter of concern among teachers is the lack of means of redress against unsubstantiated accusations of physical or sexual abuse, which can damage or even destroy their health or career (Ruff, 2008:87). The call for a right for teachers who are accused of physical or sexual abuse against pupils to remain anonymous until allegations have been proven in a court of law, has been acted upon by new sections inserted into the Education Act 1996 by the amendments contained in the Education Act 2011.

Three new sections are inserted into the Education Act 1996 by the Education Act 2011, which place restrictions on reporting allegations of offences by teachers in England/Wales. Firstly, if a teacher employed at a school allegedly committed a relevant criminal offence and the victim is a pupil registered at the school, the new

[191] A regulated activity can be defined as any activity relating to children which is carried out frequently by the same person as a form of work which requires regular contact with children (UK, 2006a:schedule 4 item 1 & 2).

section 141F prohibits anybody to publish any information which may lead to the teacher being identified (UK, 2011a:sec.13(1); UK, 2011b). The restriction to publish the information is lifted when the Secretary of State or the General Teaching Council for Wales publishes information about the investigation, the decision of a disciplinary case, proceeding for the offence has been instituted or the teacher concerned decides to put forward their side of the story publically or give someone else permission to do so. Secondly, the newly inserted section 141G (UK, 2011a:sec.13(1); UK, 2011b) makes breaching section 141F by publishing information specified an offence. In the section, publication is defined as communication addressed to the public at large or any section thereof, but does not include official documents relating to the case. Thirdly, section 141H, inserted into the Education Act 1996 (UK, 2011a:sec.13(1); UK, 2011b) stipulates the defences a person charged with an offence under section 141H has available to him/her.

i) Supply teachers

Supply teachers have to undergo the same checks to ensure that they meet the requirements, including qualifications, registration, VBS disclosure, health and physical capacity or fitness, as well as employment history (ATL, 2012:3). Supply teachers would also be expected to provide documentary evidence of obtaining QTS, or that they fall into a category exempted from QTS. Teachers who qualified after 7 May 1999 will also have to prove that they have completed the legally prescribed induction period (ATL, 2012:4). The DfE requires that supply teachers undergo a VBS check every three years, while any supply teacher who has held no position for three months or longer may be expected to provide a VBS disclosure again (ATL, 2012:5).

3.3.5.4 Conditions of service

Provisions regarding what the job of teaching entails are found in the Education Act 2002, stipulating that teachers' contracts may not contain provisions on duties and working time different from those made under an order made under the Act (*cf*. 5.4.3). The effect hereof is that if a particular duty is not in an order, teachers cannot be required to undertake the work (Ruff, 2008:81). The conditions of employment of part-time teachers must mirror the conditions of full-time employees (DfE, 2013c:91). Contracts of part-time teachers must adhere to the relevant legislation (DfE, 2013c:85) and the employer, albeit a school governing body or a LA, in the deployment of part-time teachers must ensure that there are no breaches of the

relevant legal provisions regarding equal opportunities and unlawful discrimination (UK, 2013:91; *cf*. 5.4.3).

Duties

The School Teachers' Pay and Conditions document contains a list of duties a teacher would be required to undertake. Teaching duties are divided into categories including, among others, teaching, whole school organisation, strategy and development, health, safety and discipline, management of staff and resources, professional development, working with colleagues and other relevant professionals, and professional development (DfE, 2013c:51). The expected duties include:

- teaching;
- planning, preparation and assessment (PPA);
- other activities connected with the well-being and progress of pupils;
- staff meetings;
- continuing professional development (CPD);
- meetings with parents; and
- management duties (DfE, 2013c:50).

Teachers in the UK are required by legislation or in other official documents to provide support to future teachers and new entrants, supervise pupils after school hours and stand in for absent colleagues (Desurmont *et al*., 2008:41; *cf*. 3.3.5.1 5.4.3). With regard to standing in for absent colleagues, a teacher may not be required to cover for absent colleagues for more than 38 hours during any school year, as specified by the School Teacher's Pay and Conditions Document. Teachers who accept initial teacher training activities, such as school-based mentoring may receive additional payment at the discretion of the school governing body (Desurmont *et al*., 2008:42; *cf*. 5.4.3).

Teachers are required to ensure that they work as many additional hours as may be needed to fulfil their professional duties effectively, including planning and preparation, assessing, monitoring, recording and reporting on the needs, progress and achievement of their pupils (DfE, 2013c:52). Any teacher involved in teaching pupils must be allowed 10% of the teacher's timetabled teaching time for periods of PPA (DfE, 2013c:53). PPA periods must be a minimum of 30 minutes at a time and

teachers may not be required to carry out any other duties during these periods (DfE, 2013c:54). Governing bodies and head teachers are required to keep in mind the need for teachers to maintain a balance between their work and their the time needed to pursue personal interests outside of work and to adhere to work time limits set in relevant legislation (DfE, 2013c:53; *cf*. 5.4.3).

Teachers are required to prepare their pupils for external examinations, but may not be routinely required to be involved in activities that do not involve the professional skills and judgement of the teacher, such as invigilation (DfE, 2013c:54). Administrative tasks may also only include tasks relating to the teachers' professional role and may not include clerical and other administrative tasks, including among others collecting money from pupils and parents, bulk photocopying, investigating a pupil's absence, collating pupil reports and many more similar activities (DfE, 2013c:64).

i) Part-time teachers

Part-time teachers can be required to carry out duties not involving teaching outside school sessions on days they would normally be required to be available to work, but may never be required to be at work on days they are not supposed to be at the school (DfE, 2013c:52). They may also be required to undertake duties such as break, registration and assembly duty during the days and sessions they normally work. Their duties will depend on the directed time, and therefore the mix of teaching, PPA and non-contact time, their contracts stipulate (DfE, 2013c:91). Head teachers must be vigilant that they do not require of a part-time teacher to work a greater proportion of their directed time outside their normal sessions than full-time teachers, or allocate directed time either side of a period when the teacher is not required to be available for work, as this would surmount to discrimination (DfE, 2013c:92).

ii) Supply teachers

Supply teachers employed by school governing bodies and LAs are required to carry out all tasks and functions as found in the School Teachers' Pay and Conditions Document. These tasks would include supervision of classes due to a teacher being absent, break duties and seeing pupils off the premises. Supply teachers employed by agencies can expect to have the same tasks and functions. Supply teachers allocated to a school for longer terms may be required to fulfil activities forming part

of the directed time of teachers such as attending staff meetings and parent evenings (ATL, 2012:12).

Working hours

The amount of time teachers should be available to perform duties at school or other places as determined by the headmaster is specified by regulation. Although no maximum teaching time is specified as such, regulations have been put in place on the balance between teaching and PPA (Desurmont *et al*., 2008:40). Teachers' working time is divided into directed time, which is limited to 1265 hours over a maximum of 195 days per year, of which 190 shall be days of pupil attendance at school during which teachers may be expected not only to teach, but also to perform other duties[192], and non-directed time which amounts to 5 days[193], which refers to the obligation of teachers to work such additional hours as may be necessary to complete other duties[194] than teaching[195] (Desurmont *et al*., 2008; Ruff, 2008; Eurydice, 2010a; Eurydice, 2010b; DfE, 2013c).

According to the DfE, as gathered from the annual survey of teachers' term-time working hours, primary classroom teachers work 59.3 hours a week, while secondary classroom teachers work 55.7 hours per week (BBC, 2014a; BBC, 2014d)). Of the total number of hours primary teachers worked, 23.8% is out of school, either before 8a.m., after 6 p.m. or on weekends, while for secondary school teachers the number of hours working out of school makes up 21.4% of their total working hours. According to reports based on the afore-mentioned survey, very little of the total working hours are spent in class. A primary school teacher spends on average 19 hours a week on timetabled teaching, while the average for a secondary school teacher is 19.6 hours. Other hours at school are used for lesson preparation, supervising of pupils away from class and other administrative tasks (BBC, 2014d; *cf*. 5.4.3).

Primary school classroom teachers indicated that they spend an average of 4.3 hours per week completing general administration (BBC, 2014d). Forty-five percent

[192] Desurmont *et al*., 2008:50; Ruff, 2008:81; Eurydice, 2010a:4; Eurydice, 2010b:3; DfE, 2013c:52

[193] Eurydice, 2010a:4; Eurydice, 2010b:3; DfE, 2013c:52

[194] Ruff, 2008:81

[195] DfE, 2013c:52

of teachers in England indicated in the DfE's annual survey on teachers' working hours that what they deem unnecessary or bureaucratic tasks have increased, while only 5% indicated a decrease in such tasks. According to teachers, the biggest cause of unnecessary paperwork was preparing for an Ofsted inspection (BBC, 2014d *cf*. 5.4.3).

Salaries

Salary scales according to which school teachers employed at maintained schools are paid, appear in the School Teachers' Pay and Conditions document, which is revised on an annual basis (ATL, 2012:13). Academies are not bound by the afore-mentioned document and therefore set their own rates of pay. The average salary earned by teachers at secondary academies is £900 less a year than by teachers at a LA-maintained secondary school, while the school leaders at secondary academies earn on average £1000 per year more than those employed by LAs (Henshaw, 2013; *cf*. 3.3.8; 5.4.3).

School teachers are paid on a monthly basis (NEOST, 2000:4).Salaries received used to be calculated in the same way for all teachers at maintained schools. However, in the 2012 annual report of the STRB the body made a number of recommendations aimed at replacing the existing, unnecessarily detailed threshold arrangements with straightforward criteria based on a single set of standards – the revised Teachers' Standards 2012 (Lyons, 2013; Smith, 2013). The STRB also recommended the abolishment of the current post-threshold standards.

After consultation, the government has accepted the key recommendations made by the STRB and in September 2013, the implementation of a more flexible national pay framework was implemented (DfE, 2013c; Smith, 2013). The changes came about after calls for a closer link between performance and the pay a teacher receives (DfE, 2013a; *cf*. 3.3.8). The new pay framework ended increases based on service length (Lyons, 2013). Whereas teachers previously automatically moved up a pay point on the main pay scale yearly, teachers' pay progression will now be linked to their performance (DfE, 2013a), with the institution of differentiated progression through the pay scale, awarding excellence and performance improvement (Lyons, 2013; Smith, 2013).

Only on the upper pay scale, and thus for more senior teachers, had pay progression been linked to performance (ATL, 2012:13; Smith, 2013). Now the new framework

abolishes mandatory pay points within pay scales for a classroom teacher, rather linking pay progression to annual written evaluations, thus individual performance, and enabling individual pay decisions (DfE, 2013a; Dowling, 2013; Smith, 2013) within the specific context of a school (Dowling, 2013; *cf*. 5.4.3). But the main pay scales will still be available as a point of reference for new teachers as a guide of career expectations (DfE, 2013a; Smith, 2013).

A broad national pay framework, which includes higher pay bands for London and fringe areas, contains four pay ranges:

- the main pay range,
- the upper pay range,
- the pay range for leading practitioners, and
- the unqualified teacher's range (DfE, 2013c:20; *cf*. 5.4.3).

Teachers who are not entitled to be paid on any other pay range, will be paid according to the main pay range. More experienced senior teachers, who contribute to the school more comprehensively, will be paid according to the upper pay scales (DfE, 2013c:20; Smith, 2013). Previously teachers had to obtain *Advanced Skills Teacher* and *Expert Teacher* levels to move into the upper pay scale levels. The levels are now removed, allowing schools to pay excellent teachers more than the prescribed maximum salary (Dowling, 2013; Lyons, 2013), using the upper pay range as guide (DfE, 2013c:20). Teachers in the main pay range may apply to be paid on the upper range annually in line with the schools' pay policy (DfE, 2013c:22) and will consequently be assessed by the relevant body regarding competency and substantial and sustained contributions and achievements (DfE, 2013c:23 & 79). A new Leading Practitioners pay range is created. Teachers in this range will have the purpose to primarily model and lead the improvement of teaching skills (DfE, 2013c:20 & 23; Lyons, 2013). Unqualified teachers are paid within the minimum and maximum levels of the unqualified teachers' pay range until they have obtained QTS, when they will be moved onto the main pay range for teachers (DfE, 2013c:24). Unqualified teachers' pay range levels are noticeably lower than that the levels of the main pay range (DfE, 2013c:21 & 24).

Government sets the minimum and maximum pay levels only, with certain points in between for reference to guide schools (DfE, 2013c:21 – 24; Dowling, 2013). Schools are no longer obliged to match a teacher's existing salary when recruiting

new teachers (DfE, 2013c:21; Lyons, 2013).However, movement between pay ranges is permanent as long as the teacher stays in the employment of the same employer, albeit the school government body or LA (DfE, 2013c:21; *cf*. 5.4.3). Decisions regarding increases of the salaries of teachers who have completed a year of teaching, must be done annually by the relevant body (DfE, 2013c:25). Pay progression must be clearly credited to the teacher's performance and will be subject to continued good performance (DfE, 2013c:25). A decision may also be taken not to award progression, irrespective if the teacher is subject to capability proceedings (DfE, 2013c:25-26).

According to the timeframe provided, schools have between September 2013 and September 2014 to review and revise evaluation and pay policies, monitor the teachers in their employ throughout the year, conduct evaluations during the summer term of 2014 and make the first performance-related pay increases during September 2014 (Lyons, 2013). According to the non-statutory guidance provided by the DfE, teachers will have to be appraised on their:

- impact on pupil progress;
- impact on wider outcomes for pupils;
- contributions made to improvement in other areas such as behaviour of pupils and lesson planning;
- development, both professionally and career-wise; and
- wider contributions to the work of the school, including outside the classroom (Lyons, 2013).

LAs and school governing bodies must have a pay policy linked to their evaluation system (DfE, 2013c:4 & 74). Procedures used by the relevant body when formulating the pay policy must comply with the requirements stipulated in discrimination legislation and make compliance with relevant legislation[196] clear. Furthermore, procedures for determining pay must be objective, open and accountable. The pay policy has to be reviewed annually, while keeping up to date with changes in legislation and staffing structure which may impact the policy. The relevant body

[196] The Employment Relations Act 1999, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (DfE, 2013c:74).

should consult with teachers as well as representatives of recognised trade unions when formulating the pay policy, but also when changes are made. Teachers are entitled to access of the policy (DfE, 2013c:74). The pay policy should also include procedures for pay hearings and appeal procedures, should a teacher seek a review of a decision taken which affects pay (DfE, 2013c:4 & 75 *cf*. 5.4.3). When a school governing body or LAs determines the remuneration of a teacher, the relevant body must base decisions on the pay policy according to the teacher's post within the staffing structure of the school (DfE, 2013c:5).

The move away from mandatory pay points allows schools greater freedom to keep good teachers in the classroom, reward good teachers and attract and recruit the best teachers. The increased flexibility will particularly assist schools in disadvantaged areas to recruit the best teachers and then retain these teachers (DfE, 2013a; Lyons, 2013; *cf*. 3.3.8) as it is now possible to create posts with salaries above the upper pay scale (Smith, 2013; *cf*. 5.4.3).

The UK government has stated that the intention with linking performance and pay is to reward good work and not to cut teachers' pay (Dowling, 2013 *cf*. 5.4.3). However, trades unions are not reacting favourably to the changes. During May 2014, it is reported that thousands of schools across England/Wales had to close, as teachers joined the National Union for Teachers (NUT) strike, following a series of regional strikes (BBC, 2014c). NASUWT joined the NUT in the regional strikes, but cancelled a proposed walk-out during November 2013 as the government entered into debate since with seven teaching unions on performance-related pay, pensions and conditions of employment (*cf.* 3.3.8). However, both unions are considering more extended strikes during the summer term (*cf*. 3.3.8).

Furthermore, a number of possible problems have been identified. Although the Association of School and College leaders welcome the newly gained flexibility to link performance and pay, the association foresees difficulty in implementing the changes within the current budget constraints faced by school leaders (Dowling, 2013). According to the association, school budgets are either static or declining, which will lead to a situation where, in order to pay some teachers more, others will have to be paid less or made redundant. Thus they indicate that to make the flexibility work, the government should consider a fair funding formula. Dowling (2013) points out that schools will require guidance and effective tools in order to

implement the changes or run the risk of having their decisions challenged as discriminatory and even having to face equal pay claims (*cf*. 3.3.4.1; 5.4.3).

Lyons (2013) reiterates Dowling's concerns by stating that critics fear pay decisions will be made as a response to funding pressures. The author also mentions that schools may make pay decisions based on whether the teacher fits in at a particular school, while the possibility of tension between teachers and the damage to staff morale, especially given the right employees, is given by section 77 of the Equality Act 2010 to disclose particulars about pay to others (*cf*. 3.3.4.1) is a real problem (Lyons, 2013). The possible pitfalls schools face, particularly when it comes to indirect discrimination relating to protected characteristics and the evaluation of teachers on maternity and sick leave, are numerous, and the establishment of performance-related pay policies will have to be compiled very carefully (Lyons, 2013).

Apart from the monthly salaries teachers earn, schools or LAs may pay certain allowances to teachers (*cf*. 5.4.3). A teaching and learning responsibility allowance may be paid to teachers who undertake additional responsibility for the purpose of ensuring the continued delivery of high-quality teaching and learning. The responsibility has to be continual and teachers are held accountable for the delivery of required tasks (DfE, 2013c:27). Teachers receiving the allowance are required to contribute to curriculum development through sharing their expertise and advising on effective practice, either orally or in writing (UK. 2013c:80). These teachers normally form part of the leader group. Classroom teachers, including unattached teachers, may receive a special needs education allowance if teaching classes:

- requiring a special educational needs qualification;
- at a special school;
- to one or more groups of special needs pupils in designated special classes;
- involving a substantial element of working directly with pupils with special needs; and
- have a greater level of involvement in teaching special needs pupils than normally required of teachers throughout the school (DfE, 2013c:30).

Unqualified teachers may receive allowances should the relevant body determine that the teacher has taken on substantial additional responsibility focused on teaching and learning, which requires exercise of the professional skills and

judgement of the teacher, and such a teacher has qualifications and experience adding value to the position the teacher has undertaken (DfE, 2013c:31). Teachers acting in the role of one of the leader team or who are temporarily seconded to the post of head teacher, may receive allowances or a lump sum for the work done (DfE, 2013c:33-34). Schools and LAs may make payments they consider fitting to teachers in respect of continuing professional development undertaken outside the school day (DfE, 2013c:87), involvement in initial teacher training, such as a mentor of a newly trained teacher during the induction period (DfE, 2013c:87), and participation in out-of-school learning activities as agreed on between the teacher and the head teacher (DfE, 2013c:45).

Teachers in Wales, who are required to pay the annual registration fee with the GTCW (*cf*. 3.3.5.1), are entitled to receive £33 per year from the relevant body, paid back to them (DfE, 2013c:45). Teachers may agree to sacrifice part of their salary *in lieu* of receiving certain benefits which are exempted from income tax. A salary sacrifice agreement may include child care vouchers or - benefit scheme, cycle scheme, or a cyclist's safety equipment, or a mobile telephone scheme as benefits-in-kind (DfE, 2013c:46). Salary sacrifices must be voluntary on the part of the teacher and may never be enforced as an employment condition (DfE, 2013c:90).

i) Part-time teachers

Part-time teachers have to be paid the pro rata proportion of the appropriate full-time equivalent to which such a teacher would have been entitled had the teacher been appointed in a full-time position including allowances (DfE, 2013c:41 & 85). Calculations are done according to the total number of hours in the school's timetabled teaching week[197] (DfE, 2013c:44). Part-time teachers may agree to work additional hours from time to time as requested by the head teacher. The additional hours worked must be included in the calculation of the remuneration the teacher is to receive (DfE, 2013c:44). Part-time teachers cannot be required to work on or attend non-pupil days, or parts of such days, if these days fall on a day they do not normally work, except mutually agreed on by the teacher and head teacher (DfE, 2013c:85; *cf*. 5.4.3). When a part-time teacher works in different positions within a

[197] The school's timetabled teaching week refers to the aggregate period of time in the school time table during which pupils are normally taught (UK, 2013:44), including PPA time and other non-contact time, but excluding break times, assemblies and registration (UK, 2013:85).

school or more than one school, the relevant body must calculate and combine the different hours worked to arrive at a consolidated pro rata remuneration for the teacher (DfE, 2013c:86).

ii) Supply teachers

Although the original aim of the STRB was to provide a reliable and comprehensive pay structure for all teachers in maintained schools in England/Wales, this is not the case. LA and school employed supply teachers have the right to be remunerated according to the School Teachers' Pay and Conditions Document (DfE, 2013c:36). However, academies are not bound by the afore-mentioned document, neither are agencies, and these institutions may therefore set their own pay levels (ATL, 2012:5; *cf*. 5.4.3).

Important changes were brought about for supply teachers employed by agencies through the Agency Workers' Regulation 2010. According to the regulation, teachers employed by agencies now have equal access to facilities such as the staffroom and canteens, as well as entitlement to information about vacancies at the school and the opportunity to apply for such vacancies (ATL, 2012:6). Furthermore, the regulation allows for teachers employed by agencies for 12 weeks or more to be treated equally on pay, holidays, limitations regarding working time and improved maternity/paternity/adoption rights (ATL, 2012:6; *cf*. 5.4.3).

Supply teachers in England/Wales employed at maintained schools, not engaged by an agency, should be paid according to the correct point on the salary scales as set out in the School Teachers' Pay and Conditions document (ATL, 2012:13; DfE, 2013c:36). The pay policy of a LA or school should contain provisions regarding the payment of unattached teachers and used in the determination of the remuneration of supply teachers (DfE, 2013c:84). Supply teachers seldom receive allowances for anything other than qualifications and experience, although such an allowance is not impossible (*cf*. 5.4.3). If a supply teacher is required to teach a designated special class consisting of mainly or wholly statemented[198] pupils, a class with mainly or wholly visually or hearing impaired pupils or is teaching at a special school, it is

[198] After assessment of a child who the LA believes has special education needs as stipulated in section 323 (UK, 1996a), the LA has to make and maintain a statement of the child's special educational needs, as well as the provisions made (UK, 1996a:sec.324).

mandatory for the school to add a special needs point to the salary of such a teacher (ATL, 2012:13; DfE, 2013c:45).

When calculating the salary of a supply teacher in England/Wales, the school may either work on a daily or hourly rate depending on the circumstances of employment. Daily rates are calculated by dividing the annual rate by 195, while hourly rates are calculated by dividing the daily rate by the number of teaching hours on the timetable of the particular school (ATL, 2012:13; DfE, 2013c:44). A supply teacher employed by the same LA for a full year may not be paid more than a teacher in regular employment throughout the period (DfE, 2013c:44). A supply teacher who has two years continuous service has the right to a redundancy payment (ATL, 2012:5; *cf*. 5.4.3).

Supply teachers in the employ of a school or LA have the same additional work in proportion to full-time permanent teachers as their salary rate is calculated on the time a full-time teacher has to work. Since full-time teachers are expected to do such additional work, which includes marking and preparation, outside normal school hours and directed time, the calculation of the salary rate of a supply teacher should include an element of pay for such additional work (ATL, 2012:12).

Required conduct

In England the new Teachers' Standards came into effect in September 2012, with the new evaluation regulations (Lamont & Pyle, 2013:6). The previous standards, QTS and Core standards, which were required to be met in order to achieve QTS and pass induction (Coates, 2011:4; DfE, 2011b:1), have been replaced by the new standards. From September 2012, the new Teachers' Standards have been used to assess teacher performance annually according to the new evaluation arrangements. These standards set out a clear baseline of what is expected of all teachers from the start to the end of their career (Coates, 2011:4; DfE, 2011b:1).

The new standards apply to the majority of teachers of all career stages and application of the standards would depend on the role and the context within which the teacher or trainee is practising, making the professional judgement of appraisers and head teachers central to the evaluation process. The new standards differ in content, structure and application from the previous standards (Lamont & Pyle, 2013:6; DfE, 2011b:1) and are expected to contribute positively to raising the status of the teaching profession (Coates, 2011:4; *cf*. 5.4.3). The standards will also be

used to assess trainee teachers to recommend them for QTS (DfE, 2011b:1; *cf*. 5.4.3), as well as at the end of the induction period of newly qualified teachers to ascertain their competence (Coates, 2011:6, DfE, 2011b:2).

The Teachers' Standards 2012 are divided into three parts (Coates, 2011:7; DfE, 2011:2). The preamble to the standards provides an all-encompassing summary clarifying the expected practices and attitudes teachers should portray (*cf*. 5.4.3). According to the preamble to the Teachers' Standards 2012, teachers' first concern should be the education of pupils in their care and therefore they are accountable for pupils achieving the highest possible standards in work and conduct. Teachers are required to:

- act with honesty and integrity;
- have good subject knowledge;
- ensure that they are up to date with developments in knowledge and skills relating to their fields;
- be self-critical;
- establish positive professional relationships; and
- act in the best interest of pupils in co-operation with the pupils' parents (DfE, 2011b:5).

Part 1 consists of the eight standards for teaching (*cf*. 5.4.3), with supporting bullet points intended to illustrate the scope of the standard (Coates, 2011:7; DfE, 2011b:5). The eight standards require of teachers to:

- set high expectations which inspire, motivate and challenge pupils;
- promote good progress and outcomes by pupils;
- demonstrate good subject and curriculum knowledge;
- plan and teach well-structured lessons;
- adapt teaching to respond to the strengths and needs of all pupils;
- make accurate and productive use of assessment;
- ensure a good and safe learning environment by managing behaviour effectively; and
- fulfil wider professional responsibilities (DfE, 2011b:5-7).

The standards in Part 1 form the basis of performance assessment of both QTS and trainee teachers (Coates, 2011:7).

Part 2 contains the standards for Professional and Personal Conduct (*cf*. 5.4.3), which set out non-negotiable high standards regarding professional behaviour and conduct (Coates, 2011:7; DfE, 2011:2). Firstly, teachers are expected to maintain excellent standards of ethics and behaviour not only inside the school, but also outside the school, as they must sustain the publics' trust in the profession (DfE, 2011:8). Therefore teachers are expected to treat pupils with dignity, while building mutual respect and observing proper boundaries of professional conduct, safe-guarding pupils' well-being as required by statute, respect the rights of others and show tolerance towards others, maintain fundamental British values[199], ensuring that when expressing their personal views, they consider the vulnerability of pupils to influences. Teachers are also expected to show regard for the ethos, policies and practices of the school they work at, be punctual and attend regularly, as well as show an understanding of statutory frameworks and act within these statutory frameworks in which their professional duties and responsibilities are set out (DfE, 2011b:8).

In an online survey of over 1600 teachers[200] conducted by the Lamont and Pyle (2013:6 & 7) in November 2102 in order to establish the extent of awareness among teachers regarding the new Teachers' Standards and evaluation regulations, the following emerged:

- Although the majority of teachers are aware of the new Teachers' Standards and evaluation regulations, senior leaders are more aware of the changes than classroom teachers (Lamont & Pyle, 2013:14).
- The majority of schools have made changes to the relevant policies and the majority of teachers have been informed that the new Teachers' Standards will be used to assess them. Once again the senior leaders had a greater awareness of the changes in their schools (Lamont & Pyle, 2013:14).

[199] British values includes democracy, the rule of law, individual liberty and mutual respect and tolerance for different faiths and beliefs (DfE, 2011b:3).

[200] All the teachers participating held QTS (DfE, 2013c:7).

- The participating teachers were less clear of exactly what the changes entailed, particularly in regard to classroom observations. This could possibly be because they have not been appraised since the new policies have been instituted (Lamont & Pyle, 2013:14-15).
- Approximately half of the participants indicated that they think that the new arrangements would make it easier to identify and tackle underperformance, while one third of the respondents did not think the changes would have any effect. Senior leaders were once again more positive than classroom teachers (Lamont & Pyle, 2013:15).

The GTCW Guide of Professional Conduct and Practice contains the Practising Teacher Standards (GTCW, 2013d:2). The standards clearly set out the understanding, knowledge and values teachers are expected to demonstrate (Wales, 2011b:1; Wales, 2012:1). Welsh teachers are expected to meet these standards at the end of their induction period and maintain these standards throughout their teaching career (Wales, 2011b:5; *cf*. 5.4.3). Furthermore, the Practising Teacher Standards provide a framework which enables teachers to identify performance-related objectives, as well as select appropriate professional development activities (*cf*. 3.3.5.7). The Practising Teacher Standards should be used as the foundation of discussions in which teachers are assisted to identify their strongpoints and areas in which they need development (Wales, 2011b:1; Wales, 2012:8; *cf*. 3.3.6).

The Practising Teacher Standards contain 36 standards sorted under three main categories (Wales, 2011b:5). The three main categories are professional values and attributes, professional knowledge and understanding, and professional skills.

Professional values and attributes relate to the teacher's appreciation and valuing of the other role players and include, among others, appreciation for the diversity and diverse needs of pupils, establishing fair, respectful, supporting relationships with high expectations with pupils, cooperation with parents and other staff; active involvement in professional networks and communities, and having high expectations with regard to the development of the Welsh language. The category professional knowledge and understanding includes ensuring they stay well-informed on developments in their subject as well as all other aspects of teaching, show understanding for their professional duties and responsibilities, illustrate knowledge of key factors affecting children and young people, knowing where, when and how to seek advice and have knowledge of strategies to promote good behaviour and how

to apply these strategies. The third category is divided into three sub-categories – planning and target setting, monitoring and assessment, and teaching and managing learning – each with a number of bullets expanding on the required conduct (Wales, 2011b:5-7). Formal capability procedures must be instituted against teachers who do not meet the required standards any longer (Wales, 2012:1).

v) Evaluation

The responsibility for the management of teachers' performance lies with the relevant body, although it is regulated by government (Desurmont *et* al., 2008:66; *cf*. 5.4.3). According to Eurypedia (2012a), performance management of teachers can be defined as a process used to assess the overall performance of a person within the context of the individual job description and the provisions, as set out in the School Teachers' Pay and Conditions document in order to plan for the individual's development within the context of the school's improvement plan (Eurypedia, 2012b; *cf*. 5.4.3). All maintained schools and local authorities must implement an evaluation policy, as well as a policy dealing with a lack of capability (DfE, 2012g:3; *cf*. 3.3.5.5.)

Responsibility for performance management is a devolved responsibility, but the responsibility for pay is not (Wales, 2012:18). Section 131(5) of the Education Act 2002 (UK, 2002) provides for the use of the results of an evaluation in determining the salary a teacher receives. Therefore, the Secretary of State and the National Assembly of Wales are enabled to make regulations requiring the evaluation of the performance of teachers (UK, 2002:sec.131(1)) and allow schools to use the information obtained when making decisions on a teacher's pay (UK, 2002:sec.131(5)), after consultation with LAs and other relevant bodies (UK, 2002:sec.131(6); Ruff, 2008:80). But the decisions concerning pay of both English and Welsh teachers are the responsibility of the DfE (Wales, 2012:18).

Until the changes brought about by the new payment framework, progression on the upper pay scale was done when recommended in the review statements at the end of an evaluation cycle and was generally only possible after two evaluation cycles have been completed (ATL, 2012:13-14). In England, the changes in evaluation made by the implementation of the new pay framework in 2013 allows for consistent progression from entering teaching as a graduate to the upper pay scales. The straightforward set of criteria will also allow schools to promote the best teachers more rapidly (Smith, 2013). Smith (2013) describes the Teachers' Standards 2012 as realistic standards which will provide teachers with something to aspire for. The

primary purpose of the performance evaluation is to assist teachers to develop in order to carry out their duties more effectively (Desurmont *et al*. 2008:63), thus identifying and acting on teachers' training and development needs. These needs form the basis of the performance management and continual professional development arrangements at a school (Euryedia, 2012b; *cf*. 3.3.5.7; 5.4.3).

In Wales, the relevant bodies have to follow the requirements as found in the School Teachers' Pay and Conditions document regarding pay progression, while the Welsh Government has not made any changes to the performance management regulation. The view of the government is that the performance management system is mainly focused on providing a process according to which teachers' performance is assessed according to set objectives in order to allow teachers to improve and develop (Wales, 2012:18). Welsh teachers are required to meet the Practising Teachers' Standards (Wales, 2012:1).

The Education (School Teacher Performance Management) (England) Regulations 2012 (hereafter referred to Performance Regulation England (UK, 2012a)) and the School Teacher Evaluation (Wales) Regulations 2011 (hereafter referred to as Wales Evaluation Regulations (Wales, 2011a) require of school governing bodies and LAs to:

- adopt a written performance management policy which sets out the evaluation process; and
- make the document available to teachers in their employ (Wales, 2011a:reg.5; UK, 2012a:reg.3(1) &(2); Wales, 2012:3).

The Performance Regulation England does not apply to teachers undergoing their induction period or teachers subject to capability procedures (UK, 2012a:reg.1(4)). The Wales Evaluation Regulations include unqualified teachers (Wales, 2011a:reg.3), but also stipulate that when a decision is taken to institute formal capability procedures, such procedures supersedes performance management arrangements (Wales, 2012:1; *cf*. 3.3.5.5; 5.4.3).

Dowling (2013) and Lyons (2013) point out that the school governing body needs to ensure that when they establish detailed pay and evaluation policies (*cf.*3.3.5.4iii), they have set measurable targets and use transparent systems for evaluation and pay which are applied consistently, in order to ensure that their decisions during evaluation are justifiable, should any claims arise. School governing bodies will also

have to ensure that policies are readily available to staff members (Lyons, 2013). Furthermore, the School Teachers' Pay and Conditions document stipulates that the definition of continued good performance in a school's pay policy should create an expectation within classroom and unqualified teachers of progressing to the top of their respective pay ranges.

The evaluation period for teachers, attached and unattached, is a period of 12 months, with the starting date of the 12 month period established by the relevant body[201]. For teachers employed for a fixed-term of less than 12 months, the evaluation period will be for the duration of the contract[202], while for teachers who begin employment at a school other than at the beginning of an academic year, the relevant body may decide if the evaluation period will be longer or shorter than the 12 months[203], bringing the newly appointed teachers' evaluation period in line with the other teachers at the school (Wales, 2011a; UK, 2012a; Wales, 2012).

Evaluation policies should be supportive and developmental in nature (DfE, 2012g:6), clearly indicate how objectives will be set, how they will be assessed and how moderation of decisions will be done. It must also make clear what other evidence will be reviewed as part of the process. Therefore, at the beginning of an evaluation period the head teacher, or LAs in respect of unattached teachers employed by the LA, must inform each teacher of the standards[204] against which the performance of the teachers would be measured in that evaluation period[205], as well as set objectives for the teacher for the period[206] (Wales, 2011a; UK, 2012a).

Objectives set must be set in such a way that if they are achieved, they will contribute to improved education of pupils at the school and the implementation of plans by the governing body focused on the improvement of the particular school's

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[201] Wales, 2011a:reg.22(2); UK, 2012a:reg.5(1) & (2); Wales, 2012:5

[202] Wales, 2011a:reg.22(3); UK, 2012a:reg.5(3); Wales, 2012:5

[203] Wales, 2011a:reg.22(5); UK, 2012a:reg.5(4); Wales, 2012:5

[204] Standards referred to are the standards contained in the 2102 Teachers' Standards document, as well as any other set of standards relating to teachers' performance published by the Secretary of State, and which the relevant body considers relevant to the performance of a teacher (UK, 2102a:reg.6(8)) for English teachers and Practising Teacher Standards (Wales, 2012:1) for Welsh teachers.

[205] UK, 2012a:reg.6(3)(a) & 6(6)(a)

[206] Wales, 2011a:reg.26(1) & 39(1); UK, 2012a:reg.6(3)(b) & 6(6)(b)

educational provision and performance[207]. When the evaluation objectives of Welsh teachers are set, it is required of the appraiser to also take the professional aspirations of the teacher[208], as well as any national priorities or school improvement as set by the Welsh Ministers[209], into consideration. Objectives should be clear, concise, measurable, challenging and relevant[210] and must take into consideration that an acceptable balance between professional time and personal time is maintained. Performance management is seen as a collaborative approach where the appraiser and the teacher must take joint responsibility for the process[211] (Wales, 2011a; UK, 2012a; Wales, 2012).

Evaluations of classroom teachers employed by the governing body of a school are to be done by the head teacher in England[212], while in Wales the head teacher must appoint an appraiser for each teacher at the particular school after consultation with the teacher[213]. In England, it is the duty of the governing body to ensure that the head teacher complies with the stipulated duty[214]. When appraising English teachers, the appraising person must assess the performance of teachers in the carrying out their roles and responsibilities during the evaluation period against the standards and objectives set out during the initial interview[215]. Furthermore, the professional development needs of teachers have to be assessed in order to identify action that needs to be taken[216] (*cf*. 3.3.5.7) and where relevant recommendations relating to teachers' pay need to be made[217] (Wales, 2011a; UK, 2012a; Wales, 2012; Lyons, 2013; *cf*. 5.4.3).

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[207] Wales, 2011a:reg.26(1) & 39(1); UK, 2012a:reg.6(5) & (7); Wales, 2012:6

[208] Wales, 2011a:reg. 26(2)(a) & 39(2)(a); Wales, 2012:6

[209] Wales, 2011a:reg.26(2)(b) & 39(2)(a); Wales, 2012:8

[210] Wales, 2012:8

[211] Wales, 2012:6

[212] UK, 2012a:reg.7(3)

[213] Wales, 2011a:reg.21; Wales, 2012:4

[214] UK, 2012a:reg7(4)

[215] UK, 2102a:reg.7(6)(a)

[216] UK, 2012a:reg.7(6)(b;

[217] UK, 2012a:reg.7(6)(c); Lyons, 2013

The Welsh Evaluation Regulations allow for revision of a teacher's objectives[218], as well as a regular meeting between the teacher and the appraiser to monitor the performance of the teacher[219]. Furthermore, professional development opportunities, needed to assist in the attainment of objectives, must be identified and agreed upon by the teacher and the appraiser[220] (*cf*. 3.3.5.7). A written report recording the assessments mentioned above, as well as any recommendations made, must be given to UK teachers as soon as is practically possible, but this must be within 10 days[221]. When an appraiser is not satisfied with the progress of a teacher, such a teacher must receive a written notification informing him/her that his/her performance will be managed under the capability procedure and that the evaluation process will no longer apply[222] (*cf*. 3.3.5.5). Appeal against an evaluation is possible[223]. The appraiser must provide a recommendation on pay progression to the head teacher, should the teacher be eligible for pay progression[224] (Wales, 2011a; DfE, 2012g; UK, 2012a; Wales, 2012; DfE, 2013c).

i) Unattached teachers – supply and part-time teachers

With regard to evaluation, a supply teacher teaching at the same school for a full term or more, should be subject to an evaluation and also be provided with appropriate aims for the time spent teaching at the school. Upon completion of the employment, the teacher's performance should be discussed during a review meeting (ATL, 2012:14). Unattached teachers employed by the LA must be appraised by the LA (UK, 2012a:reg.7(5)) in England, whereas the LA in Wales may delegate some or all of the duties imposed on an appraiser to a school teacher attached to the school where the unattached teacher teaches or to the person they consider best placed to act as appraiser (Wales, 2011a:reg.36).

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[218] Wales, 2011a:reg.27 & 40; Wales, 2012:9

[219] Wales, 2011a:reg.28 & 41; Wales, 2012:9

[220] Wales, 2012:9;

[221] Wales, 2011a:reg.29 & 42; UK, 2012a:reg.8; Wales, 2012:13

[222] DfE, 2012g:8

[223] Wales, 2011a:reg.30; Wales, 2012:15; DfE, 2013c:130

[224] Wales, 2012:17

The responsibility for the performance management of all unattached teachers[225] lies with LAs and therefore the LA will need to identify all their unattached teachers in order to ensure that they are included in the performance management processes (Training and Development Agency (TDA), 2007; Wales, 2011a; UK, 2012a). It is the duty of the LA to ensure that arrangements are in place to follow all the steps of the evaluation process as in the case of teachers attached to a school. Decisions must also be taken on how the process will be handled when a teacher works at a number of different locations (TDA, 2007; Wales, 2011a; UK, 2012a).

Supply teachers working at maintained schools who are eligible for progression are personally responsible to maintain careful records of when they have worked (ATL, 2012:13). Time worked at an academy does not automatically count towards completing the period. LAs have the deciding power if they will recognise time taught at academies towards progression. The time taught while in the employment of an agency does not count towards pay progression (ATL, 2012:13).

Due to the temporary nature of their work many supply teachers are denied access to performance management. The Wales Evaluation Regulation stipulates that the regulation does not apply to teachers employed on a short-term contract (Wales, 2011a:reg.3). Supply teachers who regularly work in one school may attempt to reach an agreement with the head teacher to be performance managed within the school in order to qualify for pay progression (ATL, 2012:14).

Leave

Teachers in England/Wales qualify for a variety of leave types with pay, including:

- sick leave, which includes leave due to illness, injury and other disability according to entitlements calculated on years of service (NEOST, 2000:7);
- 26 weeks' ordinary maternity leave (UK, 1996b:sec.71(1)) with no fewer than two weeks' compulsory maternity leave (UK, 1996b:sec.72(3)(a);
- adoption leave (UK, 1996b:sec.75A);
- parental leave for the purpose of caring for a child (UK, 1996b:sec.76); and

[225]Supply teachers employed by LAs have the same obligations and entitlements as those employed by schools (TDA, 2007).

- paternity leave (UK, 1996b:sec.80A) including paternity adoption leave (UK, 1996b:sec.80BB; *cf*. 5.4.3).

In cases where a teacher is absent from work due to an accident, injury, assault which arises out of or in the course of the teacher's duties, or contagious or infectious illness contracted in the course of the teacher's duties, such absence shall not be deducted from the sick leave entitlement of the teacher (NEOST, 2000:11). It is the duty of a teacher who lives in a house with other persons suffering from an infectious disease to inform the employer immediately and take the approved precautionary measures. Should the teacher be advised by an approved medical practitioner not to perform his/her duties as a precautionary measure, the period of time the teacher is absent will not be deducted from his/her sick leave entitlement (NEOST, 2000:12; *cf*. 5.4.3).

Teachers who are absent due to negligent actions of a third party for which damages are recoverable, have the duty to inform the employer. The employer may require of the teacher to refund the money received in lieu of sick leave pay received or part thereof, but may not exceed the damages recovered. Furthermore, teachers may forfeit the right to any sick leave payment, or further sick leave in respect of a period of absence, if the absence can be ascribed to any negligent action of the teacher, such as misconduct or acting in a way that may delay recovery (NEOST, 2000:12 *cf*. 5.4.3).

With regard to maternity leave, pregnant teachers have a number of duties. It is the pregnant teacher's duty to inform her employers at least 14 weeks prior to the expected week of childbirth of the expected date, if possible. She also has to apply for maternity leave at least 21 days before taking maternity leave. Moreover, she needs to inform the employer if she intends to return to her teaching position after the birth and if she intends to make use of the national maternity scheme for teachers. If the teacher does not intend to return to teaching, she has the duty to provide her employer with a written resignation at least 21 days before such termination or as soon as is reasonably practicable (NEOST, 2000:6 & 13).

Pregnant employees referred by a medical practitioner, registered midwife or registered nurse for ante-natal classes must be allowed to take time off the employer

appointment[226] with remuneration[227]. The employee must have an appointment and on request, be able to produce proof of the appointment[228]. Employment Rights Act 1996 stipulates that no employer may subject an employee to any detriment by acting or failing to act for any reasons relating to leave for family or domestic reasons[229]. Supply teachers employed by agencies for longer than 12 weeks have the same entitlement and requirements as a permanent worker[230]. Both permanent and supply teachers have to attempt to arrange to obtain an appointment outside working hours (UK, 1996b; NEOST, 2000).

Employees are entitled to a reasonable paid time off from work in cases where, among others, dependants need assistance due to illness, child birth, injury or assault, or to make arrangements for provision of care, and death of a dependant (UK, 1996b:sec.57A(1)), as well as the right to time off to perform functions as a trade union representative or candidate (UK, 1996b:sec.61(1)), with remuneration (UK, 1996b:sec.62). The Employment Rights Act 1996 also provides employees with the right to time off from work for study or training while being remunerated and prohibits an employer to subject such an employee to any disadvantage (UK, 1996b:sec.47(A)(1) and (47F)(1)(a)).

All teachers, including supply teachers, are entitled to leave for marking external examinations, acting in a jury and performing other public service, being accredited representatives of recognised teachers' organisations and leave for other purposes allowed by the LA (NEOST, 2000:18).

3.3.5.5 Disciplinary procedures and grievances

According to the Education Act 2002, employers are required to use disciplinary and grievance procedures according to statutory procedural requirements[231]. These procedures are broadly consistent with the procedures that have long been applicable to school staff members and which aimed at achieving fairness in

[226] UK, 1996b:sec.55(1); UK, 2000:13

[227] UK, 1996b:sec.56(1)

[228] UK, 1996b:sec.55(1) and (2)

[229] UK, 1996b:sec.47C(1)(2)

[230] UK, 1996b:sec.57ZA(1)(2) & sec.57ZB

[231] UK, 2002:sec. 35(8) & 36(8)

dismissals and also resolve grievances[232]. It is the duty of LAs and governing bodies to draw up appropriate procedures to deal with individual grievances, breaches of discipline and dismissals[233] as long as the legal stipulations are followed (NEOST, 2000; UK, 2002; Wales, 2006; Ruff, 2008; UK, 2009; Wales, 2013).

Dismissal of teachers has to be fair[234], but only if the employee has been continuously employed for a period of not less than one year[235]. Supply teachers continuously employed by the same employer have the right not to be unfairly dismissed[236]. It is the duty of the employer to prove that the dismissal is not unfair[237]. As with other employees in England/Wales, teachers are entitled to written reasons for dismissals[238] (UK, 1996b; ATL, 2012).

In England/Wales, cases of incompetency and less serious misconduct by attached teachers are dealt with locally, by the relevant body (TTA, 2012a:3; Wales, 2013a:4). The Teaching Agency deals with serious misconduct cases and is required to make a decision if the teacher should be prohibited from teaching in England (TTA, 2012a:3; *cf*. 3.3.6; 5.4.3). In Wales, the GTCW has the responsibility to investigate, as well as hear cases of unacceptable professional conduct and serious professional incompetence, once the local procedures for complaint resolution have been exhausted (GTCW, 2013a:4 & 10). Agencies are responsible for the discipline, dismissal and suspension of supply teachers holding a contract of employment with the agency (Wales, 2013a:14; Wales, 2013b:7)

The Education Act 2002 and its regulations also contain additional provisions on how governing bodies and LAs should deal with:

- staff conduct;
- discipline and grievances;
- serious concerns about performance of the head teachers; and

[232] Ruff, 2008:84

[233] UK, 2000:19; UK, 2002:sec.35(5)(a) & 36(5)(a); Wales, 2006:reg.7(1); UK, 2009:reg.7; Wales, 2013b:7

[234] UK, 1996b:sec.94(1)

[235] UK, 1996b:sec.108(1)

[236] ATL, 2012:5

[237] UK, 1996b:sec.98

[238] UK, 1996b:sec.92

- suspension and dismissal of staff (Ruff, 2008:84).

Regulation of staff conduct and discipline is the responsibility of the school governing body, as well as providing staff with opportunities for seeking redress and any grievances relating to their employment[239], plus procedures for dealing with lack of capability[240]. The governing body must establish disciplinary rules and procedures and ensure that these are made known to the staff[241]. Only when the control over the conduct and discipline requires action which does not fall within the functions of the governing body, but within the authority of the LA, will the action be taken over by the LA[242] (UK, 1998b; Wales, 2006; Ruff, 2008; UK, 2009).

Capability procedures

Capability procedures apply to teachers about whom serious concerns arise regarding their performance, which could not be addressed by the evaluation process (DfE, 2012g:3; Wales, 2013a:4). When capability procedures are instituted, the common law principle, *rules of natural justice* must be adhered to (*cf*. 5.4.3).

i) England

In England, the process starts with a formal capability meeting. The teacher must receive notification of the intended formal capability meeting at least 5 days prior to the date set and the notification must contain:

- sufficient information regarding the concerns about performance, as well as any possible consequences for the teacher to prepare answers;
- copies of any written evidence;
- details of the time and place of the meeting; and
- advice regarding the teacher's rights to be accompanied (DfE, 2012g:11).

During a formal capability meeting the intention is to establish facts and will be conducted by the head teacher (DfE, 2012g:11). Teachers may be accompanied by a colleague or a trade union official or competent trade union representative. The

[239] UK, 1998b:schedule 16 item 22(1); Wales, 2006:reg.7(1); UK 2009:reg.7(1)

[240] Ruff, 2008:84; Wales, 2006:reg.7(1)(c); UK, 2009:reg.8

[241] UK, 1998b:schedule 16 item 22(2)

[242] UK, 1998b:schedule 16 item 22(5); Wales, 2006:reg.7(5); UK, 2009:reg.7(2)

teacher has the right to respond to the concerns and make relevant representations, which may provide new information or a different view of the evidence already collected. Should the person conducting the meeting be of the opinion that there is insufficient grounds for continuing with the capability process, the process will be ended and evaluation process will be reinstituted (DfE, 2012g:10; *cf*. 3.3.5.4).

The initial formal capability meeting will be followed by a formal monitoring and review period (DfE, 2012g:10). During this time monitoring, evaluation, guidance and support will continue. After the period of monitoring and review the teacher will be invited for a review meeting or a decision meeting if the teacher has been issued with a final written warning. A formal review meeting, adhering to the *rules of natural justice*, will be scheduled after the monitoring and review period. The person conducting the meeting may end the capability process and re-institute the evaluation process if satisfied that the individual teacher has improved sufficiently. If the person feels that there has been progress and that further progress is likely, the decision may be made to extend the monitoring and review period. If no or very little progress is evident, then the teacher will be issued a final written warning (DfE, 2012g:11).

Written records of all meetings must be kept and sent to the teacher involved (DfE, 2012g:12). The final written warning should mirror any previous warning and should inform the teacher he/she may be dismissed if failing to achieve an acceptable level of performance within a given time period, as well as provide information regarding a period of further monitoring and review and the procedures and time limits in case the teacher wants to appeal the decision. The teacher will also be invited to a decision meeting. The preceding two meetings will be followed by a decision meeting, complying with the *rules of natural justice*.

As is the case of the formal review meeting, should the teacher have made sufficient progress during the further monitoring and review period, the capability procedures will cease and the evaluation procedure will be re-instated. The person conducting the meetings must make a decision or recommendation to the School Governing Body when a teachers' performance stays unsatisfactory, for the dismissal of the teacher or to require that the teacher stop working at the school (DfE, 2012g:12). Schools are not only required to deal with a lack of capability on the part of the staff (UK, 2009:reg.8), but in England also provide written advice to an inquiring school the teacher is applying to for a position, if the teacher had been the subject of

capability procedures within the last two years, as well as provide written details of the concerns, the duration of the proceedings and the outcome of the proceedings (UK, 2012b:reg.2(3)).

ii) Wales

According to the Welsh Government (2012:18; 2013a:4), performance management evaluation (*cf*. 3.3.5.4iv) may not form any part of formal disciplinary, competency or capability procedures, but relevant information from evaluation statements may be considered in decisions regarding disciplinary or dismissal matters triggered by other procedures. Any decision taken to enter into formal capability procedures supersedes evaluation arrangements and therefore an evaluation process may be suspended at any time with the institution of formal capability procedures (Wales, 2012:18).

The capability procedures and support measures followed in Wales differ according to the case at hand. Unsatisfactory performance can fall within three categories:

- Lack of capability due to ill health, where the unsatisfactory performance can be ascribed to health issues, as well as other physical or mental issues.
- Incapability due to a lack of competence, where the unsatisfactory performance can be linked to a lack of skills or aptitude.
- Misconduct, where the actions or lack of action of a teacher leads to a contravention of the workplace rules of the employer, and/or the Code of Professional Conduct and Practice (hereafter referred to as the Code) of the GTCW (Wales, 2013a:7).

As in the case of England, capability procedures start off with a formal meeting (Wales, 2013a:8). The rules and procedures followed for the formal capability meeting by the Welsh mirrors that of the English (Wales, 2013a:8-13). However, there are some differences in the procedures following on the first meeting. In the Welsh system, after the issue of underperformance has been raised and investigated, an informal support programme will be implemented for a period of 20 – 30 working days (Wales, 2013a:17). Should there be no marked improvement in performance, the teacher will receive an oral warning. Twenty to thirty working days of support and monitoring will once again be available to the teacher. This will be followed by a first written warning, final written warning and finally disciplinary and

dismissal procedures will be instituted. In between each stage, the teacher will be monitored and receive support for 20 – 30 working days (Wales, 2013a:17).

Suspension and dismissal

Provisions for suspension and dismissal of staff vary according to whether schools are community or voluntary controlled, where the employer is the LA or voluntary aided or foundation school, where the governing body is the employer. Different provisions may apply for academies or trust schools. Head teachers and governing bodies of community and voluntary controlled schools have the power to suspend a teacher for a good reason[243], while the party suspending the teacher has the responsibility to inform the other party as well as the LA[244]. Suspension can only be ended by the governing body[245] (UK, 1998b; Wales, 2006; Ruff, 2008; UK, 2009; Wales, 2013b).

LAs have to be informed in writing by the school governing body if the governing body determined that a teacher should be dismissed, providing reasons in the written communication[246]. Hereafter, the LA has 14 days after the notification has been given to inform the relevant teacher of the intended dismissal[247]. The teacher must be informed of the reasons for the dismissal, the date the employment contract ends and their right to appeal within 5 days[248]. The LA may give the relevant notice as required under contract and terminate the contract without notice should the circumstances surrounding the teacher's conduct so require[249]. Should the teacher be employed at different schools, the LA will require such a teacher to stop working at the particular school where the problem arose[250] (UK, 1998b; Wales, 2006; UK, 2009; DfE, 2012g; Wales, 2013b; *cf*. 5.4.4).

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[243] UK, 1998b:schedule 16 item 24(1); Wales, 2006:reg.16(1); Ruff, 2008:85; UK, 2009:reg.19(1); Wales, 2013b:15

[244] UK, 1998b:schedule 16 item 24(2); Wales, 2006:reg.16(2); Wales, 2013b:15

[245] UK, 1998b:schedule 16 item 24(3); Wales, 2006:reg.16(3); UK, 2009:reg.19(3); Wales, 2013b:15

[246] UK, 1998b:schedule 16 item 25(1); Wales, 2006:reg.17(1); UK, 2009:reg.20(1); DfE, 2012g:12; Wales, 2013b:14)

[247] Wales, 2006:reg.17(2); UK, 2009:reg.20(2); Wales, 2013b:14

[248] DfE, 2012g:12 & 13

[249] UK, 1998b:schedule 16 item 25(2); Wales, 2013b:15

[250] UK, 1998b:schedule 16 item 25(3) Wales, 2006:reg.17(3); UK, 2009:reg.20(3); Wales, 2013b:15.

As far as dismissal is concerned, governing bodies of community, voluntary controlled and community special schools do not have the power to dismiss teachers, but may decide that any person employed or engaged to work at schools by them should cease to work there (Ruff, 2008:85; DfE, 2012g:12; Wales, 2013b:14). In the case of a claim for unfair dismissal the governing body will be the respondent and not the LA (Wales, 2013b:14). In such circumstances the governing body must notify authorities in writing of their decision and the reasons therefore. LAs as the employers are required to terminate contracts of employment (DfE, 2012g:13; Wales, 2013b:14)). The capability procedure may be suspended temporarily, if the teacher raises a grievance during the procedure, in order to deal with the grievance. If the grievance and the capability procedure is related both issues can be dealt with concurrently. Depending on the case, if capability procedures seem to have triggered a long period of illness, the case can either be dealt with under the school's absence policy, or the monitoring and/or formal procedures can continue (DfE, 2012g:13-14).

Supply teachers employed by an agency hold a contract of employment with the agency and therefore the agency carries the responsibility for discipline, dismissal and suspension (Wales, 2013b:17; *cf*. 5.4.4). In a case where allegations of gross misconduct are made against a supply teacher, the head teacher should report the matter to the agency. The agency should also be informed if the decision was made not to employ the supply teacher at the school any longer, that the teacher was asked to leave the premises and the reasons for the decision. On the other hand, the agency has to inform the governing body of the school where the supply teacher works of any decisions to suspend or take disciplinary/dismissal actions against such a supply teacher (Wales, 2013b:17)

Section 141D and 141E inserted into the Education Act 1996 by the amendments stipulated in the Education Act 2011 require of employers to consider whether a case where a teacher has been dismissed, or would have been dismissed if the teacher did not resign must be referred to the Secretary of State. The provision applies to both teachers employed by LAs and schools, as well as teachers employed by supply agencies or contractors (UK, 2011a:sec.8; UK, 2011b; UK, 2012c:reg.20). According to the Education (Supply of Information) (Wales) Regulation 2009, schools in Wales have to report cases of professional incompetence where the services of a registered teacher to the GTCW have been ended (Wales, 2013a:29).

The respective roles of governing bodies and LAs are not always clear in practice. In *Green v Governing Body of Victoria Road Primary School and Kent County Council* [2004] 2 All ER 263; [2004] ELR 75 the Court of Appeal held that the governing body was the correct respondent for the constructive dismissal claim, despite the fact that the applicant teacher had an employment contract with the local authority. In *Murphy v Slough Borough Council and the Governing Body of Langleywood School* [2005] IRLR 382, the Court of Appeal found that the liability of a governing body of a school as an employer only existed when the claim related to the exercising of employment powers vested in it by law. In *Northamptonshire County Council and Abington Vale Middles School v Gilmore (unreported)* UKEATR/0579/05/CK the EAT emphasized that when a school fails to follow a protocol formulated by an LA and to which the school subscribed, it did not make the LA liable for a claim for unfair dismissal by the teacher. The conclusion of the court was that any liability lay with the school.

3.3.5.6 Resignation, dismissal and sanctions

Teachers' contracts differ from those of other employees as their contracts can only be ended on three days in the year:

- 31 December;
- 30 April (or the last day of the school's Easter holiday if it is earlier and the teacher is moving to a new teaching job in the summer term); or
- 31 August (NEOST, 2000:4; Ruff, 2008:85; cf. 5.4.4).

Furthermore, the notice period for resignation or termination for teachers is two months to terminate on 30 December or 30 April and three months to terminate on 31 August (NEOST, 2000:5; *cf*. 5.4.4). As specified in the Employment Rights Act 1996, teachers who have been continuously employed for more than eight years shall be entitled to receive additional notice (NEOST, 2000:5). Importantly, the afore-mentioned entitlement to notice periods does not apply when the teacher's contract is terminated due to gross misconduct (NEOST, 2000:5). The reason for these stipulations regarding appointment is to protect pupils from the disruptive effects of midterm changes. If the contract of a temporary employed teacher, employed for a period of one term or as a substitute for a permanent teacher, does not contain any provisions regarding a period of notice or termination, the stipulations relevant to permanent employed teachers will be applicable (NEOST, 2000:5).

Teachers employed before 1 January 2007 may retire on full pension when they reach the age of 60, yet may also continue working until they are 65 years of age. People entering the profession after this date will normally only be able to retire at the age of 65. Teachers reaching the age of 65 will automatically retire at the end of the term in which they turn 65, unless a mutual agreement between the teacher and employer has been reached to extend the teacher's contract (NEOST, 2000:6; *cf*. 5.4.4). In such an instance, the teacher's contract can be ended, either by resignation or termination, in the same way as ordinary service. There are concerns that the age requirement for retiring may breach the age discrimination legislation. However, the teaching profession, as in South Africa and Belgium, portrays an aging profile and evidence indicates a shortage of qualified teachers in key subjects, which will enable anyone who wishes to remain teaching to do so (Ruff, 2008:87). Retired supply teachers, however, need to clarify how much they are allowed to earn with supply teaching before it affects their pension (ATL, 2012:14).

Teachers' salaries, including those of part-time teachers and supply teachers are automatically pensionable. The automatic deduction of pension fund contributions is relevant to teachers employed by LAs or directly by schools, including academies. Teachers who do not wish to contribute to the scheme must complete an opt-out form. Supply teachers employed by agencies are not able to contribute to the scheme as the Agency Workers' Regulation does not cover pensions (ATL, 2012:14).

3.3.5.7 Continual Professional Development

In England/Wales, Continual Professional Development (CPD) of not only teachers, but the whole school workforce, is a government priority (Desurmont et al., 2008:53). CPD includes a wide range of staff development activities, both formal[251] and informal, specifically designed to improve teachers' practice (Eurypedia, 2012b, Eurypedia, 2012e; cf. 5.4.5). Within the English context, CPD is considered the most beneficial to quality teaching when it is integrated with performance management and school self-evaluation into a logical cycle of planning (Eurypedia, 2012b). The Welsh Government views CPD as most effective when integrated into a simple, consistent system which also includes professional standards in which the elements should work together as a coherent system to initiate improved standards of teaching

[251] Formal CPD activities refer to accredited qualifications (Eurypedia, 2012b; Eurypedia, 2012e).

focused on national priorities (Eurypedia, 2012e). CPD is seen as an essential element of performance management, as well as supporting teachers in enhancing their knowledge and skills (Wales, 2012:9; *cf*. 3.3.5.4).

Therefore, in both England/Wales it is compulsory for schools to have a CPD plan for their teachers as part of the school's development plan (Desurmont et al., 2008:49) which is determined by its own needs according to the requirements indicative from the school development plan (Eurypedia, 2012b; Eurypedia, 2012e). Teachers are assisted further to identify and address their developmental needs according to their career aspirations by the framework of the Teachers' Standards 2012 (Coates, 2011:7; Eurypedia, 2012b; *cf*. 3.3.5.4) in England and the Practising Teacher Standards in Wales (Wales, 2012:9).

With regard to the CPD of teachers in England/Wales, the minimum annual time prescribed amounts to 35 hours a year. Teachers are expected to be available for work, while the school is closed for pupils for five days (*cf*. 3.3.5.4; 5.4.5). Originally these days were introduced in order to support a number of non-teaching activities, which include professional development (Desurmont *et al*., 2008:48; Eurypedia, 2012b). It is considered a professional duty of teachers to review their methods of teaching and their programmes of work, as well as participate in in-service training or CPD throughout their careers. Thus, participation in CPD depends on the professional needs of a particular teacher, as well as the availability of the resources at the school to meet the needs. It also means that CPD can range from a few hours of training to a few days to full- or part-time studies over a long period of time in order to obtain a nationally recognised qualification. Courses may be presented during school hours, in sessions after school, at weekends or during holidays (Eurypedia, 2012b; Eurypedia, 2012e; *cf*. 5.4.5).

Even though CPD benefits teachers as it increases their job satisfaction and career opportunities, there is no automatic link between participating in CPD and an increase in salary (Eurypedia, 2012b; Eurypedia, 2012e). Furthermore, a school governing body has the discretion to subsidise a teacher who undertakes CPD outside school hours (Eurypedia, 2012b; Eurypedia, 2012e). Some teachers may not be able to, or wish to attend training courses in the evening, over the weekend or during holidays and head teachers and governing bodies are required to respect their wishes (DfE, 2013c:87; *cf*. 5.4.5). According to the Guidance on School Teachers' Pay and Conditions (DfE, 2013c:87) the relevant bodies should take

cognisance of the individual's right to make their own choices, while ensuring equal opportunities and keeping contractual requirements for reasonable work-life balance when planning CPD activities.

3.3.5.8 Duty of care

Teachers in the UK have a legal duty to do everything reasonably possible to protect the health, safety and welfare of pupils. This duty derives from three sources (Lauwers, 2004:57; National Union of Teachers (NUT), 2013:3), namely:

- the common law duty of care;
- a statutory duty of care; and
- a duty arising from the contract of employment (*cf*. 5.4.6).

Through the ages, the common law duty of care has been founded in the *in loco parentis* principle (NUT, 2013:3). However, in 1962 the UK court acknowledged teachers as professionals and the expected standard of care became the expectation that the teacher will exhibit the standard of care of a prudent parent in the school environment. Currently, the UK expects teachers to maintain a standard of care which is that of a reasonable person in the setting of a class teacher, while case law expects teachers to act as competent reasonable professionals acting skilfully and carefully. In *Beaumont v Surrey County Council* (1968) 66 LGR 580, the teacher on playground duty was absent on the particular day and no other teachers were appointed to take over the duty. An 11-year-old boy suffered serious injury to his eye when the boys were playing with a piece of discarded plastic found in a rubbish bin. The court held the school liable in this instance as the head teacher did not take reasonable and proper actions to ensure the safety of the pupils in his care and prevent injury from inanimate objects or other pupils or a combination of both. The judge in the case described the standard of care required of a teacher as a *high standard* (*c*f. 5.4.6).

The common law principle of duty of care provides a teacher the authority to maintain discipline (NUT, 2013:10) within the statutory provisions regarding the disciplining of pupils. Teachers may be held liable for damages if a pupil in their care suffer harm due to their negligence (NUT, 2013:3; *cf*. 3.3.4.1). Moreover, the Children's Act 1989 places a statutory responsibility on teachers to safeguard the pupils in their care (UK, 1989; Lauwers, 2004:57; NUT, 2013:4). According to said Act, the duty of care requires of a person with the responsibility to care for the child

to do everything reasonably possible in all circumstances to safeguard the child or to promote the welfare of the child (UK, 1989:sec.3(5)). Furthermore, teachers' contracts of employment, as per the list of contractual duties found in the School Teachers' Pay and Conditions document, also contain provisions requiring them to promote the safety and well-being of pupils, while maintaining good order and discipline (NUT, 2013:4). Teachers' duty of care does not only relate to within school activities, but also to out-of-school activities (NUT, 2013:4-5).

The duty of care of teachers in the UK has been tested in courts on numerous occasions. Courts have confirmed the duty which schools and teachers have to ensure suitable supervision of pupils, especially during break, in the *Carmarthenshire County Council v Lewis* [1955] 1 All ER 565 (hereafter referred to as *Lewis)* and the *Brown v North Lanarkshire Council* [2010] CSOH 156 (hereafter referred to as *Brown*) cases. In *Lewis*, the LA was held responsible after a truck driver was killed while trying to avoid hitting two four-year-old pupils who left the school through an open gate and landed up on the highway, while the teacher on playground duty was busy dealing with another emergency. The teacher was not considered negligent, but the LA was, as adequate precautions were not in place. In *Brown*, the LA was held liable for the injuries a 10-year-old pupil suffered when the paintbrush of another pupil entered his eye and brain, while the pupils were painting on the floor. The court held that the teacher did not consider the possibility that a paintbrush could cause injury and took no reasonable steps, such as providing other brushes or having the pupils work on desks.

In liability cases in the UK the onus of proof lies with the victim. This means that the injured pupil will have to prove that the required high standard of care was not met (Lauwers, 2004:61). Schools and LAs as employers have vicarious liability (*cf*. *Brown*) and will therefore bear the responsibility if damages which arise from a teacher who does not fulfil the duty of care obligation (NUT, 2013:5). However, the teacher will not be absolved of the legal responsibility and the school or LA may decide to bring an action against such a teacher in order to recoup some of the monies paid, although this rarely happens (Lauwers, 2004:61). It is important for UK teachers to ensure that they are aware of their responsibilities towards pupils in their care and the procedures in place when they are concerned about or suspect possible abuse of a pupil (NUT, 2013:9). Teachers are not expected to investigate possible child abuse, but to report it to the relevant people (NUT, 2013:9).

Although teachers are seldom held criminally liable for their actions or omission to act, they are subject to criminal law (Lauwers, 2004:59). In most cases where teachers are held criminally liable, the teacher acted fraudulently or there is a clear case of assault. However, teachers may be held criminally liable due to neglect. In the unreported case *R v Ellis* heard in the Manchester Crown Court (Voice, 2012:16), a teacher was found guilty of manslaughter and breaching the health and safety law. The teacher pleaded guilty of gross negligence and was jailed for a year, after a 10-year-old in his care drowned in a small flooded river (Lauwers, 2004:60; Voice, 2012:16).

In England, courts have not dismissed educational malpractice[252] cases out of hand. According to Mawdsley and Cumming (2008:25), English courts have allowed claims of educational malpractice to proceed, although the plaintiff cannot be assured of a successful outcome. The House of Lords decision referred to as *X and others (minors) v Bedfordshire County Council* [1995] UKHL 9 (29 June 1995), which involved five related appeals, the statutory responsibilities of authorities were questioned by the appellants. Three of the five appeals relate to educational malpractice. In each of the complex cases the parents of pupils sought redress after educational authorities allegedly failed to diagnose special learning needs. The House of Lords ruled that the claims for negligence may proceed.[253] Subsequently in *Phelps v Hillingdon London Borough Council* [2001] 2 AC (hereafter referred to as *Phelps*), the House of Lords upheld a decision of the trial court to award damages to the plaintiff. In *Phelps*[254] the House of Lords ruled that a LA can be held vicariously liable for negligent professional services.

3.3.5.9 Support for teachers

According to common law, UK schools have a duty of care towards their staff members, and are required to perform this duty whether to permanent staff or supply

[252] Malpractice can be defined as a negligence claim where professional standards of conduct has not been maintained leading to a breach of duty of care (Mawdsley & Cumming, 2008:25)

[253] Information regarding the resolution of the cases is not available. The cases may have been settled out of court or the plaintiffs may not have had the resources to continue (Mawdsley & Cumming, 2008:32)

[254] Phelps instituted a claim of statutory breach of duty by educational authorities and professional negligence by a specialist advisor, after her reading problem was not identified during her 12 years of schooling and the specialist did not identify her dyslexic condition, making it difficult to get and keep a job (Mawdsley & Cumming, 2008:32-33).

teachers (ATL, 2012:17; NUT, 2013:6). The duty of care on employers requires reasonable care for both the physical and mental health of the teachers in their employ (NUT, 2013:6). Given the assaults against teachers reported at UK schools, it would be expected of a school to ensure that the disciplinary policy of the school is equally applicable to supply teachers, as permanent teachers and that transgression will be dealt with similarly (ATL, 2012:18).

Schools and LAS, as employers, should also assess the stress teachers experience due to pupil behaviour, excessive workload and the conduct of other staff, as risk factors (NUT, 2013:6). The decision by the House of Lords to allow the appeal of a teacher's claim for damages for mental breakdown due to the pressures and stress of his workload in *Barber v Somerset Council* [2004] 1 WLR 1089; [2004] 2 All ER 3 is an indication that schools and LA need to be aware of their duty to employees, particularly with regard to workload (*cf*. 3.3.6.1; 4.5.6).

The Employment Rights Act 1996 allows for employees not to be disadvantaged if the employee reasonably believed that a circumstance of danger was serious and imminent and it could not be reasonably expected of him/ her to avert the danger and he/she therefore either left, proposed to leave or refused to return to the workplace (UK, 1996b:sec.44(1)(d)) or taken (or proposed to take) appropriate steps to protect him- or herself or others (UK, 1996b:sec.44(1)(e)).

Teachers, who are the victims of violent or criminal assaults as a consequence of their employment, or their dependents in the event of their death, shall receive monetary compensation, which may not be less than the prescribed amounts as found in the Conditions of Service for School Teachers in England/Wales (NEOST, 2000:20). It is strongly recommended for schools and LAS to obtain insurance for protection against the financial consequences of a liability claim (Lauwers, 2004:64), albeit as a vicarious liability claim or an employment rights claim instituted by a teacher as victim (Lauwers, 2004:61). Furthermore, teachers are entitled to compensation for losses or damages to personal property sustained during the course of their duties at school, or during out-of-school activities (NEOST, 2000:21).

Disabled teachers are entitled to support in the workplace (*cf*. 3.3.4 vi). The Equality Act (2010) calls on employers to make reasonable adjustments to provide support for disabled teachers by making reasonable adjustments such as modifications to buildings, offering flexible work hours and providing specialist equipment. Although the Equality Act (2010) places the responsibility for the required adjustments on the

employer, the costs of the adjustments do not necessarily have to be paid by the school. The Access to Work programme offers help to employers for expenses as mentioned above as well as communication support at interviews, support workers, travel to work and disability awareness training for colleagues, as long as applications are done within 6 weeks of the disabled employee date of commencement (Disability Rights UK, 2012: DfE, 2014b)

3.3.5.10 Regulation of the profession

As is the case in South Africa, in England whether teaching is a profession is also a matter not yet resolved. Ruff (2008:86) is of the opinion that professionalism is a concept of importance up to the 20th century, but now in the 21st century its importance has diminished as specialist knowledge becomes available to everyone and professional skills are less valued than they once were. However, as with the establishment of SACE in South Africa (*cf*. 2.5.1), the establishment of the General Teaching Councils (GTCs) in 1998 addressed an aspiration of teachers – that they should be viewed as a profession with a self-governing organisation. The GTCs have become an effective regulatory role for professional standards and have established an effective disciplinary function to promote high professional standards (Ruff, 2008:86). In Wales, the GTCW still acts as a watchdog of the teaching profession, but in England the disbandment of the General Teaching Council for England and the establishment of the TTA has been a controversial move. (*cf*. 3.3.6; 5.4.7). Despite a loss of autonomy, teachers in the UK have a strong sense of professional identity (Wilson & Stewart, 2014).

i) England

The TTA is an executive agency of the DfE and acts as regulator of the profession on behalf of the Secretary of State (*cf*. 5.4.7). Teachers do not have to register with the TTA, but the agency does still have a regulatory function, as it is involved in the investigation of serious misconduct cases in order to provide the Secretary of State with a recommendation to prohibit a teacher from teaching (*cf*. 3.3.5.5; 5.4.7)

The TTA investigates matters in order to advise the Secretary of State if a prohibition order should be made in respect of a teacher (TTA, 2012a:3). When an allegation against a teacher is received from an employer, a member of the public, the police, the Disclosure and Barring Service or another regulator (TTA, 2012b:4; TTA, 2013:4), the TTA, must establish whether the actions of the teacher constitutes

unacceptable professional conduct, if the conduct may bring the profession into disrepute and/or the teacher may have been convicted of a relevant offence. An investigation will be done, should any one or more of the above-mentioned apply, after which the case will be referred to a Professional Conduct Panel, if necessary (TTA, 2012a:3; TTA, 2013:5). Decision regarding prohibition orders may take into account failure by a teacher to comply with the standards found in Part 2 of the Teachers' Standards 2012 (UK, 2012c:reg.4; *cf*. 3.3.5.4). The TTA does not investigate cases of incompetence (TTA, 2013:5), as the responsibility to manage teacher competence and conduct lies with head teachers and governing bodies (TTA, 2012b:4; *cf*. 3.3.5.5).

Certain amendments to the Education Act 2002 are made by the Education Act 2011. Section 8(1) (UK, 2011a; UK, 2011b) calls for the insertion of five subsections into the Education Act 2002. These inserted subsections provide for the Secretary of State to exercise certain functions in order to regulate the teaching profession in England. Inserted section 141B allows for the Secretary of State to consider allegations of unacceptable conduct which may bring the profession into disrepute or convictions of a relevant offence. Furthermore, the Secretary of State may decide whether to prohibit the person from teaching (TTA, 2012b:4). A new schedule 11A is inserted to the Education Act 2000 by section 8(2) (UK, 2011a; UK, 2011b). Schedule 11A contains provisions about the regulations to be made by the Secretary of State. As stipulated in Schedule 11a (UK, 2011a:item.8(1); UK, 2011b), the Teachers' Disciplinary (England) Regulations 2012:

- make provision for the procedures to be followed by the Secretary of State when deciding about prohibiting a person from teaching (UK, 2012c);
- allow the Secretary of State to make an interim prohibition order in situations where he/ she considers it necessary to do so in the public interest (UK, 2012c:reg.14), at any time without a formal hearing (TTA, 2013:6);
- require of the Secretary of State to review the prohibition order every six months should the teacher concerned apply (UK, 2012c:reg.16);
- specify the effect of the order, which may include the work the teacher can still carry out (UK, 2012c:reg13(5));
- make provision for the publication of information which relate to the cases (UK, 2012c:reg.15);

- allow for the right to appeal against the order to the High Court, within the 28-day prescribed period (UK, 2012c:reg.17; TTA, 2013:4);
- provide for a teacher who is subject to a prohibition order to apply for the setting aside of the order and the resulting procedures (UK, 2012c:reg.16(1));
- provide for a notice of a prohibition order to be served on the teacher's employer and to require that the teacher's employer take action (UK, 2012c:reg.19) ; and
- make provision for the effect in England of teachers banned from teaching in Wales, Scotland and Northern Ireland (UK, 2012c:reg.18).

Inserted section 141C requires of the Secretary of State to keep a list of teachers who are subject to a prohibition order or teachers who have failed the induction period. These lists must be available for the public to view and may include teachers banned from teaching in Wales, Scotland and Northern Ireland (UK, 2011a:sec.8(1); UK, 2011b; UK, 2012c; *cf*. 3.3.5.5).

ii) Wales

In Wales, the GTCW is an independent, statutory, self-regulating professional body in charge of regulating teachers in the public interest (GTCW, 2013a:4; GTCW, 2013d:2). Therefore the GTCW is responsible to ensure that teachers teaching in Wales have the required qualifications and are suitable to teach, in order to create protection for all stakeholders, but also instil confidence in the profession. Regulation of the profession is done by maintaining a register of all qualified people, investigating teachers' conduct[255] and competence[256] when a question in this regard arises. By requiring all teachers to register with the GTCW (*cf*. 3.3.5.4), employers and the public have the reassurance that all teachers are qualified and there is no record of anything which would make them unsuitable to teach pupils (GTCW, 2013d:2). The GTCW has statutory powers to investigate any breach of the Code and is required to decide whether an investigated teacher is suitable to remain on the register (GTCW, 2013d:2; *cf*. 5.4.7).

The General Teaching Council for Wales (Disciplinary Functions) Regulations 2001 (Wales 2001) make provision for the disciplinary functions of the GTCW. The

[255] Conduct refers to behaviour inside or outside the school (GTCW, 2013d:2).

[256] Competence refers to the teaching ability of the teacher (GTCW, 2013d:2).

regulations clearly stipulate the role and responsibilities of the GTCW, by providing clear guidelines regarding the establishment of investigating committees (Wales, 2001:reg.3(1)), professional competence (Wales, 2001:reg.5(1)) and professional conduct committees (Wales, 2001:reg.5(1)), as well as the roles of the relevant committees when a complaint is received. The GTCW is required to consider all reported breaches of the Code, but investigate only such breaches considered to meet the threshold of unacceptable professional conduct, serious professional incompetence or a conviction of a relevant offence (GTCW, 2013a:10; GTCW, 2013d:2).

The committees may take any failure by a registered teacher to adhere to the Code into account during any disciplinary proceedings against such as teacher (Wales, 2001:reg.7; GTCW, 2013a:10). Procedures followed by the GTCW are similar to the ones followed by the TTA England (GTCW, 2013a; *cf*. 3.3.6i), with the main difference being that a case is either referred to a Professional Conduct Committee or Professional Competence Committee depending on the nature of the case (GTCW, 2013a:13). After investigation, only the most serious breaches of the Code will be referred for a public hearing (GTCW, 2013d:2). Sanctions imposed by the GTCW may include suspension of a teacher's registration, removal of registration or warnings given as to future conduct of the teacher (GTCW, 2013d:2). The 2001 Regulation was amended in 2009 by the General Teaching Council for Wales (Disciplinary Functions) Amendment Regulations 2009 (Wales, 2009), by among others the insertion of regulation 18A, which stipulates that the GTCW has to inform the Secretary of State, upon request, of a decision to make a prohibition order against a teacher on the grounds of unacceptable professional conduct or conviction of a relevant offence (Wales, 2009:reg.2(b)).

3.3.6 Other aspects relevant to the legal status of teachers

Teacher status can be described as the determining social and cultural factors which determine the degree to which teachers are respected within society.

3.3.6.1 Experiences of the UK society

In England/Wales there has been a real and perceived public deprecation of teachers particularly because teaching is associated with being women's work and therefore a low status job (Thornton & Bricheno, 2000:195). Teachers in England/Wales view teaching older pupils and maleness to result in higher status,

with the subsequent authority and power (Thornton & Bricheno, 2000:191). In a four year study (2002-2006)[257], conducted jointly by researchers of the University of Cambridge and University of Leeds, parents constantly rated the status of teachers higher than the teachers did themselves (Hargreaves, Cunningham, Everton, Hansen, Hopper, McIntyre, Maddock, Mukherjee, Pell, Rouse, Turner & Wilson, 2006; Hargreaves, Cunnigham, Hansen, McIntyre & Oliver, 2007:1).

In the 2013 Global Teacher Status index, 85% of participants indicated that they have respect for teachers (Dolton & Marcennaro-Gutierrez, 2013:18). However, only 40% indicated that they think pupils respect their teachers ((Dolton & Marcennaro-Gutierrez, 2013:17). An indicator of a society's perception of the status of a career is the willingness of parents to encourage their children to become teachers (Dolton, 2013). Over the four years of the study, nearly fifty percent of the participants in a public opinion survey indicated that they think teaching is an attractive career, while teachers and teacher associated groups, which include teachers, teaching assistants, parents, governors and head teachers themselves perceived a steep decline in teacher status (Hargreaves *et al*., 2006; Hargreaves *et al*., 2007:1). In the 2013 Global Teacher Status index, UK participants ranked the quality of their education system and the quality of their teachers as 6.1 out of 10 and 6.4 out of 10 respectively (Dolton & Marcennaro-Gutierrez, 2013:48). In the survey, teacher' status was likened similar to that of nurses and social workers, while primary and secondary teachers were ranked at the same status level (Dolton & Marcennaro-Gutierrez, 2013:19), with head teachers ranked much higher (Dolton & Marcennaro-Gutierrez, 2013:48). Interestingly, UK teachers were awarded a higher status by participants from their country than teachers from other European countries (Dolton & Marcennaro-Gutierrez, 2013:19). In the UK, there is an understanding that teaching is a demanding job (Dolton, 2013; *cf*. 5.2.3).

Teachers and associated groups, as well as trainee teachers, consider teaching as similar to a high status profession when it comes to demonstrating responsible high level performance, but the teaching profession is more subject to external control, as not having high quality working conditions and as a less regarded authority (Hargreaves *et al*., 2006; Hargreaves *et al*., 2007:1). When asked to provide an estimated salary for teachers, as well as what is perceived as a fair wage, the figure

[257] The Teacher Status Project

provided by participants to the teacher status index was higher than the actual salary earned by teachers. The participants indicated that they think teachers should earn 15% more than what they currently earn (Dolton & Marcennaro-Gutierrez, 2013:48). Seventy-four percent of the participants also indicated that they support performance-related pay (*cf*. 5.2.3).

3.3.6.2 Teaching as career choice

Only a quarter of the participants in the teacher status index indicated that they will encourage their children to become teachers (Dolton & Marcennaro-Gutierrez, 2013:19), while in the study conducted by Hargreaves *et al*. (2007:19), 50% of the participants indicated that they consider teaching an attractive career whether it is as primary or secondary teacher. According to participants in the Teacher Status Project, the most common reason for becoming a teacher is because it is considered an interesting career. Pay was mentioned as positive reason by approximately the same number of people who mentioned it as an unattractive aspect (Hargreaves *et al*., 2007:19). The most unattractive aspect of teaching is seen as *having control of a classroom* (Hargreaves *et al*., 2007:1).

3.3.6.3 Teachers' view on their career

The Hargreaves study indicated that external status is not a priority to teachers, but that a positive feeling about their status is created within teachers when they experience supportive relationships with leadership and feel trusted and appreciated by parents. The classification of schools as high achieving or poorly performing also has a strong impact on teachers' perception of status, with teachers at the performing schools experiencing a raise in their sense of status, while teachers at the poorly performing schools experience a sense of decline in their status (Hargreaves, *et al*., 2007:2).

According to Ruff (2008:86), at the same time as the recognition of professional status, there has been a move to de-skilling. An introduction of a higher level of teaching assistants, to help reduce the burden of teachers by the government, has led to a feeling that government was trying to dilute teacher professionalism and expertise, reducing its value in allowing these assistants to undertake certain work previously only undertaken by qualified teachers (Ruff, 2008:86-87; Desurmont *et al*., 2008:14). Support staff are providing support for special education needs or other additional needs and learning mentors assist pupils in overcoming barriers to

learning due to social, emotional or behavioural problems (Desurmont *et al*., 2008:14)

Although the government denies that this was the intention, the wording of the relevant regulations remains ambiguous (Ruff, 2008:87). Henshaw (2013) reports that the number of fulltime equivalent teachers working at English schools has dropped from 448 100 in 2010 to 442 000 in 2012, although between 2011 and 2012 there was a rise of 4000 in teacher numbers. However, at the same time there was a rise of 18 400 teaching assistants at English schools between 2010 and 2012; the majority of these teaching assistants, in fact 12 500, being appointed in the 12 months preceding the November 2012 statistics. The increase in appointments of teaching assistants leads to a feeling that classes are increasing in size, the number of teachers are decreasing and unqualified teachers are allowed into the classroom, resulting in an undermining of the professionalism of teaching (Brennan, in Henshaw, 2013). NUT (2012:2) reports that supply teachers employed by agencies are finding it increasingly difficult to find work, as schools make use of non-teacher qualified support staff.

Furthermore, the autonomy of teachers as professionals has been reduced by government through imposing detailed curriculum requirements on teachers and regulating their terms and conditions of employment through legislation (Wilson & Stewart, 2014). Galgóczi and Glassner (2008:27) report that teachers are increasingly pressured due to performance criteria and stricter measures to ensure cost efficiency. Although the main reason for the NUT strike in May 2014 was changes in the ways teachers are paid (*cf*. 3.3.5.4iii), union leaders also indicated that teachers are demonstrating their frustration with the *intolerable pressures* placed on them by government (BBC, 2014c). According to the NUT general secretary, government is crushing teachers with the stifling accountability regime and the resulting long hours teachers are required to work. The NUT poses that teachers experience the new pay framework (*cf*. 3.3.5.4iii), changes to pension, excessive workload and bureaucracy negatively and that these factors all impact on the morale of the profession, recruitment and retention of teachers and the provision of quality education (BBC, 2014e; *cf*. 5.2.3).

The move towards an output-oriented measurement of school quality (Lauwers, 2004:48) has led to a situation in the UK where features of a market system in operation within education are becoming evident (Lauwers, 2004:11). Schools'

performance is measured by the results of the pupils, which requires strict regulation. In the UK, rules on inspection and teacher qualifications have intensified as it is seen as integral to the new quality agenda. Along with the new quality agenda has come increased risks of civil liability (Lauwers, 2004:11; *cf*. 3.3.5.9), as schools are becoming more accountable to parents and government, while obtaining more legal responsibility for the management of the school and the safety of the pupils (Lauwers, 2004:13). According to Wilson and Stewart (2014), the complete education system in the UK has become driven by the results of global tests resulting in a loss of professional autonomy and uncertainty due to constant change (*cf*. 5.2.3).

In the UK teachers are held highly publically accountable, with results from national testing being important for individual teachers and results from national inspections important to schools (Wilson & Stewart, 2014). The Office for Standards in Education, Children's Services and Skills (Ofsted) is responsible for the inspection and regulation of, among others, schools. It is a non-ministerial national government department (Eurydice, 2010a:2; Lauwers, 2004:55). The internal evaluation undertaken on an annual basis is quite separate from the periodic school inspections. Ofsted inspections differ in their aim, as sample lessons are evaluated as part of the assessment of the quality of teaching at a particular school (Desurmont *et al*., 2008:66).

From 2012, Ofsted has taken a no-nonsense approach to inspections and introduced no-notice inspections during which teachers will be evaluated on how well they use their expertise (Finn-Kelcey, 2012). Inspectors will focus on teachers' subject knowledge and their ability to develop pupils' knowledge, skills and understanding. NUT (2012:5) is of the opinion that Ofsted inspections are often experienced as intrusive and punitive, instead of developmental. The way in which teachers experience Ofsted inspections is understandable when one takes into consideration that not only are inspection results published on the web, but the level of public funding a school receives is related to the quality of the school (Lauwers, 2004:50). Ofsted also attaches labels to schools, resulting in teachers feeling accountable and vulnerable (Wilson & Stewart, 2014). Sadly, whereas these teachers should feel accountable to pupils and parents, they feel accountable to government. Teachers are torn between what they consider is best for the pupils in their care and what government wants (Wilson & Stewart, 2014).

English and Welsh teachers also reported that their salaries are lower than similarly situated professional groups in the private sector (Galgóczi & Glassner, 2008:28), while the salaries received by teachers, both at the start and end of their careers, are below the GDP per capita (Galgóczi & Glassner, 2008:31). Furthermore, Henshaw (2013) reports that the average salary of full-time qualified classroom teachers has dropped between 2010 and 2012 from £34 800 to £34 200. However, the new pay framework providing more flexibility to schools regarding payment of teachers is an attempt not only to address the quality of teaching, but also raising the standards of the profession (Dowling, 2013). It is believed that by linking pay and performance, teaching will become a more attractive career, as well as more rewarding (DfE, 2013a; *cf*. 3.3.5.4iii). Unions do not agree and consider this as one more pay cut. The new approach is seen as more punitive and as de-motivational (NUT, 2012:1). After a one day strike in May 2014, NUT members voted at a union conference to strike for a week during June 2014, calling on the government to rectify the pay cuts teachers had to deal with since 2010, while NASUWT is also threatening industrial action (BBC, 2014a).

Minority teachers in England indicated that the disregard by white British teachers for cultural diversity acts as a disincentive for prospective teachers (Cunningham & Hargreaves, 2007:29) deterring minority groups from pursuing teaching as a career (Cunningham & Hargreaves, 2007:34, *cf*. 3.3.41). Interestingly, teachers in England/Wales, as in the case of Belgium, indicated that the growing ethnic diversity of pupils with an immigrant background in their classroom is one of the factors contributing to deteriorating working conditions. Another factor English and Welsh teachers identified is the burden placed on them by the amount of administrative duties, despite the agreement on *Raising Standards and Teachers Workload*. This agreement is aimed at reducing the administrative workload of teachers (Galgóczi & Glassner, 2008:23; *cf*.3.3.8.1).

Teachers, and other paid staff responsible for pupils, such as teaching assistant[258], have statutory authority to discipline misbehaving pupils inside the school, as well as when they are not at school (DfE, 2012a). The Education Act 1997, amending the Education Act 1996, stipulates that the head teacher has the duty to define disciplinary measures with the view to promote self-discipline and a proper regard for

[258] Except if the head teacher takes the power away (DfE, 2012a)

authority within pupils[259], encourage good behaviour and respect for others[260], ensuring that the standard of behaviour of pupils is acceptable[261]and otherwise regulate the conduct of pupils[262]. When establishing measures to discipline misbehaving pupils, head teachers and teachers must take the guidance of the governing body, regarding the screening and searching of pupils, the power to use reasonable force, other physical contact, the power to discipline outside the school and the duty to pastoral care, into account[263]. Despite the afore-mentioned legal requirement, societal changes have led to the diminishing of respect for teachers. More and more parents and pupils no longer consider it inappropriate to abuse teachers verbally and physically (UK 1997; DfE, 2012a). Ruff (2008:88) asks the question – Should the right to respect not be a new legal right for teachers?

Brown and Winterton (2010:3) report that cases of extreme violence are rare in UK schools, while low level disruptions, verbal aggression and cyber bullying are increasing. Teachers reported that the biggest problem they face is low level disruptions, such as noisy pupils in the classroom (Brown & Winterton, 2010:8). However, teachers also reported increases in the number of pupils carrying weapons, while teachers reported being aggressively confronted by parents or guardians increasingly (Brown & Winterton, 2010:9). In a 2008 survey of the Teacher Support Network, 84% of the teacher participants reported that they have been verbally abused. Since then, concerns about the threat posed by aggressive parents are growing, as in a 2009 ATL survey 40% of teacher participants indicated that they had been confronted by an aggressive parent or guardian (Brown and Winterton, 2010:32; *cf*. 5.2.3).

Brown and Winterton (2010:33) point to another matter of concern emerging over the last few years. The authors report on the findings of a joint survey regarding cyber bullying conducted by the ATL and Teachers Support Network in 2009 in which 539 UK school staff participated. In the survey, 15 percent of school staff have been cyber bullied, while 20 percent reported knowing a victim of cyber bullying. Of the

[259] UK, 1997:sec.2(4)(a); UK, 1997:sec.3(4)(a)

[260] UK, 1997:sec.2(4)(b); UK, 1997:sec.(3(4)(b)

[261] UK, 1997:sec.2(4)(c); UK, 1997:sec.3(4)(c)

[262] UK, 1997:sec.2(4)(d); UK, 1997:sec.3(4)(d)

[263] DfE, 2012a

victims, approximately 66.6 percent of the victims received unwelcome e-mails, while 28 percent reported receiving offensive text messages and 25 percent reported that offensive messages about them had been posted on social media network sites. In the case of 44 percent of the victims, the cyber bullying was done by a pupil, while 28% reported being cyber bullied by their managers or colleagues (Brown & Winterton, 2010:33).

Reports over the last two years imply a worsening picture. In a survey in which 814 school staff members took part, it is reported that at least a third of UK school and college staff have faced physical violence from pupils in the 2011/2012 academic year with attacks ranging from threats, to pushing and shoving and punching and kicking (Ainsley, 2012). While one third of the participants to the survey mentioned that they have had to deal with physically violent pupils, a quarter of the participants reported that the violence was aimed at them. One support staff member was told by a female pupil that she would kick the smile off the staff member's face. Fifty-seven percent of the participants indicated that according to them, incidences of violence at schools increased over the last 5 years (Ainsley, 2012). Dixon (2013) and Martin (2013) report that exclusions of primary school pupils, because of assaults against teachers, have increased with 15% over the last four years and have become more prevalent than assaults of teachers by secondary school teachers. However, trade unions warn that the problem may be far greater than portrayed by statistics as staff members are often discouraged from reporting incidences of assault to protect the school's name (Dixon, 2013; Martin, 2013).

Furthermore, in the last 5 years more than 4000 teachers in London have been assaulted by pupils (Davis, 2014). The numbers include teachers being bitten by pupils, as well as teachers injured while trying to break up fights or restrain unruly pupils. One teacher was knocked unconscious when a 15-year-old pupil's head butted her (Davis, 2014). In April 2014, a teacher in Leeds was stabbed to death by another 15-year-old pupil (Dawson, 2014). It is not just in England where teachers have to deal with assault. In Wales, over 1000 pupils were excluded from schools due to assault of or violence against teachers (Dawson, 2014), while over the last three years seven primary school staff have been stabbed by pupils (Jones, 2014). Physical and verbal attacks on teachers lead to a loss of confidence in the classroom (Jones, 2014). Hathway, a NUT Wales policy officer, points out that stress-related illness among teachers is already proportionately high, due to the unsustainable high

workloads teachers are expected to manage, and working in an environment where teachers are vulnerable to physical and verbal attacks making it even more difficult (Jones, 2014; *cf*. 3.3.5.10).

As is the case in South Africa (*cf*. 2.2) and Belgium (*cf*. 3.2.5.3), concerns have been expressed about the increasing levels of stress resulting from growing administrative duties imposed on teachers mainly by central government. In 1999, the European Working Time Directive came into force, (Ruff, 2008:81), while measures to tackle workload pressure have been introduced in England/Wales, since 2003 (Desurmont *et al.*, 2008:1). In 2003, the then Labour Government, the Welsh government and the majority of the major national teachers' and general workers' unions signed the national Workload Agreement. The main aim of the agreement was to address the problem of the excessive workload of teachers by introducing some reforms (ATL, 2012:15; *cf*. 5.2.3; 5.4.3).

The reforms introduced in the agreement included making head teachers responsible for ensuring a reasonable work-life balance, not routinely asking teachers to accept administrative tasks, reasonable allocation for time on timetable in support of leadership and management responsibilities, a limitation on the time required to cover for absent colleagues in an academic year, no invigilation of external examinations, and the allocation of a guaranteed 10% of teaching time, according to the timetable, for preparation, planning and assessing time during the school day (ATL, 2012:16; *cf*. 5.4.3). Furthermore, the agreement also led to the establishment of two new support staff roles to assist teachers and decrease workload. These are higher level teaching assistants and cover supervisors. Higher level teaching assistants are seen as support staff that complement the professional work of teachers and may take responsibility for planning, preparing and delivering learning activities for individuals and groups or, for a short term, for a whole class. Cover supervisors may be used when no active teaching is taking place and they supervise pre-set learning activities in the absence of the teacher (ATL, 2012:16). Since these assistants do not receive the same salary as a qualified teacher, it has become a cheaper option for schools than using supply teachers, which has led school to abuse the situation. According to ATL (2012:16), schools are undermining the role of the higher level teaching assistants by using such assistants to cover presenting, preparation and assessing time predominantly or exclusively, by interpreting short term to mean anything from a whole term to even longer periods

and requiring of assistants to teach whole classes. Despite this fact, teacher stress-related personal injury claims still increased.

3.3.7 Concluding remarks

The legal status of teachers in the UK are well regulated and clearly documented in the respective Acts and statutory instruments. Currently, performance-related pay can be considered a contentious issue which has not been well received by teachers. Teachers in the UK are respected and are seen as an attractive career choice by society. However, teachers themselves do not have such a positive view of their careers.

3.4 SUMMATIVE REMARKS

This chapter provides a description of the legal status of teachers in the Flemish community of Belgium and the UK. In both countries, the legal position of teachers is well regulated and clearly documented.

The decrees of 1991 are the main statutory instruments according to which the legal status of teachers is regulated. Teachers in Belgium seem to have a great degree of autonomy in the classroom and are respected by society.

The legal status of teachers in England/Wales is regulated by a number of acts and statutory instruments. Education is a devolved matter and therefore there are certain aspects in respect of the legal status of teachers where the stipulations differ for teachers in England/Wales. Teachers in the UK seem to have less autonomy and are more restricted in the classroom. Teachers in the UK are respected by the majority of the society, although it is perceived that they do are not respected by pupils.

In the following chapter, the research design for the quantitative component of study will be expounded upon.

CHAPTER FOUR
RESEARCH METHODOLOGY

4.1 INTRODUCTION

In the previous two chapters, the literature study using document analysis was completed by presenting an international perspective on the legal status of educators in Belgium and England/Wales Chapter Three, while in Chapter Two the South African situation was addressed.

This chapter deals with the research methodology that was chosen and followed by the researcher of this study. Research methodology refers to the specific steps followed by the researcher in order to attain the objectives of the study (*cf*. 1.1.2). In any study the way in which the researcher views the world (*cf*. 1.5.1), as well as the research problem (*cf*. 1.5) identified, will greatly direct the approach the researcher follows.

4.2 RESEARCH DESIGN

Research design refers to the way in which the study is organized in order to answer the research question, by stimulating awareness of possible challenges and opportunities early on in the study (Gorard, 2010:239). The chosen design provides a description of the way in which the study will be conducted (McMillan & Schumacher, 2006:22).

According to McMillan and Schumacher (2006:22), the intent of the research design is to provide a detailed plan of how the evidence needed to answer the research question will be obtained, and therefore it is imperative for the researcher to match the research question to the most suitable design (*cf*. 1.5.2). In choosing the most suitable design the first choice to be made by the researcher is generally to consider the following three types of methods:

- Quantitative, which can be defined as research concerned with testing theories (Creswell, 2009:4), by setting out to answer questions on the relationship that exists between variables (Leedy & Ormrod, 2005:94; Creswell, 2009:4), by obtaining numerical data in an objective and systematic process from a sample of the population in order to generalize findings (Maree & Pietersen, 2007c:145) and/or by providing explanations, making predictions or controlling behaviour

(Leedy & Ormrod, 2005:94). Fouché (2005:269) argues in this case that the research design determines *the researcher's choices and actions.*

- Qualitative, which can be defined as research concerned with answering questions related to the nature of phenomena (Leedy & Ormrod, 2005:94), by exploring social situations through collecting descriptive data (Nieuwenhuis, 2007b:50) in the natural setting to create greater understanding (Nieuwenhuis, 2007b:51; Creswell, 2009:4) while aiming at understanding and interpreting from the participants' point of view (Leedy & Ormrod, 2005:94; Nieuwenhuis, 2007b:50; Creswell, 2009:4). Fouché (2005:269) states that in this case the choices and actions of the researcher determine the design.
- Mixed method research, which refers to combining elements of quantitative and qualitative data collection methods in the same study (Leedy & Ormrod, 2005:97; McMillan & Schumacher, 2006:27; Creswell, 2009:4; Mertens, 2010:293) thus collecting *both numeric information and text information to answer research questions* (Ivankova *et al*., 2007:261) by collecting, analysing and mixing the two types of data in different phases of the research process (Creswell & Plano Clark, 2007:5). According to Gorard (2010:247), mixed method can metaphorically be seen as *having a variety of tools in a toolbox and using them as appropriate* allowing for *methodological eclecticism* (Tashakkori & Teddlie, 2010:274), thus strengthening the study by using both quantitative and qualitative approaches (Creswell, 2009:4) to ensure a better understanding of the problem (Creswell & Plano Clark, 2007:5; Tashakkori & Teddlie, 2010:272).

Teddlie and Tashakkori (2010:23) consider the conceptualisation of mixed method designs to have changed greatly over the past decade. Therefore, after reading further, this researcher decided rather to use methodological pluralism, and more specifically multi-strategy research, as a more precise description of her research design (*cf*. 1.5.2). As stated in Chapter One, this does not mean that the distinctive characteristics of the mixed method design will not feature in the study (*cf.* 1.5.2).

Hantrais (2009:95) comments on the lack of written material regarding the use of mixed methods in comparative studies. This can possibly be attributed to the fact that the use of mixed method in a comparative study may make an already complex research design even more complex (Hantrais, 2009:95). However, according to Wolf (2010:147), a number of authors have recommended the use of comparative studies in which qualitative and quantitative strategies are combined as a way to

overcome the disadvantages attributed to the respective methods when used singularly, especially in multivariate studies.

Moreover, Hantrais (2009:96) states that the use of multi-strategy research can be used to enlarge the scope of the comparative study, check and support validity, investigate new observations, as well as provide new or different explanations for the similarities and differences found. The researcher of this study believes the opposite is also true: the use of a comparative study in a multi-strategy study can also check and support validity, investigate new observations and even explain or expand on findings.

Multi-strategy methods have led to enrichment in comparative studies (Palmer, 2005:266; Örücü, 2006:31) and vice versa. Thus, according to the researcher of this study a multi-strategy approach allows one to ensure a clear understanding of the problem on hand and thus becomes a logical choice (*cf*. 1.5.2).

4.2.1 Parallel multi-strategy design

As stated by Hantrais (2009:109) in using the multi-strategy approach, each of the individual approaches used will add to the study as it sheds more light on the phenomena under investigation by drawing attention to the different factors involved. At the same time multi-strategy study allows the researchers to use abductive reasoning, moving back and forth between inductive and deductive reasoning (Morgan, 2007:71; *cf*. 1.5.1). Multi-strategy studies can assist in reducing or eliminating the risks of reaching incorrect conclusions (Hantrais, 2009:109).

As mentioned by Palmer (2005:289), the aim of a study determines the suitability of the method. Biesta (2010:104) is of the opinion that the decision about the purposes of the research presents the foundation for the research questions. Bryman (2006:111) specifies that researchers should be clear on the reasons why a multi-strategy method is used, proving that the rationale for using this method is clearly thought through (Bryman, 2006:110).

In this study, the first reason for using a multi-strategy method is that the quantitative and qualitative strategies chosen had each been designed to answer specific research questions (*cf*. 1.3.2). The comparative law study was used in order to answer the question – To what extent does South Africa's legal framework regarding the status of educators differ from those of Belgium and England/Wales? The quantitative component focused on participants' responses to statements regarding

perceptions held by the South African school community on the status of their educators (*cf*. 1.3.2).

A second reason for using a multi-strategy method is that the researcher wanted to use the information gained from the comparative law study to gain a better understanding of the international perspective on the legal status of educators in order to advocate for changes in viewpoints, and even possibly offer solutions to problems currently faced by educators in South Africa (*cf*. 1.3.2).

In accordance with Bryman (2006:98 &110), the researcher of this study considers the results of multi-strategy research not always predictable and therefore theoretical typologies as proposed by Creswell (2009:208-216) provide little understanding of the different combinations available (Bryman, 2006:99), even though Biesta (2010:100) considers the Creswell typologies as some of the most encompassing ones available. This does not mean that the typologies as proposed by Creswell (2009:208-216) are not relevant as these provide a systematic construction of the possibilities in which quantitative and qualitative methods can be mixed, as well as create awareness of the different aspects of multi-strategy research (Bryman, 2006:98-99).

According to Teddlie and Tashakkori (2010:22), the parallel mixed design has also been referred to as a concurrent or simultaneous design. Although such designs have all been defined in a similar way, they all differ with regard to key aspects such as if the qual and quan phases happen concurrently, or with a lapse of time in between, or even both (Teddlie & Tashakkori, 2010:22-23). Thus, just as concurrent mixed designs refer to the time sequence of the mixed analyses, so does parallel mixed designs (Teddlie & Tashakkori, 2010:23; *cf*. 4.2.5).

However, in concurrent designs, the quantitative and qualitative components are in no chronological order, but done simultaneously (Onwuegbuzie & Combs, 2010:414) while in a parallel mixed design the application of the quan and qual phases occur either in simultaneous or lapsed parallel threads (Nastasi, Hitchcock & Brown, 2010:320; Teddlie & Tashakkori, 2010:23; *cf*. 4.2.4). According to Nastasi *et al.* (2010:320) the afore-mentioned implies that from the conceptualisation to the deduction, all happen separately for qual and quan phases in order to answer related parts of the same questions (*cf.* 1.5.2.5, 4.2.5.1).

Taking into consideration the criteria used by authors to typify their studies as exposed by Onwuegbuzie and Combs (2010:411) during a classical content

analysis, this researcher will considered her multi-strategy design to be a parallel complementarity QUAN + QUAL design (*cf.* 1.5, 4.2.4, 4.2.5.2).

Complementarity refers to the fact that the one strand of data, in this instance the qualitative component, seeks to explain, expand and elucidate the findings obtained from the quantitative component (Greene, Caracelli & Graham, in Nastasi *et al*., 2010:307; Onwuegbuzie & Combs, 2010:411). Therefore complementarity designs allow the researcher to gain complementary views about the phenomena being studied (Green, 2005:158; Dahlberg, Wittink & Gallo, 2010:782) as each method addresses different aspects of the research study (O'Cathain, Murphy & Nicholl, 2007). Carroll and Rothe (2010:3479) consider each source of knowledge to entail a different *level of reconstruction of experiences* and the combination of these assist the researcher in obtaining better insight in the complexity and context of the phenomena being studied (*cf.* 4.2.5.3).

4.2.1.1 Strategies of inquiry

In this multi-strategy research study the strategies used were a survey as the quantitative component and a comparative education law study as the qualitative component (*cf*. 1.5.2.1).

The quantitative component

Quantitative research refers to a research approach in which a systematic and objective process is used in order to obtain numerical data from a selected sample of the population with the aim of generalising the findings to the population studied (Maree & Pietersen, 2007c:145; Muijs, 2011:2) According to Browne and Green (2005:95), solid quantitative research depends greatly on sound measurement techniques and suitable, reliable, accurate instruments.

Quantitative designs can be divided into experimental and non-experimental designs. In this study the researcher decided to use non-experimental, descriptive survey research (*cf*. 1.5.2.1). These designs are usually descriptive in nature and the selected samples (*cf*. 4.2.2) are measured on the relevant variables at a given time without any manipulation (Maree & Pietersen, 2007c:152).

As the main aim of the study was to establish what the perspectives of different role players in education are regarding the status of educators (*cf*. 1.2), no manipulation was required and therefore a non-experimental design was considered suitable.

i) Survey

Surveys are the most popular non-experimental research design (Maree & Pietersen, 2007c:152; Muijs, 2011:30) as they provide quantitative data which can be statistically analysed (Maree & Pietersen, 2007c:152; Cresswell, 2009:145) about individual units (Babbie, 2010:254), are flexible (Muijs, 2011:30) and are used to depict or investigate the research topic to find patterns, regularities and relationships (Browne, 2005b:117) by describing incidence, frequency and distribution (Leedy & Ormrod, 2005:108). Survey research also focuses on generalities (Browne & Green, 2005:97). Maree and Pietersen (2007b:155) characterise surveys as designs which require big samples and which measure multiple variables and hypotheses.

As pointed out by Muijs (2011:38), some of the ***advantages of surveys*** are the flexibility of the method, the easily generalised findings as the study is done in a real world setting, the efficiency of the method as a large sample can be used without becoming too expensive or time consuming, the easy guarantee of participant anonymity, and the standardised questions.

Best and Kahn (2003:117) warn that surveys are not just about collecting and tabulating numbers, they involve a lot more. Researchers using a survey must ensure that they have a well formulated problem, with definite aims, plan their study very well and creatively, while the data they gather must be carefully analysed and interpreted in order to report the findings sensibly (Best & Kahn, 2003:117; Ary *et al.*, 2006:406; Creswell, 2009:146; Muijs, 2011:30-34).

Muijs (2011:39) mentions the obvious lack of control over the environment as well as the limited length and depth of responses as ***disadvantages of the survey method***. Leedy and Ormrod (2005:184) warn researchers using the survey method to keep in mind that this method *captures a fleeting moment in time* and can therefore not be considered valid for eternity. Moreover, this type of research relies on *self-report* data, as people are reporting their personal views on the matter at hand (Leedy & Ormrod, 2005:184).

One of the most challenging problems to a survey is non-sampling error, as it introduces bias which undermines the validity and reliability of findings (Browne, 2005b:125; *cf*. 4.2.3.1). Non-sampling error occurs because of problems with the data collection instrument and may be ascribed to poor reliability or poor validity,

such as an instrument that is greatly influenced by *courtesy bias*[264] (Browne, 2005b:125). According to Muijs (2011:53), ways to avoid non-sampling error like bias include avoiding double negatives, unclear questions, keeping the survey short and simple and showing cultural and gender sensitivity.

Another problem experienced in surveys is non-response: participants who do not return the questionnaire (Ary *et al*., 2006:438; McMillan & Schumacher, 2006:236; Muijs, 2011:36). Non-response bias refers to the possibility that what is learnt from those who respond to the survey may differ significantly from the people who did not respond (Perkins, 2011). Browne (2005b:123) considers a high response rate to provide a sound guarantee against non-response bias, whereas response rates lower than 60% raise concerns about bias in the sample, while the possibility of generalising the findings are lowered. In larger samples, non-response mostly does not affect the results, but it is still necessary to keep the possibility in mind that a low response rate may lead to bias and therefore the researcher should attempt to follow up on these participants (Ary *et al.*, 2006:438; McMillan & Schumacher, 2006:236-237). According to Blair and Zinkhan (2006:5) as long as a diverse sample is used, measures of relationships should be resistant to sample bias, including non-response.

At the same time various authors report a decrease in response rates to surveys (Wiseman & Billington, 1984:336; Dey, 1997:215; Cook, Heath & Tompson, 2000:823; Johnson & Owens, 2003:127; Baruch & Holtom, 2008:1140). Research conducted by Baruch and Holtom (2005:1149-1150) indicated that response rate in surveys, as reported in academic journal articles, has decreased from an average of 64% in 1975 to 48% in 2005. Cook *et al* (2000:829) reported the mean response rate for the 68 surveys reported in 49 studies as 39.6%.

Johnson and Owens (2003:128) consider the decline in survey response rate to be due to external factors over which the researcher has no control, among others concerns with privacy and confidentiality, fears of exploitation of personal information, general scepticism and declining public participation. Baruch and Holtom (2008:1141) find two main reasons for non-response as that of failure to deliver the questionnaires to the target sample and reluctance of the participants to respond.

[264] The tendency to reply according to what the participant thinks the researcher wants (Browne, 2005b:125)

Moreover, Wiseman and Billington (1984:336) suggest that in reporting the researcher should report pertinent facts such as how the rate was computed, details regarding non-response, including non-contacts and disallowed questionnaires. At the same time Baruch and Holtom (2008:1142) consider it important to distinguish between the total number of questionnaires returned and the usable questionnaires, as well as if the questionnaires were administered[265] or whether the response was voluntary. In this study the researcher reported on the number of questionnaires distributed to school; the number of questionnaires handed out by the contact persons at the relevant schools; the number of questionnaires received back from schools; and the number of questionnaires that were usable (*cf*. 4.2.2; Table 4.2; Chapter 6).

However, there are authors who contend that a high response rate is not the only important factor which ensures quality data (Perkins, 2011). Johnson and Owens (2003:127) report that the American Association for Public Opinion Research (AAPOR) acknowledges that response rates are but one gauge of survey quality (*cf*. 4.2.1.1). Although response rate is not the only important aspect to consider, Blair and Zinkhan (2006:7) encourage researchers to control non-response bias by following the best practices and add high value through diversity of participants.

Some authors (Taylor-Powell & Hermann, 2000:16; Perkins, 2011) suggest the use of incentives to increase response rates, while the studies of Baruch and Holtom (2008:1151) and Cook *et al*. (2000:832) did not find evidence of incentives increasing response rates. However, this researcher decided to use incentives to encourage the learners to return both their own and the questionnaires of their parent/caregivers. Learners received a small pen when returning their own questionnaire and a lanyard when returning the questionnaire of their parent/caregiver.

The educators at the township schools also received a pen and pencil set as incentive as the researcher was warned by her colleagues that these educators are usually very reluctant to respond to questionnaires. It is, however, difficult to establish whether the incentives led to improved response rates. At two schools the researcher left the incentives when collecting the questionnaire, and then had to

[265] In this instance the situation in which questionnaires are administered causes participants to feel compelled to respond rather than doing it voluntary (Baruch & Holtom, 2008:1142)

return to collect more completed questionnaires, which might be an indication that the incentives increased the response rate at those specific schools.

In this study, the researcher did a cross-sectional survey using a self-developed pencil and paper questionnaire. In order to overcome problems associated with surveys, the researcher clearly defined the problem and objectives of the study (*cf.* 1.2 & 1.3), used a large sample selected in multiple stages (*cf.* 4.2.2) and followed the guidelines suggested for the development of questionnaires (*cf.* 4.2.3.1).

The researcher decided on a survey as her quantitative method (*cf*. 1.5.2.1) as it is, as stated by Babbie (2010:254), the ideal method for researchers who want to describe, explain or explore original data of a population too large to observe directly as a whole. As the researcher wanted to measure the attitudes and perspectives of three groups of role players within the school community, a survey lent itself as the best method to use.

The qualitative component

Whereas the quantitative researcher generally wants to explain, the qualitative researcher generally wants to understand within a natural setting, exploring reality from the insiders' view (Fouché & Delport, 2005:74).

Although numerous sources on comparative law studies were read, the authors of these sources all discussed comparative law either as a research method, approach or an independent scientific branch (Rheinstein, 1952; Pound, 1955; Kamba, 1974; Venter *et al.*, 1990; Örücü, 2006; Hantrais, 2009). None of them ventured to place a comparative law study within a specific strategy. Hantrais (2009:ix, 29 & 32) considers the ability of comparative studies to be either quantitative or qualitative. The researcher of the study decided to consider a comparative law study as a qualitative approach since a document analysis was done to collect relevant data (*cf*. 1.5, 1.5.2.1, 4.2.6.2).

i) The comparative education law design

In her groundbreaking book on comparative research,[266] Hantrais (2009;viii & 7-9) points out the significance of the ongoing debate on whether and to what extent the comparative method would be distinctive from other methodologies. The debate

[266] International comparative research. Theory, methods and practice.

seems to have started in the 1960's with Hall, Zweigert and Kötz who began intensive comparative law research.

Historically speaking, comparative law dates as far back as Antiquity with several forerunners of the movement. In the 18th century, Montesquieu took the courage to act as formal initiator of comparative law (Gutteridge, in Hantrais, 2009:34), with the central aim of identifying and classifying the different legal structures and searching for forms of laws and legal conventions. Since then, the view of comparative law has undergone many changes from viewing comparative law as an exact science (Rheinstein, 1952:98; Venter *et al.,* 1990:211) to considering the interconnection between the law and other social phenomena (Kamba, 1974:493; Corcoran, 1996:55; Palmer, 2005:264) to a point where it is not merely considered a method anymore, but rather an independent branch of research (Örücü, 2006:30).

Among the objectives of comparative law are the endorsement of social and economic change; the search for solutions to problems experienced in the domestic law of the country the researcher hails from; and a search for different perspectives on domestic law in order to build and develop the domestic legal system, or to compare systems which share the same problems, but deal with such problems in superior, different or more resourceful ways (Venter *et al.*, 1990:215-217; Corcoran, 1996:56; Kleyn & Viljoen, 1998:274; Örücü, 2006:32; *cf*. 1.2.1).

The comparative law method can be defined as a *unique, systematic and jurisprudential strategy* applied, by virtue of similarities and differences between the diverse legal systems or parts/branches thereof, to acquire new knowledge and understanding regarding the specific topic (Kamba, 1974:486; Venter *et al*., 1990:211). In the case of this study the researcher wanted to acquire a better understanding of the international perspective on the legal status of educators in order to develop a better understanding of the South African situation (*cf*. 1.2).

A comparative law study is a unique way to obtain new information, gain insight and evaluate information by means of a scientific scrutiny of the law (Venter *et al.*, 1990:215). The focus of comparative legal studies is mainly on rules and institutions, jurisprudence and national legal systems (Kleyn & Viljoen, 1998:44; Hantrais, 2009:35) as these sources provide authority for arguments (Kleyn & Viljoen, 1998:44). Van Zyl and Van der Vyver (1982:365) consider it of the utmost importance for law students and law practitioners to take note of not only the general drift, but also the particular content of legal systems of other countries. However, the

researcher involved in a comparative legal study must ensure that the study does not only offer a thorough, parallel, description of the relevant legislation and systems, but moves beyond these descriptions and categorisation to a real comparison (Örücü, 2006:39; Hantrais, 2009:35). Örücü (2006:31) mentions that critique against comparative law researchers has focused on a reluctance to move beyond the description, analysis and explanation phase towards evaluation and perhaps even prescription.

Although there is no standard method for a comparative law study (Palmer, 2005:290), three phases are evident in each comparative law study:

- **Descriptive phase**: Investigation of the relevant elements of each of the individual legal systems, including the relevant socio-economic problems and legal solutions, with the aim to study the content of each system separately (*cf.* Chapter Two & Three).
- **Identification phase**: Content analysis (*cf*. 4.2.6.2) of the relevant elements from each system against the background of each individual system's legal and societal background, aiming to understand what each system consists of, as well as the differences and similarities found.
- **Explanatory phase:** Reflection on links between the relevant elements, while considering the contexts within which these elements function, as well as accounting for the differences and similarities in order to reach the aim of the study (Pound, 1955:70; Kamba, 1974: 511-512; Venter *et al*., 1990:219; Steenhoff, 2002:48; Örücü, 2006:38; *cf*. 4.2.6.2).

As Bryman (2006:111; *cf.* 4.2.1) states, researchers of a multi-strategy study must be clear in their reasoning concerning why they decided on this method. Kamba (1974:489) and Palmer (2005:266) mirror this sentiment regarding the use of a comparative law study in stating that the researcher should be clear on the purpose of the comparative law study as the purpose plays an integral part in the selection of legal systems or topics as well as the method of comparison. However, other factors such as personal preferences, past experiences of the researcher, available time and the manageability of the topics, accessibility and language also play a role in the selection made (Kamba, 1974:509-510; Palmer, 2005:266).

There are numerous **advantages** to using comparative law as a research method. Among these advantages are the emphases placed by the method on the

interdependence between law and other social phenomena, the better understanding of foreign legal systems created by the use of the method (Kamba, 1974:493), the potential of comparative analysis to hone, intensify and expand the way in which one perceives the law (Curran, 1998:658), making comparative law a part of the *deeper critique of law itself* (Zumbansen, 2005:1084) while comparatists show awareness of the veiled intricacies of meaning across languages and other socio-cultural barriers (Curran, 1998:659).

As said by Steenhoff (2002:49), one can learn *from each other's mistakes as well as from each other's good points.* Zumbansen (2005:1079) argues that comparative analyses allow one to distance oneself from the domestic legal system, while at the same time redirecting the analytical focus back onto the said legal system.

However, the use of the comparative law method also poses some **disadvantages**, such as superficiality or misunderstanding the foreign law systems (Corcoran, 1996:57), the unavailability of primary and secondary sources, high costs and language, cultural and sociological problems (Corcoran, 1996:60). In any comparative study one of the biggest problems faced by the researcher is language, but in a comparative law study this is particularly true. Kleyn and Viljoen (1998:275) consider it imperative for the researcher to have a basic knowledge of the languages of the legal systems studied. Other challenges pointed out by Kleyn and Viljoen (1998:275) and Örücü (2006:37&40) are:

- a lack of knowledge regarding the structure of, and classification within the legal systems as legal systems differ with regard to the systematic order and relative worth of different legal sources;
- problems with concept construction and definitions;
- terminology which may appear similar semantically, but differ in meaning. Venter *et al*. (1990:227) warn that the researcher partaking in a comparative law study must be wary of semantic connections found in words as these do not always indicate parallelism, or that these elements are necessarily identical in different legal systems. The opposite may also be true. Differing names for different elements do not make them incomparable (Venter *et al.*, 1990:227); and
- the aim of the comparative law study must be kept in mind (*cf*. 1.3.1, 4.4.2).

The aim of this study was to obtain an educational-juridical perspective on the status of educators, by comparing and contrasting the perspectives of specific South

African school communities with school communities in two countries, through the acquisition of knowledge regarding the education law of the respective countries, with particular focus on the educators' status (*cf*. 1.2, 1.3). At the end of the process, new insight and knowledge regarding the status of educators and perceptions regarding their fundamental rights led to an understanding of the perceptions regarding educators' status. The new insight assisted in ascertaining the importance of professional and societal status in the enhancement of educators' confidence, providing for a change in viewpoints and a solution to current problems found in the South African education system. Therefore a *context-orientated comparative law* approach[267] was taken.

4.2.2 Research participants: sampling

In any survey the main concern is to what extent the findings of the survey can be generalized (Browne, 2005b:118). The population refers to the group of sampling units relevant to the research question (Maree & Pietersen, 2007c:147) one wants to generalise the findings to (Muijs, 2011:33). However, due to restrictions such as time and cost it is seldom possible to study the entire population (Maree & Pietersen, 2007a:172; Muijs, 2011:33). In order to ensure that the results can be generalized it is important that the researcher clearly defines the target population, as this allows the researcher to establish whether the sample drawn is representative of the population (Browne, 2005b:119; Muijs, 2011:33). The target population of this study was all public school educators (N=2126), learners (N= 57161) and one parent/caregiver of learners (N=57161) in the Sedibeng-East District (D7) (*cf*. 1.5.2.2). To obtain a representative sample the researcher decided to use stage sampling (Leedy & Ormrod, 2005:207; Cohen, *et al*., 2007:112), a method combining different sampling strategies (Mertens, 2010:319; *cf*. 1.5.2.2). According to Cohen *et al*. (2007:112), when using stage sampling the researcher takes samples of samples, moving from a general to a focused, specific view.

Flick (2011:85) considers sampling in quantitative research to focus on representativeness of participants and therefore the aim is to construct comparative groups sharing many characteristics. Baruch and Holtom (2008:1153) consider it of extreme importance that the participants are representative of the population

[267] A study in which the researcher is concerned with the interaction between law, social and cultural elements (Örücü, 2006:31)

studied. Cook *et al*. (2000:821) propagate that response representativeness is more important than the response rate in a survey, as response rate is only of importance should it influence representativeness.

Blair and Zinkhan (2006:6) deem it necessary to accept that a sample will not be perfect, therefore it is important to do one's best to ensure diversity within the sample as this enhances the strength of relational findings (*cf*. 4.2.1.1). Consequently, while methodologists consider random sampling as the only method to ensure an optimal representative sample (Strydom, 2005c:196; Creswell, 2009:148; Muijs, 2011:34), the researcher believes that in this instance in order to ensure a representative sample, it was necessary to ensure that participants from each different type of school were represented in the study. This led to the decision to use a combination of sampling methods (*cf*. 1.5.2.2).

Sampling error refers to the degree to which a sample might differ from the population (Best & Kahn, 2003:13 & 388; Browne, 2005b:119) and can occur for a number of reasons, such as a too small sample or the use of invalid sampling methods (Browne, 2005b:125). In this study the researcher ensured that the samples were drawn according to prescribed guidelines using valid sampling methods. As mentioned by Strydom (2005c:195), researchers should take cognisance of the fact that sample size may impact on the statistical test due to either insensitivity or oversensitivity.

Although cost and time resources should be considered, the researcher should also keep in mind that the larger the sample, the closer it will reflect the characteristics of the population it is drawn from, especially in a heterogeneous population (Browne, 2005b:121; Strydom, 2005c:195; Maree & Pietersen, 2007a:178). Furthermore, when drawing a representative sample the researcher has to ensure that an up-to-date complete list of the sample frame is obtained (Maree & Pietersen, 2007a:172). In this instance the researcher contacted the Sedibeng-East District office and obtained the most current list of public schools from which the sample was drawn[268] (*cf*. 1.5.2.2).

The list obtained from the district office of the Sedibeng-East district indicated 75 public schools (N=75), including primary, secondary and LSEN schools (*cf*. 1.5.2.2).

[268] The information was obtained from Mr J Ceronio.

From the seventy-five schools, the researcher of the study decided to eliminate seven schools from the sample. The reasons for this decision were:

- one was a school for the blind;
- another school had learners who mostly have the mental capacity of Foundation Phase learners;[269]
- four of the schools were combined schools; and
- another was a combined LSEN school.

It was clear that the mentally and physically impaired learners would not have been capable of completing the questionnaire. With regard to the elimination of the combined schools, the researcher's decision was based on the fact that the grades accommodated in the different schools did not correlate with each other and therefore influenced the proportionality of primary and secondary schools.

None of the texts consulted gave a clear cut answer to the question – *what is an ideal sample size?* The researcher considered the guidelines provided by Stoker (in Strydom, 2005c:196) as seen in the table below, as well as Neumann (2011:265).

Table 4.1: Guidelines for sampling

Population	Percentage suggested	Number of participants
20	100%	20
30	80%	24
50	64%	32
100	45%	45
200	32%	64
500	20%	100
1000	14%	140
10 000	4.5%	450
100 000	2%	2000
200 000	1%	2000

(Stoker, in Strydom, 2005c:196)

[269] The principal of the school was contacted in order to establish if the learners will be able to answer questionnaires of this nature and she indicated that their learners do not have the reading skill or the abilities to make this possible.

As mentioned previously, a combination of sampling strategies was used during different stages of the sampling process. During the first stage of the sampling, the researcher used purposive sampling when selecting the schools participating in the research (*cf*. 1.5.2.2). Purposive sampling refers to a sampling method were the researcher does sampling with a specific purpose in mind (Maree & Pietersen, 2007a:178; Neuman, 2011:268). The researcher focused on the concentration principle (Flick, 2011:74), where during sampling, the focus is on elements considered representative of the study (Strydom, 2005c:202).

The reasoning behind this decision was to allow for each type of school to be included in the sample. Therefore the researcher decided that the sample should include participants from Afrikaans primary school/s, Afrikaans secondary school/s, English town primary school/s, English township primary school/s, English town secondary school/s, English township secondary school/s, parallel medium primary school/s, parallel medium secondary school/s and LSEN school/s (*cf*. 1.5.2.2).

During the second stage of the sampling process, the samples for the learners, their parent/caregivers and educators had to be drawn. The researcher decided to make use of stratified sampling (*cf*. 1.5.2.2). In stratified sampling the population is divided into strata or sub-populations (Neuman, 2011:256), in which the participants have similar characteristics (Cohen, *et al*, 2007:111). Stratified sampling is generally used to ensure that the different groups or strata involved in the study are each suitably represented. The population of this study was considered a stratified population (Leedy & Ormrod, 2005:202) with four strata – educators, Grade 7 learners, Grade 10 learners and the parents/caregivers of the learners.

The types of schools purposively selected in stage 1 of the sampling process were each included in the main strata as sub-strata. The samples of the different strata are represented in Figure 4.1 below.

Figure 4.1: Representation of the different strata

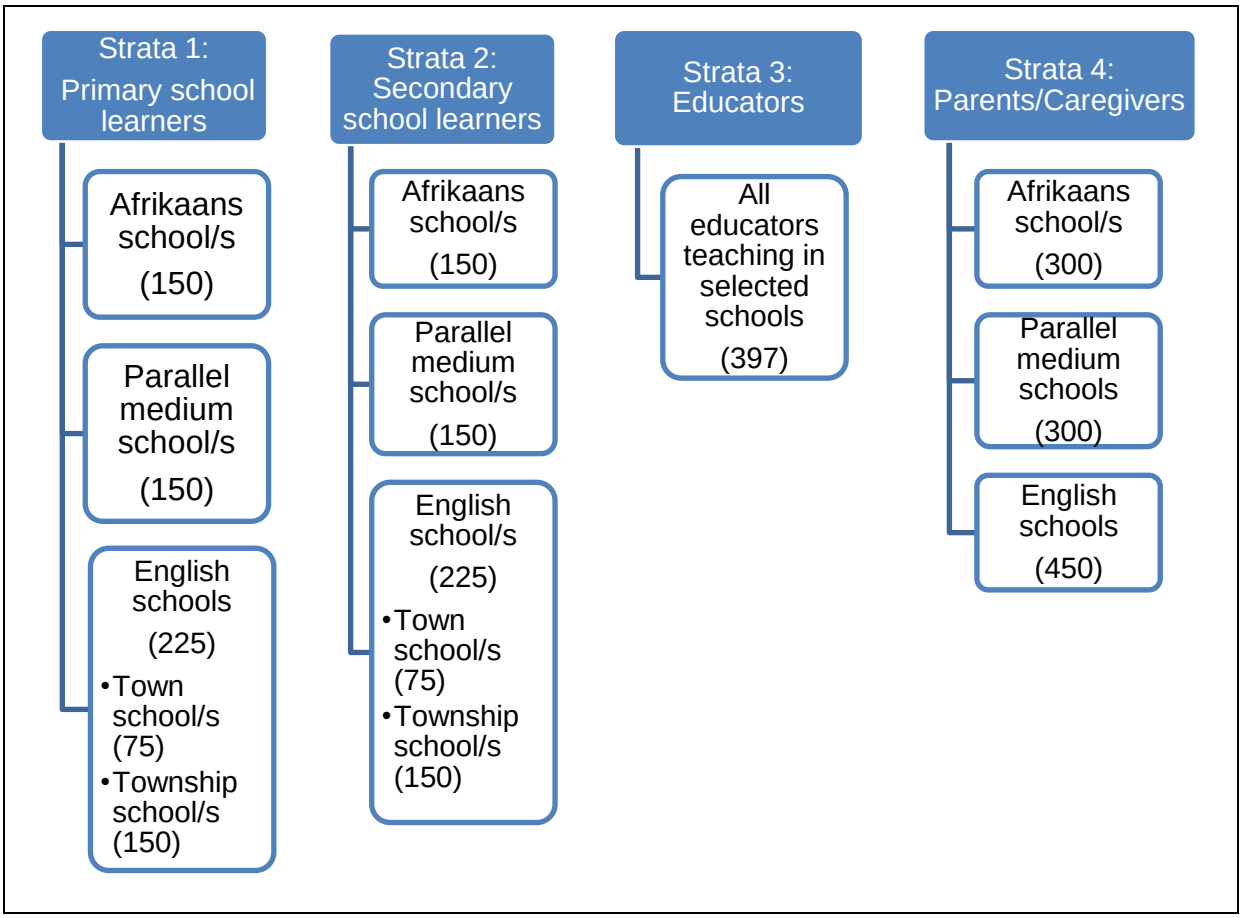

Figure 4.1 illustrates not only the decisions taken in the first two stages of the sampling process, but also the third part of the sampling process. During this stage the researcher had to decide on the number of participants per strata and how the division would be done.

According to the sample frame, the total number of educators teaching at schools within the district was 1640 (N=1640), while the total number of Grade 7 and 10 learners at schools in the district was 8548 (N=8548). When one considers the guidelines provided by Stoker (in Strydom, 2005c:196; *cf*. Table 4.1), the required sample of educators should constitute approximately 12 - 14% of 1640 (n≈213), while the learners should constitute approximately 4.5% - 6% of 8548 (n≈450). However, after consulting various sources on response rates (*cf*. 4.2.1.1), which mention a decrease in response rates of surveys in the last 2-3 decades, the researcher decided to oversample[270] (Taylor-Powell & Hermann, 2000: 16; Kelley,

[270] Oversampling refers to increasing the sample size according to the expected number of responses as well as the estimated nonresponse rate (Taylor-Powell, 2000:16, Kelley, *et al.,*2003:264).

Clark, Brown & Sitzia, 2003:264) as Neumann (2011:264) illustrates that increase in sample size leads to an increase in accuracy, although more so in the case of small samples than large samples.[271]

Since the questionnaires were distributed at the end of the academic year, the researcher was concerned with the possibility of a low response rate due to participants experiencing increased work pressure and therefore decided to double the number of educators in the sample, while increasing the number of learner participants in the sample by 1.3 times the required sample.

During the next stage of the sampling process the researcher had to select the schools according to the guidelines provided in the previous stages. In selecting the relevant schools, the researcher grouped the schools into the proposed groups and then selected the schools according to the number of learners, trying to get as close as possible to the required number of participants.

Table 4.2: Representation of sampled schools

	Number of Schools	Proportional % of the population	Proportional % of the sample	Number of learners
Afrikaans schools				
Primary Schools Grade 7	2	1.7%	10.8%	145
Secondary School Grade 10	1	2.11%	13.4%	180
English schools				
Primary schools (Town) Grade 7	1	1.33%	8.495%	114
Primary schools (Township) Grade 7	2	1.19%	7.601%	102

[271] Neumann (2011:264) considers large samples to be samples of 1000 or more participants.

	Number of Schools	Proportional % of the population	Proportional % of the sample	Number of learners
Secondary School (Town) Grade 10	1	1.17%	7.452%	100
Secondary Schools (Township) Grade 10	2	2.57%	16.39%	220
Parallel medium schools				
Primary Schools Grade 7	2	1.47%	9.389%	126
Secondary School Grade 10	1	2.07%	13.19%	177
LSEN schools Grade 7 and 10	2	2.08%	13.26%	178
Total	**13**	**15.7%**	**100%**	**1342**

The parent/caregiver questionnaires correlated with the number of questionnaires per school type as only parents/caregivers of learners who completed a questionnaire received a questionnaire. At the schools, the questionnaires were distributed by a contact person, identified by the school principal and researcher.

The sampling of the participants at each school differed, as each school differed concerning to the number of learners and educators. In some instances all the learners in a particular grade were included in the sample, while at other schools the persons delegated by the principal distributed the questionnaires as they saw fit.

The choices made with regard to the learners used in the study were based on the following reasoning:

- Grade 7 learners are in the first year of the Senior Phase of their compulsory education.
- Grade 7 learners can be expected to have reached a level of maturity to answer the questionnaire honestly.

- Grade 10 learners have just entered the FET phase of their education, having completed their compulsory education.
- Grade 10 learners have not yet entered the phase in which they are expected to prepare for their final examinations, as is the case with Grade 11 and 12's (*cf*. 1.5.2.2).
- As some of the learners included in the sample were under-aged, proxy consent forms were sent home to be signed by the parents/caregivers before they completed the questionnaire (*cf*. 1.5.3, 4.3.3).

After the questionnaires had been collected from the schools, some concerns arose regarding the response rate, particularly that of the parents/caregivers. Therefore the researcher decided to include another stage of purposive sampling. In this instance four B.Ed. Honours students known to the researcher were asked to distribute questionnaires to learners, parent/caregivers and educators at their schools in the townships. Furthermore, the researcher e-mailed four acquaintances whom she knew had learners in the relevant grades. Lastly, the local newspaper was contacted with a request to include a short article in which the researcher requested parents/caregivers of learners in Grades 7 and 10 to participate in the study (*cf.* Addendum D). No responses were received from this article as its placement was later than anticipated and the summer holidays had already started.

4.2.3 Methods of data-collection

Multi-strategy designs make use of both numbers and words as forms of information, as well as two ways of representing information (Biesta, 2010:101). Thus, the data collection methods also encompass a mixture of numbers and text (Biesta, 2010:101). In this study the numbers were obtained from the results of the questionnaires (*cf.* 1.5.2.3; 4.2.3.1) while the text was dealt with in the document analysis (*cf*. 1.5.2.6; 4.2.6).

4.2.3.1 Quantitative design: questionnaires

Questionnaires are measuring instruments designed specifically to obtain information useful for analyses by the researcher of a study (Babbie, 2010:255). Leedy and Ormrod (2005:185) consider questionnaires as measuring instruments that often use checklists and rating scales as devices to obtain information. In survey research (*cf*. 1.5.2.1, 4.2.1.1i) questionnaires in many formats are used to obtain information from participants (Browne, 2005a:109).

There are a number of ***advantages*** to using questionnaires, such as the cost effectiveness, the fact that data obtained from surveys are easy to analyse as long as they address clearly formulated research questions and the availability of computer packages to do data entry and tabulation (Browne, 2005a:109; Leedy & Ormrod, 2005:185). Furthermore, most participants are familiar with questionnaires as everyone has at one stage or other completed surveys and therefore surveys are experienced as non-threatening. Lastly, questionnaires have the potential to reduce researcher bias (Browne, 2005a:109; Leedy & Ormrod, 2005:185).

Browne (2005a:109) lists the following as possible ***disadvantages*** of using questionnaires:

- A lack of control over responses.
- The possibility of a low response rate.
- Questions being missed or answered in an incorrect fashion.
- Reading and comprehension difficulties.
- The inflexible nature of a structured questionnaire.

In order to compile a well-structured questionnaire, researchers must first choose the variables they want to measure and define them in such a manner that the definition can be used in the questionnaire, as this influences both the question and response for each question in the questionnaire (Browne, 2005a:110). As the aim of the researcher is to obtain honest, accurate answers (Browne, 2005a:111), the researcher should in designing a questionnaire consider what type of data would be generated by the questions asked, as well as the statistical techniques to be used to analyse the data (Maree & Pietersen, 2007b:158). Furthermore, even though different types of survey have different requirements regarding the questionnaire there are a number of aspects the researcher should take into consideration when designing a questionnaire (Maree & Pietersen, 2007b:159).

Creswell (2009:149) suggests that the researcher provide a title for the questionnaire. The instructions in the questionnaire should be straightforward, comprehensible and concise (Maree & Pietersen, 2007b:159) as this will ensure that no question is misunderstood (Browne, 2005a:111). The questionnaire should be attractive (Muijs, 2011:37), user friendly with clear instructions and printed in a big enough font in order to encourage participants to complete it (Maree & Pietersen, 2007b:159). Maree and Pietersen (2007b:160) suggest that one should start the

questionnaire by asking non-threatening questions, such as biographical details first to put the participants at ease. Babbie (2010:266), however, suggests that particularly with self-administered questionnaires, the researcher should start with the most interesting set of items. These items should still be non-threatening, but when the potential participants glance over the first few items they should be eager to answer them, while more boring biographical data should be placed at the end. This makes the questionnaire appear less like a routine form which could leave the participant unmotivated (Babbie, 2010:266).

In sequencing the questions, the researcher ensured that the questions were organised in such a way that the participant would not easily be confused. Short instructions explaining the purpose of the survey were given, and then the questionnaire started in a non-threatening way, by completing their biographical information. In order to keep the participants interested, the researcher attempted to make the second section a thought-provoking section, moving on to more specific items relevant to the topic of the study (*cf*. 4.2.3.2; Addenda E1, E2 & E3).The researcher should also attempt to keep questions dealing with the same topics grouped together and ensure that the topics follow logically on each other (Maree & Pietersen, 2007b:160). In this instance the researcher divided the questionnaire into sections in order to ensure that the questions dealing with similar topics were grouped together and then attempted to ensure that the questions in each section required similar types of responses.

The questionnaires designed by the researcher consisted of closed-ended questions. Closed-ended questions refer to questions asked or statements made by the researcher to which the participant must select an answer from the list provided by the researcher (Babbie, 2010:256). According to Babbie (2010:256), Likert formalised this type of response in the creation of the Likert scale according to which participants have to indicate whether they *strongly agree*, *agree*, *disagree* or *strongly disagree*. A Likert scale provides ordinal data of a participant's attitude (Maree & Pietersen, 2007b:167) by allowing them to rate their response on the matrix provided by the researcher (Babbie, 2010:264).Researchers using questionnaires have a choice of four scales of measurement (Maree & Pietersen, 2007c:147) depending on the types of categories used to classify the measured variable, as well as the assumptions which can be made about relationships between these categories. These assumptions made about the relationships have implications on the types of

statistical analysis that can be used for the resulting data (Browne & Green, 2005:98).

The concepts used in this study were abstract, making it more difficult to develop appropriate indicators (Browne & Green, 2005:98), therefore in the questionnaires used by the researcher of this study only nominal and ordinal scales were used. Nominal scales are the most basic type of measurement as they merely distinguish labels from each other according to differences in names, such as male and female (Browne & Green, 2005:98; Maree & Pietersen, 2007c:148). Ordinal scales do not differ much from nominal scales except that they label categories of interest as well as rank them in an order (Browne & Green, 2005:98; Maree & Pietersen, 2007c:148).

Description of the developed research questionnaires

Keeping the above-mentioned information in mind the researcher developed three questionnaires – one each for learners, parents/caregivers and educators. The three questionnaires had a similar lay out and consisted in principle of the same statements to which the participants had to respond (*cf*. 1.5.2.3). In the case of the educator questionnaire, an extra section was added.

The layout of the questionnaires comprised the following:

Section A: Biographical information (*cf.* Addenda E1, E2 & E3).

Section B: Expectations held about all educators[272] in general (*cf.* Addenda E1, E2 & E3).

Section C: Characteristics of educators[273] (*cf.* Addenda E1, E2 & E3).

Section D: Educators' actions (*cf.* Addenda E1, E2 & E3).

Section E: How I observe the teachers at our school[274] (*cf.* Addenda E1, E2 & E3).

Section F: Legal stipulations[275] (*cf.* Addenda E1, E2 & E3).

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[272] In the learner and parent/caretaker questionnaires the term teacher was used in the place of educators, as the majority of people in South Africa still use the term.

[273] In the learner questionnaire the words *at our school* was added to the headings of sections C and D, as the researcher was of the opinion that learners would be able to relate to the statements better if they can call specific images to mind.

[274] For the learners the wording was changed to *How I see my teachers*.

A section was added in the educator questionnaire:

Section G: Being informed as educator (*cf.* Addendum E1).

4.2.3.2 Reliability

Reliability refers to the repeatability with which a measuring instrument, such as a questionnaire, yields similar results after the researcher has accounted for random errors in the measurement instrument (Browne & Green, 2005:105; Maree & Pietersen, 2007c:147; Pietersen & Maree, 2007b:215; Muijs, 2011:61). There are different types of reliability. In this study the researcher wanted to ensure internal reliability. Internal reliability refers to inter-item correlation. Thus, it is a measure of the degree of similarity between items in a questionnaire which all measure the same construct (Pietersen & Maree, 2007b:216). The inter-item correlation is measured by using Cronbach's Alpha coefficient. Pietersen and Maree (2007b:216) state that researchers generally accept a Cronbach's Alpha coefficient of 0.9 as indicating a high internal reliability, while a coefficient of 0.7 as indicative of low reliability. However Simon (2008) proposes a Cronbach Alpha of between 0.6-0.9. Therefore, the researcher of the study strove to obtain a Cronbach Alpha coefficient above 0.7, but considered 0.6 as acceptable.

In this instance, the questionnaire made use of a checklist to obtain bibliographical data and to establish the knowledge regarding professional status, as well as a rating scale for questions to determine perceptions regarding educators (*cf*. 4.2.3.1). Questionnaires were distributed by hand to school principals, who distributed them further to educators, parents/caregivers and learners (*cf*. 1.5.2.2, 4.2.2). The researcher did her best to ensure that the questionnaire did not take learners more than 30 minutes to complete, while it took adult participants no more than 20 minutes; this timeframe was confirmed during the pilot study (*cf*. 1.5.2.3), as proposed by Maree and Pietersen (2007b:159).

These questionnaires were also distributed among students and colleagues for comments after the development of the questionnaire based on the literature review, in order to make final changes before a pilot test was finally conducted with a group of participants from the population who did not form part of the sample, in order to determine the reliability and validity of the questionnaires. Cronbach Alpha

[275] For parents and learner the heading used was *Legal documents*

coefficients and inter-item correlations were calculated for the pilot study as well as the actual study to determine the reliability. Validity was determined by looking at face, content, criterion and construct validity.

As mentioned in Chapters One and Two (*cf*. 1.4.1, 2.5.1), no definitions for profession and professional are currently provided in the SACE Act (31/2000), or the SACE Code of Ethics. The researcher of this study, after studying the Code of Ethics, especially section 2 (31/2000), has compiled the following definitions:

- **profession** can be defined as a unique service, considered a life-calling, focused on dedicated rendering of a service essential to the community as specified in the code of conduct as stipulated by the autonomous professional organisation, and
- **professional** can then be defined as conduct mirroring the dedication to a life-calling in the devoted rendering of a unique service essential to the community according to the stipulations of the code of conduct of the specific profession.

These definitions were important to the crux of the study and aspects thereof were tested in the questionnaires in order to establish if these were in accordance with the perspectives held by the public school community of the Sedibeng-East District.

Pilot study

A pilot study is compulsory as it tests if the participants interpret the questions correctly, as well as whether the response categories are suitable (Strydom, 2005b:205; McMillan & Schumacher, 2006:235; Maree & Pietersen, 2007b:155), especially when questionnaires are used (McMillan & Schumacher, 2006:202). According to Creswell (2009:150), pilot-testing a questionnaire is an important part of establishing content validity. The feedback provided by the participants of the pilot study may lead to the questionnaire being adapted (Maree & Pietersen, 2007b:155) or improved (Ary *et al.*, 2006:112; Creswell, 2009:150). Pilot-testing not only assists in establishing the suitability of the questions, but also provides feedback regarding aspects such as format and the scales used (Creswell, 2009:150). Therefore a pilot study is the most effective way to minimise problems (Muijs, 2011:44).

Muijs (2011:44) suggests that researchers test their instrument by first asking colleagues to read the instrument, then doing a pilot study with participants comparable with the sample (McMillan & Schumacher, 2006:202 & 235) and asking the participants of the pilot to provide feedback on the instrument, as well as testing the responses statistically in order to identify any unusual response patterns

(McMillan & Schumacher, 2006:235; Muijs, 2011:44). This will assist in ensuring that items are understood correctly. According to McMillan and Schumacher (2006:202 & 235), although the sample taking part in the pilot should be greater than 20, as few as 10 participants taking part in a pilot study could improve clarity and format.

Another benefit of using a pilot study is that the researcher can estimate the amount of time it will take the participants to complete the questionnaire (McMillan & Schumacher, 2006:235). In this study this was extremely useful to the researcher as both the learner and educator participants were required to complete the questionnaire at school and therefore sufficient time could be arranged for, while ensuring that little if any time was wasted.

The participants of a pilot study should be representative of the population the questionnaire is intended for (Welman, Kruger & Mitchell, 2005:148). Furthermore, the sample of the pilot study should be large enough to be useful and should preferably not form part of the main study (Thabane, Ma, Chu, Cheng, Ismaila, Rios, Robson, Thabane, Giangregorio, Goldsmith, 2010). In this study the researcher ensured that the participants in the pilot study formed part of the target population, but ensured that the schools used in the pilot study were not part of the schools sampled during the main study. Lastly, the pilot study was deemed to be representative of the population (*cf*. 1.5.2.3).

Table 4.3: Pilot study participants – learners, educators and parent/caregivers

PARTICIPANT CATEGORY	n
Educators	29
Learners	164
Parents/caregivers	91

i) Validation of the questionnaire

In order to ensure the internal consistency of the relevant sections of the three different questionnaires, a Cronbach alpha coefficient was calculated for each. Cronbach alpha coefficient is based on inter-item correlation, thus the extent to which the items in a questionnaire are positively correlated to one another (Akbaba, 2006:183), and is used to measure the internal reliability of an instrument (Pietersen & Maree, 2007b:216; *cf*. 1.5).

As illustrated below in Table 4.4, the Cronbach alpha statistics in all the sections for Section B were acceptable as they fall within the range of 0.6-0.9 as propagated by Simon (2008), thus indicating that they complied with reliability criteria. Clark and Watson (1995:316) recommend an average range of between 0.15 and 0.5 as a criterion of reliability for inter-item correlations. Once again all the sections within all three questionnaires fell within this range.

Table 4.4: Pilot study Cronbach alpha/inter-item correlations - Section B

SECTION B	CRONBACH ALPHA	INTER-ITEM CORRELATION
Learners (n=164)	0.808	0.245
Educators (n=29)	0.825	0.266
Parents/Caregivers (n-91)	0.869	0.338

Using the statistics provided by the calculated Cronbach alphas and inter-item correlations for Section B, some changes were made. Firstly, item B10 was deleted from all three questionnaires. Secondly, the wording of each item of the questionnaire was re-looked at in order to ensure better internal consistency between the items. This led to the wording of item B9 of the learner questionnaire being changed.

Table 4.5: Pilot study Cronbach alpha/inter-item correlations - Section C

SECTION C	CRONBACH ALPHA	INTER-ITEM CORRELATION
Learners (n=164)	0.806	0.165
Educators (n=29)	0.788	0.151
Parents/Caregivers (n-91)	0.808	0.190

As in the case of Section B, the statistics provided by the calculated Cronbach alphas and inter-item correlations of Section C were used to make some changes. Once again the wording of each item of the questionnaire was re-looked at in order to ensure better internal consistency between the items. This led to the wording of item C15 of the learner questionnaire, C19 of all three questionnaires and C21 of the learner and parent/caregiver questionnaire being changed.

Table 4.6: Pilot study Cronbach alpha/inter-item correlations - Section D

SECTION D	CRONBACH ALPHA	INTER-ITEM CORRELATION
Learners (n=164)	0.694	0.159
Educators (n=29)	0.782	0.230
Parents/Caregivers (n-91)	0.808	0.259

The statistics presented by the calculated Cronbach alphas and inter-item correlations were once again used to make some changes to Section D. In this instance, item D1 was deleted from all three questionnaires and after re-looking at the wording of all items, the wording to statement D11 was changed in all three questionnaires.

Table 4.7: Pilot study Cronbach alpha/inter-item correlations - Section E

SECTION E	CRONBACH ALPHA	INTER-ITEM CORRELATION
Learners (n=164)	0.861	0.323
Educators (n=29)	0.844	0.375
Parents/Caregivers (n-91)	0.886	0.374

Section E of the educator questionnaire differed completely from the other two questionnaires. After studying the responses, the researcher decided that it would be valuable to change Section E of the educator's questionnaire to correspond with the other questionnaires. Thus, the educator's questionnaire was changed to include a Section E with the same items as the learner and parent/caregiver questionnaire, while the items contained in Section E were moved to Section G of the educator's questionnaire.

Furthermore, using the statistics provided by the calculated Cronbach alphas and inter-item correlations led to the elimination of item E10, re-looking at the wording of each item and consequently rewording item E1.

Table 4.8: Pilot study Cronbach alpha/inter-item correlations - Section F

SECTION F	CRONBACH ALPHA	INTER-ITEM CORRELATION
Learners (n=164)	0.896	0.281
Educators (n=29)	0.861	0.220
Parents/Caregivers (n-91)	0.912	0.320

In this last section the provided statistics of the Cronbach alphas and inter-item correlation led to (a) the deletion of item F5; and (b) re-looking at the wording of each item in each questionnaire which consequently led to (i) rewording item F4 of the parent/caregiver questionnaire; and (ii) rewording item F22 of the learner and parent/caregiver questionnaires.

ii) Reliability of the questionnaires used in the actual study

In order to establish the reliability of the research instrument developed by the researcher, the Cronbach Alpha coefficients based on the inter-item correlations of the different items in the different sections were calculated based on the ranges proposed by Simon (2008), and Clark and Watson (1995:316; *cf.* 4.2.3.2). The results of these calculations are summarised in Table 4.9. The researcher decided to include the Cronbach Alpha of the pilot study in the Table 4.9 to simplify comparison of the two statistics.

Table 4.9: Cronbach Alpha and inter-item correlation – actual study

	CRONBACH ALPHA PILOT STUDY	CRONBACH ALPHA ACTUAL STUDY	INTER-ITEM CORRELATION ACTUAL STUDY
SECTION B			
Learners (n= 704)	0.808	0.851	0.323
Educators (n = 231)	0.825	0.903	0.438
Parents/Caregivers (n = 425)	0.869	0.887	0.395

SECTION C			
Learners (n= 704)	0.806	0.881	0.261
Educators (n = 231)	0.788	0.828	0.186
Parents/Caregivers (n = 425)	0.808	0.888	0.273
SECTION D			
Learners (n= 704)	0.694	0.827	0.302
Educators (n = 231)	0.782	0.865	0.368
Parents/Caregivers (n = 425)	0.808	0.841	0.325
SECTION E			
Learners (n= 704)	0.861	0.887	0.395
Educators (n = 231)	0.844	0.909	0.455
Parents/Caregivers (n = 425)	0.886	0.894	0.412
SECTION F			
Learners (n= 704)	0.896	0.891	0.280
Educators (n = 231)	0.861	0.910	0.325
Parents/Caregivers (n = 425)	0.912	0.914	0.335
SECTION G			
Educators (n = 231)	-	0.919	0.558

Table 4.9 clearly illustrates that the Cronbach Alpha coefficients and inter-item correlations of the three questionnaires all fall within the accepted ranges. Furthermore the Cronbach Alpha coefficients of the pilot study and those of the actual study correlate with slight improvement in some cases. These improvements can be ascribed to the changes made after the pilot study (*cf*. 4.2.3.2).These statistics indicate that the self-developed questionnaires used in the study can be considered reliable. Since the researcher decided to change the educators' questionnaire after the pilot study to include a Section E which corresponds with the Section E in both the learner and parent/caregiver questionnaire, while renaming the original Section E of the educator questionnaire to Section G. The Cronbach alpha

(0.919) and inter-item correlation (0.558) of the actual study for the said section both fall within the acceptable range.

4.2.3.3 Validity

Validity, as described by Neumann (2011:208), refers to truthfulness and addresses the extent to which the chosen constructs measures social reality. Thus, validity refers to the degree to which chosen indicators measure what they are supposed to measure (Browne & Greene, 2005:95,102).

According to Scandura and Williams (2000:1249), any chosen research method will display inherent flaws, thus limiting the conclusions that can be drawn. Therefore it is imperative to ensure that corroborative evidence is obtained by using a variety of methods as well as establishing different kinds of validity (Scandura & Williams, 2000:1249; *cf*. 1.5.2, 4.2).

Validity of the quantitative research design

When assessing the validity of the research design, the focus is on internal, external and statistical conclusion validity. Internal validity typifies the extent to which the results of the study can be analysed indisputably (Flick, 2011:202), while external validity refers to the extent to which results can be transferred beyond the participants of the study to the population (Flick, 2011:203). According to Adams (2008), statistical conclusion validity answers the question – *was the original statistical inference correct?*

When statistical conclusion validity is assessed, the concern does not lie with causal relationships between variables, but rather whether or not there is any relationship, albeit causal or not (Adams, 2008). Thus, statistical conclusion validity establishes whether the correct conclusion regarding the existence of a relationship between variables is reached (Adams, 2008). This is done by ensuring that the statistical procedure used is the proper procedure for the particular purpose and the procedure's mathematical requirements are met. The researcher used the Statistical Consultation Services, North-West University (Vaal Triangle Campus) to establish statistical validity (*cf.* 1.5.2.6; 4.2.6). Although statistical conclusion validity is related to internal validity, it is important that it also supports external validity (Scandura & Williams, 2000:1253).

Neumann (2011:217) considers internal validity to mean that no errors were made internal to the research design, which might lead to false conclusions. Malhotra and

Grover (1998:414) suggest that in non-experimental designs the researcher should try to justify internal validity informally through discussion of why causality exists and while alternate explanations are improbable; while formally statistics are used to test coexisting relationships among the different variables. In order to ensure the internal validity of the study, the researcher, with the help of her study leader, Prof Elda de Waal, carefully planned the research design, constructed the research instrument using the information obtained in the literature in chapter 2, formulating definitions where necessary and translating the questionnaires (*cf.* 1.5.2, 4.2). Furthermore, the researcher attempted to construct findings that are believable and convincing, while also reporting negative or inconsistent findings. Lastly, the researcher asked two experts to evaluate the questionnaires and changes were made according to their suggestions.

External validity refers to the extent to which the results of the study can be generalized beyond the specific study (Neuman, 2011:300), by taking the findings and transferring them to other contexts within real life (Maree & Pietersen, 2007c:151). The researcher planned the sampling methods in order to ensure that the participants are representative of the larger population (*cf*. 1.5.2.2, 4.2.2). Representativeness was established by comparing the demographics of the participants with the demographics of the study population. Should the sample be representative, the researcher would attempt to generalize the findings to the larger study population.

i) Validity of the quantitative research instrument

An instrument is considered valid when the instrument actually measures the underlying concept (Browne & Green, 2005:102; Muijs, 2011:57), thus measuring what it is supposed to (Maree & Pietersen, 2007c:147; Pietersen & Maree, 2007b:216). Validity is problematic in the human sciences as the instruments used have to measure human feelings (Pietersen & Maree, 2007b:216). As most concepts in the human sciences are multi-faceted, a measuring instrument using a variety of indicators each conceptualising a different aspect of the concept (Browne & Green, 2005:102) would most probably lead to a greater validity of the instrument. Neuman (2011:211) considers this as measurement validity, which he depicts as the extent to which the indicators used are valid for a particular purpose and definition. This means that validity measures the extent to which conceptual and operational

definitions interconnect (Neuman, 2011:211). The different types of measurement validity are discussed below.

Face validity is considered the most basic measure of validity and implies that the research instrument appears to be measuring what it is supposed to (Browne & Green, 2005:103; Pietersen & Maree, 2007b:217). Face validity clearly does not provide enough evidence that the research instrument is measuring what the researcher intended, as it cannot be quantified (Pietersen & Maree, 2007b:217). In order to ensure face validity, the researcher of this study asked two experts[276] at the NWU (Vaal Triangle) to scrutinize the instrument.

A research instrument satisfies **content validity** when it is representative of the content of the construct to be measured and which forms the focus of the research (Browne & Green, 2005:103; Pietersen & Maree, 2007b:217; Muijs, 2011:57). As stated by Muijs (2011:58), doing an extensive literature review, in which the concepts the researcher plans to measure are reviewed extensively, will assist in the achievement of content validity. As suggested by Pietersen and Maree (2007b:217), the researcher asked the previously mentioned experts to consider the instrument for content validity as well as face validity before finalizing the instrument.

Criterion validity refers to the extent the chosen indicator correlates with other known indicators of the concept (Browne & Green, 2005:103; Pietersen & Maree, 2007b:217) and is considered the decisive test to establish if the developed instrument measures what it set out to measure (Pietersen & Maree, 2007b:217). Muijs (2011:58) identifies two types of criterion validity:

- *Predictive validity*: in this instance an instrument is considered valid if the instrument used predicts the outcome the researcher theoretically expected.
- *Concurrent validity*: this type of validity is less rigorous than predictive validity and considers whether the scores on the instrument agree with the scores on related factors as the researcher expected (Muijs, 2011:59).

In this study the researcher used the results obtained from the pilot study to establish if the instrument predicted the expected outcomes, as well as whether the scores on the related factors were in agreement (*cf*. 1.5.2.3, 4.2.3.2).

[276] Prof. Elda de Waal, an expert in the Education Law field and Prof. Mary Grösser, an expert in quantitative research.

Construct validity is when an instrument is designed to measure a characteristic which is not directly observable or an abstract phenomenon. This means that the characteristic needs to be inferred from other behavioural patterns (Browne & Green, 2005:103) and the instrument has to measure these phenomena in different groups of related items (Pietersen & Maree, 2007b:217). Construct validity can be insured by using statistical techniques such as item and factor analysis (Pietersen & Maree, 2007b:217). These statistical techniques were used in the statistical analysis of the study (*cf.* 1.5.2.6, 4.2.6.1).

There are a number of *threats to validity* which a researcher should be aware of. In the first place, an unreliable instrument leads to an invalid instrument; secondly there is the tendency of some participants to agree rather than disagree to questions; some participants also answer what they think the researcher expects or what they conceive as socially desirable; and finally biases such as gender and culture could play a role (Browne, 2005a:112; Browne, 2005b:125; Pietersen & Maree, 2007b:218).

Regarding the above-mentioned threats, Pietersen and Maree (2007b:218) suggest that researchers consider formulating both positively and negatively formulated items. Items and their response levels, which may lead to responses of what the participants consider socially desirable, must be carefully formulated to minimise the problem, and all possible language and cultural differences must be considered in order to avoid using aspects which might differ in meaning in different cultures.

Browne (2005a:111-112) also suggests the following in order to ensure validity and to obtain honest, accurate answers:

- In order to minimize the mental demands on the participant, ensure that instructions and questions are formulated in such a way that questions are not misunderstood.
- Questions should not be worded in such a way that they require from the participant to recall moods and events over a long time, as this is very difficult.
- Questions that require information which participants cannot recall with absolute accuracy lead to participants *guessing* what they think the *right* answer is.
- Rating scales do not always allow for the exact mental representations and therefore their response may not accurately portray the response they wanted to give.

- An awareness of aspects such as end-avoidance and positive skew are problems that arise when answered on a continuous scale. End-avoidance occurs because some participants do not like to choose extreme answers, while positive skew occurs because participants tend to favour more positive responses leading to a skewed response distribution.

In the construction of the research instrument the researcher considered the above-mentioned aspects and attempted to ensure that the threats mentioned are dealt with, where relevant, by using the advice of Pietersen and Maree (2007b) and Browne (2005a; 2005b).

During the sampling process (*cf.* 4.2.2) the decision was taken to include learners and parents/caregivers from Afrikaans-medium schools, as well as parallel-medium schools. Therefore the researcher thought it prudent to translate the original English questionnaire into Afrikaans in order to benefit the two groups and ensuring that results obtained are not influenced by miscommunication (*cf*. Addenda 5 & 7).

The translation of the questionnaires was done using the *forward-backward procedure* (Chapman & Carter, 1979:72; Candell & Hulin, 1986:419; Edwards, 1998:200; Nasser, 2005:232-233), ensuring that difficulty levels of the instruments are comparable (Chapman & Carter, 1979:76). The success of the use of this procedure is reflected in the work of Moshki, Ghofranipour, Hajizadeh and Azadfallah (2007). When using this procedure the instrument is translated into the second language by one translator, then the ensuing version is translated back into the original language (Chapman & Carter, 1979:72). In this study the original English questionnaires were translated into Afrikaans by a qualified translator and then translated back into English by the study leader, Prof. Elda de Waal. The decision to use the study leader as the second translator lies in the importance of ensuring that the context, purpose and knowledge of operational definitions contained in the instrument should not be altered (Nasser, 2005:233), which can be ensured by using an expert in the field of study.

Chapman and Carter (1979:71) warn that should proper procedures not be followed in the translation of questionnaires, the researcher might end up with results that reflect *errors in translation rather than differences in people or the variables being measured*. According to Candell and Hulin (1986:418), all the items in the translated instrument need not be equivalent. Scale equivalent techniques can be used to

generate equivalent scales if most items in the scale are equivalent (Candell & Hulin, 1986:418).

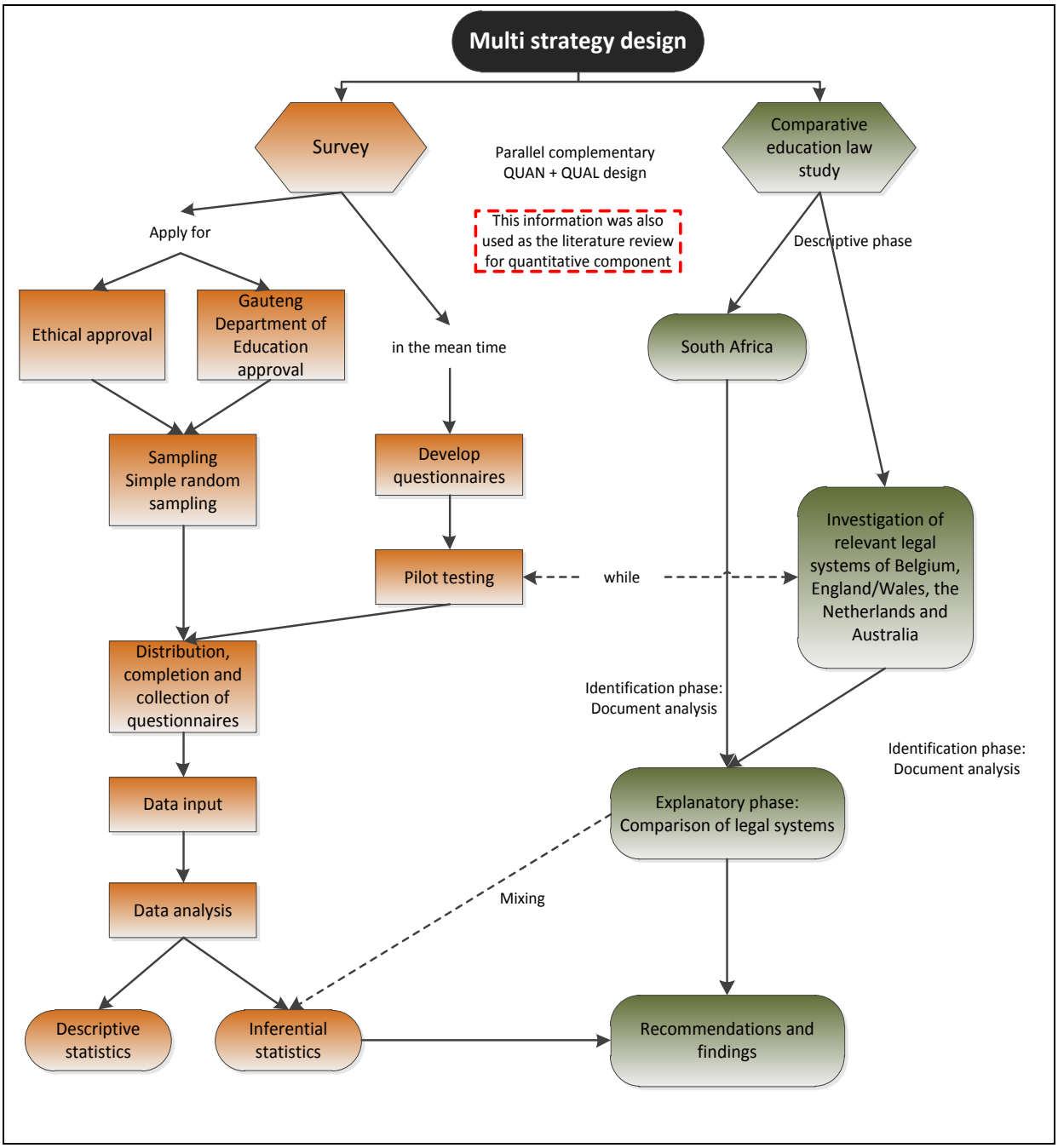
Chapman and Carter (1979:75-76) make three recommendations to ensure that the results obtained are *solid and trustworthy*. According to the authors (1979:75-76) the researcher should:

- ensure a methodical, believable procedure for translating the instrument. As mentioned, the researcher used the forward backward translation process as accepted by academia;
- clearly prove that the *means of validation*, i.e. competent translators are available for translation, were in fact available. In this instance the researcher made use of a translator, Denise Kocks, who has successfully translated and language-edited work for the North-West University, Vaal Triangle Campus, School for Educational Sciences for the past eleven years; and
- pilot test both the original and the translated instruments to verify for reliability and validity. The researcher did pilot test both the English and Afrikaans learner and parent/caregiver questionnaires and reported the findings (*cf*. 4.2.3.2).

4.2.4 A visual representation of the research design

In order to illustrate the parallel multi-strategy design the researcher decided on a mind map of the process as provided on the next page.

Figure 4.2: Research design



4.2.5 Data-collection process

In a multi-strategy research study, it is important for researchers to ensure that extensive data-collection is done and they have at least familiarised themselves with both the quantitative and qualitative forms of research (Creswell, 2009:205). In any multi-strategy study a researcher has to make decisions regarding the timing, weighting and mixing of the quantitative and qualitative data collection, analyses and interpretation (*cf.* 1.5.2.5).

4.2.5.1 Timing

It is necessary for the researcher of a multi-strategy study to consider the timing of when the quantitative and qualitative phases of the study will happen (Creswell, 2009:206) or more precisely: the order in which the researcher will make use of the different forms of data (Morgan, in Creswell & Plano Clark, 2007:81). Therefore the decision regarding timing relates much more with the decision of when the data is analysed and interpreted, than to when data is collected (Creswell & Plano Clark, 2007:81). Creswell (2009:206) distinguishes between concurrent data-collection which implies that the quantitative and qualitative data are collected at approximately the same time and implementation is simultaneous, and sequential data-collection which refers to data being collected in stages.

In this instance the researcher decided to use the wording parallel multi-strategy research (*cf.* 4.2.5.3). Therefore the quantitative and qualitative phases of the research study were run parallel to each other, implying that the phases did not necessarily happen concurrently, but neither could they be considered sequentially, especially as far as analyses and interpretation were concerned (*cf.* 1.5.2.5.1).

4.2.5.2 Weighting

In this instance weighting refers to the priority or emphasis given to the quantitative and qualitative research in the study in order to answer the research question (Creswell & Plano Clark, 2007: 81; Creswell, 2009:206). In this study the researcher attached equal weight to the quantitative and qualitative forms of research, as both were considered to play an equally important part in answering the research questions (*cf*. 1.5.2.5)

4.2.5.3 Mixing

Creswell (2009:207) considers the mixing of data as particularly difficult as it requires merging, connecting or embedding textual data with numerical data (Creswell, 2009:208). Connecting in a multi-strategy method refers to a mixing of data collected and/or analysed in the one phase with data collected and/or analysed in the other phase (Creswell, 2009:208).

According to Teddlie and Tashakkori (2009:266), a parallel mixed analysis is probably the most common technique of mixed analysis. The researcher of this study is of the opinion that the analyses of data could be described as parallel analyses since the data were analysed independently, but still provided an understanding of

the phenomena being studied, leading to *meta-inferences* as the analyses were connected and integrated (Teddlie & Tashakkori, 2009:266; *cf*. 1.5.2.5).

This meant that the mixing of data (*cf*. 1.5.2.5) only took place after the education law comparison (*cf*. Chapter 5) and the quantitative data analyses were done, (*cf*. Chapter 6) in the findings and recommendations made by the researcher (*cf*. Chapter 7).

4.2.6 Data analysis and interpretation

Onwuegbuzie and Combs (2010:398) consider the analyses of data in a multi-strategy research design as the most difficult step. Creswell and Plano Clark (2007:128) state that the researcher using a multi-strategy method must know the steps needed for both the quantitative and qualitative form of analyses as the quantitative data is analysed using quantitative methods while the qualitative data is analysed using qualitative methods.

Biesta (2010:101) mentions that during the analysis of a multi-strategy study one finds a mixing of measurement and interpretation. However, it is of the utmost importance that integration of data is effective, as it leads to logical and meaningful meta-inferences (Onwuegbuzie & Combs, 2010:398).

Although there seems to be a variety of different interpretations regarding what data are needed for mixed analysis, differing from an assumption that both quantitative and qualitative data are needed, to using only one type of data and then quantitizing or qualitizing the data, there is no doubt that mixed analysis requires at least one qualitative analysis and one quantitative analysis (Onwuegbuzie & Combs, 2010:415). In this study the researcher decided to use one set of quantitative and one set of qualitative data.

4.2.6.1 Quantitative data analysis

In the analyses of quantitative data, two quantitative analysis elements are used: descriptive analyses and inferential analyses which render descriptive and inferential statistics (Babbie, 2010:467; Onwuegbuzie & Combs, 2010:399).

Descriptive analyses techniques are used to improve understanding through organising and summarising (Onwuegbuzie & Combs, 2010:399-401) and they enhance the researcher's understanding of the properties of the data with regard to the sample (Pietersen & Maree, 2007c:183; Babbie, 2010:467). Inferential analyses

techniques are used in order to generalise and therefore make judgements about the population based on evidence obtained from the sample taken from the population (Pietersen & Maree, 2007d:198; Babbie, 2010:467; Onwuegbuzie & Combs, 2010:401). Therefore the difference between descriptive and inferential analyses is that descriptive analyses render statistics that are considered typical of the sample, whereas inferential analyses yield numerical properties that are relevant to the population and allow the researcher to make predictions about the population (Pietersen & Maree, 2007d:198; Babbie, 2010:467; Onwuegbuzie & Combs, 2010:401; *cf*. 1.5.2.6).

Descriptive statistics

Descriptive statistics can be represented in two ways – graphical and numerical (Pietersen & Maree, 2007c:183). The researcher of this study made use of the calculation of the mean and median, as well as frequency analysis as forms of descriptive statistics (*cf.* 1.5.2.6) in order to reduce the data to manageable portions making the interpretation easier (Babbie, 2010:468). The quantitative analyses of data were done by means of the SPSS computer programme.

Frequency distribution refers to the number of times the different characteristics of a variable appears in a sample (Babbie, 2010:428). Researchers use this method of analyses to report on the overall distribution of values (Babbie, 2010:428), often in the form of graphs or tables. However, it is wise also to report the averages or measure of central tendency (Babbie, 2010:428). The researcher of this study used mean as measure of central tendency. The mean is the arithmetic average of all the data values which are calculated by adding all the values together and dividing them by the number of values (Pietersen & Maree, 2007c:187). Both these measures are advantageous in reducing the raw data to their most manageable form.

In statistically analysing the data it is important to remember that the aim of the analysis is to look at the relationship between variables (Muijs, 2011:98). However, it is not only the relationship that is of significance, but rather if the relationship is statistically significant and how large the effect size is (Muijs, 2011:98-99) One such measure is cross tabulation which allows for exploring different response patterns among the different subgroups by calculating the total percentages, the column percentages and the raw percentages. (Pietersen & Maree, 2007c:185).

Inferential statistics

Inferential statistics rely heavily on probability theory, which in fact can be seen as the likelihood of an event occurring (Pietersen & Maree, 2007d:198). Inferential analyses consist of two different types of analyses: parametric and nonparametric analyses. In this study, the researcher made use of parametric analysis.

Analysis of variance (ANOVA) is a method of analysis used to compare the mean score of an ordinal variable with a number of scale points between the groups (Babbie, 2010:492; Muijs, 2011:175). As three independent groups were used in the study, an ANOVA was done in order to test if the average scores of the groups differed (Pietersen & Maree, 2007a:229). Muijs (2011:176) suggests the use of an ANOVA for nominal and ordinal data, but warns that the effectiveness of the ANOVA decreases in the ability to discriminate between the groups of a variable if there are more than five groups (*cf*. 1.5.2.6).

A Multivariate Analysis of Variance (MANOVA) is used to test between the means of more than two groups on more than one variable by considering the different variables together in one test (Best & Kahn, 2003:428; McMillan & Schumacher, 2006:310; Mertens, 2010:406; Muijs, 2011:187). According to McMillan and Schumacher (2006:310), the computation and interpretation of multivariate tests are complex, but allow the researcher to establish relationships between variables (Muijs, 2011:188) and are therefore important. As in the case of ANOVA Muijs (2011:188) recommends the use of MANOVA for nominal and ordinal data without too many categories (*cf*. 1.5.2.6).

Factor analysis is a method used to provide internal structure evidence (McMillan & Schumacher, 2006:181). Internal structure refers to the relationship between items, as well as between different parts of the instrument (McMillan & Schumacher, 2006:180). Thus, by using factor analysis, the researcher reduces the variables in the study to a smaller number of factors to establish the relationship between variables (Muijs, 2011:199). Strong correlation between items would group them together as a factor (Muijs, 2011:199). According to Pietersen and Maree (2007b:219), instruments using a Likert scale, as used in this study, are ideal for factor analysis.

4.2.6.2 Qualitative: document analysis

A document analysis allows the qualitative researcher to do an in-depth analysis and interpretation of recorded material about people, events or systems by using authentic documentation within its own context (Strydom & Delport, 2005:325; Ary *et al.*, 2006:32). In order to do such an analysis the researcher has an assortment of sources available, which include official documents, mass media, personal documents, reports, records, academic books and journals, jurisprudence and archival material (Best & Kahn, 2003:248; Strydom & Delport, 2005:325; Ary *et al.*, 2006:32 & 464; Babbie, 2010:333). Best and Kahn (2003:248) consider the researcher conducting a document analysis to be concerned with finding the explanation of the status of the phenomenon being researched at that exact time or how it developed over a period of time (*cf*. 1.5.2.6).

As the qualitative component of this study comprised a comparative education law document analysis study (*cf*. 1.5.2.1; 4.2.1.1) the researcher predominantly used the relevant Acts of the selected countries as data. In conjunction with the Acts a number of other document types were analysed. These included international law documents, mass media documents, jurisprudence, country reports and academic sources found to be relevant to the selected countries. The content of the different sources were analysed in order to establish the similarities and difference regarding the status of educators in the selected countries. Babbie (2010:333) defines content analysis as *the study of recorded human communications* which includes written documents such as book and laws, symbols and visual documents such as paintings and even websites.

As stated by Örücü (2006:38) the comparative law researcher already does content analysis of the documents during the identification phase (*cf*. 4.2.1.1) of the study. Thus, such a researcher analyses any written materials which linked to the phenomena being researched (Strydom & Delport, 2005:314). Nieuwenhuis (2007a:101) describes content analysis as *a process of looking at data from different angles* through which the researcher hopes to find similarities and differences that could prove or disprove certain assumptions or theories.

Establishing reliability, validity and authenticity of a document is crucial when doing document analysis (Strydom & Delport, 2005:317 & 325; Ary *et al.*, 2006:32 & 483). Best and Kahn (2003:248) consider it the researcher's duty to ensure authenticity as well as validity by establishing that all documents used are trustworthy.

One of the advantages of doing a document analysis is the relative low cost of such a study, especially in the electronic age (Strydom & Delport, 2005:318; Babbie, 2010:344). Furthermore, document analysis does not require any special equipment, it allows for the correction of errors without having to repeat the complete project and it is unobtrusive (Ary *et al.*, 2006:465; Babbie, 2010:344). Mertens (2010:352) also mentions the facts that document analysis provides comprehensive information, that the information already exists and that hardly any bias comes into play. However, as disadvantages the following aspects emerge:

- It is a time-consuming process.
- The researchers need to be clear on what is require and what they are looking for.
- Information may be incomplete and then the method becomes inflexible, as only data that already exist are available.
- Only recorded materials are available for use (Babbie, 2010:344; Mertens, 2010:352).

In order to report the findings in a comparative law study, the researcher of the study followed a two-step process. The first step consisted of investigating; analysing and reporting on the different elements within the different legal systems (*cf*. Chapter Two & Three). The second step consisted of taking the results from the first step and searching for similarities and differences, synthesising the information to reach the main aim of the study especially (Venter *et al.*, 1990:237; *cf.* Chapter 5).

4.2.7 Steps followed during the collection of the quantitative data

The following steps were taken in collecting the quantitative data (*cf*. 1.5.2.7):

1. Ethical approval was obtained (*cf*. 4.3)
2. Permission to do research was obtained from the Gauteng Department of Education (*cf*. Addendum A).
3. Questionnaires for learners, educators and parents/caregivers were developed (*cf*. Addenda E1, E2 & E3).
4. Letters requesting to conduct research at the school were formulated (*cf*. Addendum B).

5. Consent letters for the respective participant groups were formulated, as well as a proxy consent form for learners younger than 18 years of age (*cf*. D1, D2, D3 & D4).

6. Purposive selection of the types of schools to be included in the sample as strata was done (*cf*. 1.5.2.2, 4.2.3.2).

7. Schools were selected to partake, using the list obtained from the Sedibeng-East District, according to the calculations of participants needed per strata (cf. 1.5.2.3, 4.2.2).

8. Schools, which do not form part of the schools sampled, were identified for the pilot study (*cf*. 1.5.2.3; 4.2.3.2).

9. Principals at each school identified for the pilot study were contacted and visited to explain the study and ask permission to allow learners and educators to take part.

10. Pilot testing of the different questionnaires was done using participants not part of the sample (*cf*. 1.5.2.3, 4.2.2).

11. Changes were made to the questionnaires based on the Cronbach Alphas and inter-item correlations obtained from the pilot study (*cf*. 1.5.2.3; 4.2.3.2).

12. Principals at each sampled school were contacted and visited to explain the study and ask permission to allow learners and educators to partake.

13. Consent forms and questionnaires were dropped off at each school according to the numbers supplied by the Sedibeng-East District office, arranging to collect questionnaires at a suitable time.

14. Principals, or an assigned person, handed out consent forms and questionnaires to learners and educators. At some schools this included all learners in the relevant grades, while at other schools the person assigned by the principal handed out the consent forms and questionnaires decided which learners were selected.

15. Learners take parent/caregiver consent forms and questionnaires home, as well as ask parents/caregivers to sign the consent forms attached to the learner questionnaire.

16. The principal, or assigned person, requested learners to return forms at a given date.

17. Questionnaires were collected from schools by the researcher. In some cases the researcher returned to the school if requested to do so.

18. Additional purposive sampling was done using students, acquaintances and the printed media (*cf*. 4.2.2).

19. Collection of additional questionnaires from the above-mentioned sample.

20. Questionnaires were numbered, data entered and statistically analysed (*cf*. 4.2.6.1).

4.3 ETHICAL CONSIDERATIONS

Ethics in research refer to widely accepted moral principles which provide the rules of expected conduct researchers should display towards research participants (Strydom, 2005a:57). Flick (2011:216) considers ethical issues relevant to all research and based on four principles, *non-maleficence, beneficence, autonomy and justice*. Cresswell (2009:88) proposes that researchers anticipate and address ethical issues, while Flick (2011:216 stipulates that the researcher should aim at transparency, eliminate harm or deception and ensure data protection. Isreal and Hay (in Cresswell, 2009:87) stipulate that a researcher should not only protect participants from harm, but also gain their trust, while guarding against misconduct and improper behaviour and coping with new challenging problems.

In order to ensure ethical conduct during this study the following was done:

- The necessary ethical approval was obtained. The study forms part of a project, of which the researcher is a member, under the leadership of Prof. Elda de Waal. Prof de Waal received permission from the Ethical Committee of the NWU.[277]
- The necessary permission was obtained from the Gauteng Department of Education (*cf.* Addendum A).

Ethical issues apply to all types of research and during all stages of research (Cresswell, 2009:88; *cf*. 1.5.3). Therefore the researcher will discuss various ethical issues considered during different stages of the research study below.

[277] Minutes of the Ethics Sub-committee (Social and Behavioural Sciences) dated 7 June 2011: FH-SB-2011-020; agenda point 8.1.

4.3.1 Ethical issues in the research problem

Punch (in Creswell, 2009:88) states that the research has an ethical duty to identify a research problem that will not only benefit the research participants, but also be meaningful to other stakeholders. In this research study, the problem identified is a current problem in the education field, not only in South Africa but also in the rest of the world (*cf*. Chapter One and Two). The researcher identified a number of contributions the study can make; both to the scientific terrain and the research focus area (*cf*. 1.6).

4.3.2 Ethical issues in the purpose and questions

According to Creswell (2009:88), the researcher should ensure that the purpose statement of the research study is clear and that no misunderstanding arises due to different views on the purpose of the research held by participants and the researcher. Not only did the researcher of the study clarify the purpose of the study with each principal when permission was obtained to conduct the research at the different schools (*cf*. Addendum B), but the researcher also included a short description of the purpose of the research in each of the different consent letters (*cf.* Addenda D1, D2, D3 & D4).

4.3.3 Ethical issues in data- collection

During this stage of the research study many ethical issues arise (Creswell, 2009:89). It is of utmost importance that the researcher respects not only the participants but also the research site (Creswell, 2009:89), while special consideration should be given to the needs of vulnerable participants. In this regard, the researcher ensured compliance with ethical issues as stipulated below.

- The necessary permission was obtained from the relevant principals to conduct the research at their schools, during personal discussions and accompanying documentation (*cf.* Addendum B).
- Informed consent was obtained from all the participants. Informed consent implies that participants are informed about the goal of the study, the procedures to be followed, possible harm, disadvantages and advantages to which participants may be exposed, and the credibility of the researcher (Strydom, 2005a:59; Leedy & Ormrod, 2005:101), as per consent form found in the Ethical Application Form of the North-West University (*cf.* Addendum C1, C2, C3).

- In the case of learners, proxy consent was obtained from the parents/caregivers (*cf. 4.2.1.2)* as per consent form found in the Ethical Application Form of the North-West University (*cf.* Addendum C4).
- The participants of the study remained anonymous and the information supplied by them was treated confidentially.
- Collected data were not used to the detriment of the participants who were involved in the research project.

4.3.4 Ethical issues in data analysis and interpretation

In order to ensure ethical conduct during this stage of the research, the researcher:

- recorded the data from the questionnaires herself, ensuring anonymity by numbering the questionnaires, thus disassociating names (Creswell, 2009:91);
- will store the data for 5 years (Creswell, 2009:91); and
- undertakes to report accurately and honestly on the analysed data (Creswell, 2009:91).

4.3.5 Ethical issues in writing and disseminating the research

Creswell (2009:92) warns that the researcher should not forget that certain ethical principles are to be maintained during this stage of the research. In writing the report the researcher of this study ensured that no language used will reflect any form of bias against any persons, all findings will be true reflections of data received and in no way made to meet expectations or needs of the researcher or audience (Creswell, 2009:92).

None of the results of the study will be used to the advantage of one group or another (Creswell, 2009:92). Lastly, as proposed by Creswell (2009:92), the researcher undertakes to provide all necessary details of the study to allow other researchers to determine the credibility of the study, while always offering new information in any publications following from the study.

4.4 FEEDBACK ON FORESEEN RESEARCH CHALLENGES

In Chapter One (*cf.* 1.7) a number of possible challenges were mentioned as probably influential on the process and progress of the study. Below the researcher reports on the foreseen challenges and whether these challenges had any influence on progress and the process of the study.

4.4.1 Questionnaires

In Chapter One (*cf.* 1.7.1) the researcher identified five possible challenges with regard to the quantitative part of the study. In some instances these possible challenges appeared not to be challenges. The pilot study conducted showed no unusual response patterns, which can be seen as indicative of the fact that the diverse sample interpreted questions correctly.

Furthermore, the researcher mentioned the possibility of a low response rate and difficulty in reaching particularly the parents/caregivers of learners. According to Browne (2005b:123), a high response rate provides a sound guarantee against response bias, while response rates lower than 60% raise concerns about bias in the sample and lower the possibility of generalising the findings. However, various authors (Wiseman & Billington, 1984:336; Dey, 1997:215; Baruch & Holtom, 2008:1140) report on a decline in response rate to surveys, while some authors (Cook *et al.,* 2000:821; Strydom, 2005c:196; Baruch and Holtom, 2008:1153; Creswell, 2009:148; Muijs, 2011:34) consider it more important to ensure a representative sample (*cf*. 4.2.2). In order to overcome this challenge, the researcher decided to over-sample (*cf.* 4.2.2) to increase the number of questionnaires received back, while ensuring a representative sample by carefully planning the sampling process and sampling in stages (*cf*. 4.2.2).

Self-completion questionnaires rely heavily on high levels of literacy (Browne, 2005b:125). As the district in which the researcher worked is mainly an urban area, this challenge seemed not to have been a problem. No feedback was received from principals during the initial interview that parent/caregiver illiteracy is evident in their school community. However, the researcher has no way of knowing if the low return rate of the parent/caregiver questionnaire was due to illiteracy or to other reasons.

Lastly, in considering the possibility that the participants might answer according to what they perceive the researcher to want, the researcher attempted to formulate questions in such a way that the questions were experienced as non-threatening, making honest answers possible.

4.4.2 Comparative education law study

In order to overcome the possible challenges identified with regard to the qualitative part of the study (*cf*. 1.7.2), the researcher:

- used reliable academic and legal web sites when searching for information, as well as the research support staff of the institution;
- discussed information found with her promoter, as well as with the contacts established in the different countries to check relevancy and accuracy to ensure an in-depth education law comparison; and
- used her knowledge of Afrikaans, English and German in conjunction with dictionaries to ensure correct interpretation of the Flemish documents, while checking with speakers of these languages if she was unsure of her own interpretation.

4.5 SUMMATIVE REMARKS

Chapter Four of the study provides an in-depth description of the research design chosen and followed in this study. A detailed discussion of the research design is provided, with clarification on why certain choices were made (*cf*. 4.1, 4.2).

The researcher explained the choice of a parallel multi-strategy design and typifies the multi-strategy design as a parallel complementarity QUAN + QUAL design (*cf*. 1.5, 4.2.1). A detailed explanation of the strategies of inquiry is provided (*cf*. 4.2.1.1). Throughout the chapter the researcher attempts to allow the reader into her thought processes while making decisions regarding the different aspects of the research design.

As promised in Chapters One and Two, the researcher compiled definitions for the terms profession and professional, and consequently incorporated aspects thereof into the respective questionnaires in order to establish if these correlate with the perspectives held by the public school community of the Sedibeng-East District (*cf*. 4.2.3.2). The chapter contains the steps taken in order to ensure the validity and reliability of the study (*cf*. 4.2.3.2, 4.2.3.3).

A visual representation of the research design (*cf*. 4.2.4) is a further attempt of the researcher to provide the reader with a clear picture of the process followed and steps taken (*cf*. 4.2.7). Ethical considerations are expounded upon (*cf*. 4.3). In Chapter One a number of possible challenges were mentioned (*cf*. 1.7). In Chapter Four the researcher reports on the influence of these challenges on the progress and process of the study.

In the next chapter a comparative discussion on the legal status of educators in South Africa, Belgium and the UK will be presented.

CHAPTER FIVE
AN INTERNATIONAL COMPARATIVE PERSPECTIVE

5.1 INTRODUCTION

While the previous chapter contains an in-depth explanation of the research design used in the empirical component of the study, Chapters Two and Three provide a discussion of the legal status of educators in South Africa, Belgium and England/Wales[278]. Legal status refers to the legal capacities of a person, (Bray, 1996:95; Kruger & Robinson, 1997:13; Davel, 2000:14), thus determining the legal relationships between certain persons or a person and the State (*cf*. 2.1; Eiselen, 1997:210). Therefore, the legal status of educators in the respective countries were expounded upon by referring to the fundamental rights of educators, the legislation regulating the employment of educators, as well as current issues influencing the legal status of educators in each of the countries. Both the private law and public law status of educators were considered.

Education is a social phenomenon involving general as well as specific legal relationships between various stakeholders. From these relationships originate specific legal rights and obligations of educators (*cf*. 1.1). The relationship between the State and educators requires of educators to act in the interest of the government they serve as educators of the country's youth, while the State has the obligation to provide educators with the means to fulfil their duties and protect their labour rights. At the same time, educators stand in a very specific private relationship with the learners in their care, the parents/caregivers of these learners, as well as the public schools[279] they teach at (*cf*. 1.1.2; 2.1).

In this chapter, the public and private legal status of educators in South Africa, Belgium and England/Wales will be compared in order to evaluate the information, with the aim of gaining insight into possible trends focused on finding workable solutions to the dilemmas faced by South African public school educators (*cf*. 1.5).

[278] In this chapter, UK will be used when the aspects discussed refer to both England and Wales.

[279] The study focuses only on the public school systems of the respective countries.

5.2 A COMPARATIVE VIEW OF THE EDUCATION MILIEU OF THREE COUNTRIES

The three countries all acknowledge a right to education in various degrees and the duty of government to establish an education system. The education system of each country comprises of a public and a private school system. In Belgium and the UK education is funded by government and therefore free. In South Africa public education is partially funded by government with some parents/caregivers contributing towards the education of their children. In this section, a synopsis of the education systems of each country will be given, situating the employment and legal position of educators. In each instance, the researcher will return to issues which emerged in Chapters Two and Three, comparing and contrasting the information found in the three countries.

5.2.1 South Africa

South African schools are either public or private. No further categorisation exists. Educators at public schools in South Africa can either be employed by the Department of Education, in terms of the Educators Act (76 of 1998:sec.3(1)(10), or by the School Governing Body, in terms of the SA Schools Act (84 of 1996:sec.20(4)). This means that educators in South Africa are either civil servants or employees (*cf*. 1.1.2; 2.3.3.1).

South African educators have had to face many changes over the last two decades, not only in the approach to education, but also within the emerging culture of human rights (*cf*. 1.1.2; 2.1.1). Like all South Africans, educators are entitled to the fundamental human rights as encapsulated by the SA Constitution. In fact, the most important and influential factor determining the legal status of educators is the SA Constitution. At the same time, the actions of educators as employees within the education system are governed by national legislation while they are required to act within the rights and obligations of the profession (*cf*. 2.1.1).

Both the educator and the learner have individual rights and freedoms, which lead to a complicated educator-learner relationship. Given the history of the country, a situation arose where the focus often fell emphatically on the respect for rights, especially the rights of children, while prioritising the accompanying obligations were neglected more often than not (Malherbe, 2004:1; Venter, 2005:1; Kocks-De Waal, 2009:1; *cf*. 1.1; 2.1.1). This over-emphasis of human rights and especially children's

rights, with an accompanying arrogance among the youth towards adults, has led to a situation where the teaching and learning process has been seriously hampered not only in South Africa, but also across the world. In some instances, it even appears as if learners think that their fundamental rights protect them from disciplinary steps, whatever their conduct. To make matters worse, many South African parents/caregivers have developed the same tendency as their children to disregard the rights of educators *(cf*. 1.1; 1.1.2; 2.1.1).

Unfortunately, the situation of educators is worsened by the unprofessional conduct of some of them. Changes to legislation and in particular the enactment of the Labour Act (66 of 1995) have led to educators being demoted to government employees instead of to professionals. The unprofessional conduct of many educators during strike actions over the last years, as well as the conduct of some at the schools where they are employed, has led to a loss of trust in educators and consequently to a tarnished professional image within the South African society (1.1.2). One can consider that South African educators are experiencing status inconsistency, as the SACE Code of Ethics requires professional conduct, but neither the SACE Act nor the SACE Code of Ethics contains definitions for profession or professional, while the treatment experienced at the hands of some learners and their parents/caregivers portrays a disregard for the professional status of educators contributing to the inconsistency experienced (*cf*. 1.1; 1.1.2; 2.1.1; 2.5; 5.4.7).

5.2.2 Belgium

Whereas South Africa has no categorisation within the public school system, the UK and Belgium have different categories of public schools (*cf*. 3.2). The Belgian Constitution allows for the establishment of non-state schools, provided quality standards are met. Non-state schools receive public–funding to the same extent as state-run schools, to ensure that the afore-mentioned right may be exercised without being limited by wealth (*cf*. 3.2.1). Within the Belgian education system there are very few schools which do not receive public funding (*cf*. 3.2) making most schools public schools, each forming part of one of the three education networks (*cf*. 3.2.1.1).

In Belgium, educators are either employed by GO! education or one of the two subsidised education networks. This means that, as in the case of South Africa, educators are a type of civil servant when employed by official education and an employee when employed by subsidised education, with the main difference being

that in effect all educators are paid by the State (*cf*. 3.2.1.1; 3.2.5; De Vries, 2010b:365). Despite a slight decline in their esteem, teachers in Belgium are still held in high esteem by the Belgium community (*cf*. 3.2.6.1), while the wider Flemish population acknowledges that teaching is a demanding career which has undergone many changes over the last decades (Rots *et al*., 2002; Verhoeven *et al*.; Aelterman, *et al*., 2007). The afore-mentioned authors indicate that the Flemish community have a high regard for teachers, recognise the important social role played by teachers and are satisfied with the way teachers function (*cf*. 3.2.6.1).

Whereas teaching as a profession used to be viewed by society as a high status profession, it is now almost at the bottom of the ladder, especially primary school teaching. On the one hand the important societal role fulfilled by teachers is recognised, while the social prestige attached to teaching and the salaries received by teachers do not mirror the important societal role (*cf*. 3.2.6.2). Thus the teaching profession in Belgium is also characterised by status inconsistency. This has led to a situation where the teaching profession is considered low in status as a career choice. Other factors contributing to the decline in status of Flemish teachers relate to deteriorating working conditions, increases in workload, changes in pupils' attitude and an increase in the complexity of the role of the teacher.

In all three countries, as in many other countries (*cf*. 1.1; 5.1), shortages of educators are experienced across all sectors of education. In order to curb the problem, the Flemish government has implemented a number of initiatives, including creating a replacement pool to assist newly trained teachers in obtaining more secure employment, recognising teachers as professional by less prescriptive measures, increasing the retirement age of teachers, re-considering the administrative pressures of teachers and attempting to make the working environment more pleasant and attractive (*cf*. 3.2.6.3).

5.2.3 The United Kingdom

England and Wales are constituent parts of the United Kingdom. Whereas England has no separate government, the Welsh have devolved powers giving them responsibility for certain public services and related policies. Education is one such a devolved power. However, the UK parliament remains sovereign and retains the power to legislate on all matters including devolved matters (*cf*. 3.3).

The education systems of England and Wales are largely similar (*cf*. 3.3.1). In England there are two types of public schools, maintained schools and academies, while public schools in Wales are known as maintained schools (*cf*. 3.3.2). In England and in Wales there are a number of types of maintained schools which are funded through LAs. Despite being legally independent English academies are government funded and form part of the English public school system (*cf*. 3.3.2). Teachers are employed by the LA or school governing body and are considered employees rather than civil servants (*cf*. 3.3.5).

Reports by the BBC in 2005 and 2006 painted a picture of educators, especially newly-trained educators, of feeling abandoned in ill-disciplined classes, requesting stronger legal rights to discipline pupils in increasingly unsafe environments (*cf*. 1.1). Although the biggest problems faced by teachers in UK schools are low level disruptions, teachers are experiencing increases in verbal abuse and physical violence directed at them, aggressive parents and cyber bullying. A disturbing phenomenon is the increase in violence against teachers in primary schools, whereas a decrease has been experienced in secondary schools (*cf*. 3.3.6.3).

As is the case in Belgium, it appears as if the teaching profession in the UK lacks status consistency (*cf*. 3.3.6.1). Participants to studies seem to respect teachers, although they acknowledge that pupils may not respect teachers. Interestingly, participants from the UK award teachers a higher status than participants in other European countries. The participants to these studies considered the salaries received by teachers as unfair and considered a fair wage as 15% more than the current wage (*cf*. 3.3.6.1; 3.3.6.2).

At the same time, teachers and teacher associated groups perceive a decline in status, while they constantly rate their status lower than parents do. Still teaching is perceived as a low status job. Teachers and teacher associated groups indicate that when it comes to the demonstration of responsible high level performance, teaching is similar to a high status profession, but is more subject to external control, having poorer working conditions and less regard for the authority of the profession (*cf*. 3.3.6.1). Teachers' perception of status relies on the support they receive from management and parents, as well as the classification of schools they teach at (*cf*. 3.3.6.3).

A matter of great concern for UK teachers is the reduction of teacher autonomy with an increase in public accountability. Teachers are experiencing increasingly more

pressure from government due to a performance driven system. Detailed curriculum requirements have led to a loss of professional autonomy, while teachers are increasingly pressured, due to performance criteria and stricter measures to ensure cost efficiency requiring a greater amount of accountability. The afore-mentioned along with an excessive workload, the new quality agenda, performance-related pay and labelling of schools after inspections, have impacted on the morale of the profession. Teachers are placed in a situation where they feel accountable to government rather than to pupils and parents, and torn between doing what government requires and what they consider best for the pupils in their care (*cf*. 3.3.6.3)

The workload of educators is a major issue of concern across the world. Research in this regard has pointed to educator stress and burnout. Modern society is making greater demands on educators, while the roles of educators have changed due to educational restructuring (*cf*. 1.1.2). These changes have increased work-related stress experience by educators. The introduction of measures to tackle workload pressures in the UK requires a head teacher to ensure work-life balance. Despite these measures, teacher stress-related personal injury claims still increase (*cf*. 3.3.6.3).

From the discussion above, it has become clear that, although the extent differs, educators in all three countries experience similar problems. Educators in South Africa, Belgium and the UK have had to face and adapt to a great number of changes in recent times. Most of these changes can be linked to changes in their societies, as well as the world's view on certain matters. Many of these changes faced by educators relate to the changes in the roles required of educators.

The afore-mentioned changes have led to educators in all three countries experiencing work-related stress and a loss in morale due to high workloads and ever increasingly ill-disciplined learners. In South Africa and the UK educators are furthermore required to deal with parents who are becoming more disrespectful and even violent (*cf*. 1.1; 3.2.6; 3.3.6).

5.3 COMPARING AND CONTRASTING FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS

Every person is entitled to fundamental rights (UN, 1948:Preamble) and governments are encouraged to strive to promote respect of fundamental rights

through education. A global awareness of the plight of children has led to a focus on children's rights. However, by only focusing on the rights children are entitled to and very seldom on the norms and obligations these rights place on children, a situation has arisen where adults are becoming increasingly aware of children disregarding the rights of others (*cf*. 1.1).

The fundamental rights of South Africans are enshrined in the SA Constitution which is the supreme law of the country (1996:sec.2). The Bill of Rights as found in the SA Constitution is applicable to all law, including common law (Bekink & Brand, 2000:174), while binding both natural and juristic persona (*cf*. 2.1). The Belgian Constitution protects the fundamental human rights of all Belgians, and although the Belgian Constitution is not the supreme law of the country, it is the overriding authority within legislation (*cf*. 3.2.3). The UK has parliamentary supremacy, no codified constitution and the concept 'rights' is seldom used. Rights are rather expressed as duties and powers (*cf*. 3.3.3). The protection of human rights in the UK happens in different layers: firstly in common law which requires of all public authorities to ensure a clear legal basis for their actions, respect of fair procedure and the rule of law while acting rationally; secondly the ECHR which the UK undersigned; and lastly the HRA which provides substantive legal protection of individual rights (*cf*. 3.3.3).

Both Belgium and the UK are members of the EU and have thus accepted the jurisdiction of the EU and the European Court (*cf*. 3.2.3; 3.3.3). EU laws are considered superior to the country's laws, which holds true for Belgium. However, in the UK provisions undersigned by the UK only obtain force of law when enacted into legislation. English courts take provisions from treaties into consideration (*cf*. 3.3.3) and a court can issue a declaration of incompatibility if parliamentary legislation is deemed incompatible with the ECHR (*cf*.3.3.3).

Educators, like all other humans, are entitled to the protection offered by all fundamental rights (*cf*. 2.2; 3.3.4). However, specific rights have greater relevance to education as such and therefore the researcher focused on these specific rights. Each of the rights discussed below has a direct bearing on relationships between educators, learners and parents/caregivers in our society, thus a direct implication on the legal status of educators (*cf*. 2.2.1; 3.2.4; 3.3.4).

5.3.1 Children's rights

Education is without doubt one of the most prominent parts of a child's life. Education requires a direct and intimate relationship between educators, as representatives of the State, and learners. Therefore, the educators have to promote and realize children's rights and may never forget that they are mostly working with children, based on their age. The SA Constitution (1996) protects the rights of children in section 28 (*cf*. 2.2.1.1) while section 22*bis* of the Belgian Constitution (1993) provides similar protection to children (*cf*. 3.2.4.3). Children's rights are not mentioned in the HRA, but a number of UK laws protect the rights of children in areas where there is a need to protect them or where children can be considered entitled to protection (Freikert, 2007:167). Some UK Acts are enacted particularly to protect the rights of children, such as the Children Act 1989, while other Acts may have sections protecting certain children's rights. All three countries have also ratified numerous UN treaties protecting the rights of children, while Belgium and the UK have undersigned similar EU treaties (*cf*. 3.3.4.3). Apart from the South African protection offered by section 28, the Children's Act (38 of 2005) and the Child Justice Act (75 of 2008) contain provisions educators need to be aware of (*cf*. 2.3.2.2; 2.4.2). Educators have to take cognisance of the importance attributed to the rights of children by the different documents, as they mould and form the lives of the learners in their care.

The South African section 28(2) stipulates that a child's best interests are of paramount importance in every matter concerning the child (*cf*. 2.2.1.1). Section 22*bis* of the Belgian Constitution (1993) entitles children to respect of their moral, physical, mental and sexual integrity as well as the right to be heard, by expressing their feelings and views in matters concerning them. When the opinion of a child is taken into consideration, the age of the child, and the power of discrimination of the child have to be contemplated. Section 22*bis* also provides for the promotion of development of children. Similar to the best interests of a child principle found in the SA Constitution (*cf*. 2.2.1.1), section 22*bis* stipulates that in every decision concerning children, the interest of the child should be the first consideration (*cf*. 3.2.4.3).

The importance of the best interests of a child has been confirmed in several court cases in South African jurisprudence with the *Point High School* case being particularly relevant to the legal status of the educator (*cf*. 2.2.1.1). The ruling in the

afore-mentioned case has placed a legal duty on the DBE to appoint the best candidate in a vacant position in order to adhere to the constitutional principle. Whereas there is no doubt about the weight attributed to the best interests of a child principle by South African law, the researcher finds it disconcerting that in a translation of the Belgian Constitution (1993) by the Legal Department of the House of Representatives the largest part of section 22*bis* was omitted, with no mention of considering the interests of a child, nor the right to be heard in matters concerning the child in the English version (*cf*. 3.2.4.3).

Section 28(1)(d) of the SA Constitution (1996) places a duty on educators as it provides children with protection against maltreatment, neglect, abuse or degradation. In order to ensure the protection of the learners in their care, educators are required to be observant regarding conditions surrounding those leaners and not to hesitate to report any suspicions of abuse, neglect or maltreatment. Educators also have to guard their tongues at all times, as it is easy to pass derogatory remarks when you are agitated, as well as teach the learners in their care to consider what they say to others (*cf*. 2.2.1.1; 2.2.1.4; 2.2.1.7). The ruling in *Z v UK* has led to responsibilities placed on UK educators similar to those placed on South African educators to report suspicions of cases of neglect and abuse to the relevant authorities (*cf*. 2.2.1.1; 2.3.2.2; 3.3.4.5).

According to the SA Constitution, the Children's Act and the Child Justice Act a child is a person under 18 years of age (1996:sec.28(3); 38 of 2005:sec.1&17; 75 of 2008:sec.1), while the SA Schools Act stipulates that compulsory schooling ends at the last day of the year in which the learner reaches the age of fifteen years or Grade 9 (84 of 1996:sec.3(1)). A dilemma faced by many educators in South Africa is dealing with ill-disciplined learners, many of them 18 years of age and older. These learners are long past the age of compulsory education and no longer considered children, but still remain in classes, often as the most problematic learners, leaving educators questioning their position (*cf*. 2.2.1.1).

5.3.2 Rights concerning education

The relevancy of the general right to education to the legal status of educators lies not so much in the right, but rather in the obligations placed on educators in order to ensure the learners' rights in this regard. In order to develop into adulthood acquiring the necessary knowledge and skills to compete with the rest of the world, learners are in need of and dependent on their educators and parent/caregivers for their

education for a very long time (*cf*. 2.2.1.2). Cameron (2003:418) considers education the right without which few of the other rights will have significant meaning.

The SA Constitution (1996) provides everyone the right to a basic education in the official language of their choice, where practically possible, in public educational institutions (*cf*. 2.2.1.2). Section 24 of the Belgian Constitution (1993) stipulates that everyone has the right to free education until the end of compulsory education while any measures to prevent education is forbidden by law and federal law (*cf*. 3.2.4.4). As in the case of Belgium, the right to education in the UK provides for free public education (*cf*. 3.3.4.4). Thus, unlike Belgium and the UK, the right to education as found in the SA Constitution refers to basic education only. However, the SA Constitution provides no definition of exactly what constitutes basic education – does it refer to compulsory education only or to education until the first twelve years of schooling have been completed?

The UK has undersigned a number of conventions which provide for the right to education, while the ECHR, as contained in schedule 2 of the HRA (UK, 1998a) provides for the right to education. In this instance the UK government has made a special restriction to the ECHR. The ECHR stipulates that no person shall be denied the right to education. The UK government has enforced a restriction rephrasing the right that the State has a responsibility to provide an efficient education within public spending limits. Both the SA and Belgium Constitutions place a duty on the State to ensure access to education, whereas the change the UK made to the ECHR stipulations provides a negative formulation where the State only has the obligation to provide education within the spending limits of the State (*cf*. 3.3.4.4).

In Belgium, the right to education allows for parental freedom of choice with regard to the education of their children in respect of the philosophical, ideological or religious belief of parents and learners. In order to ensure freedom of choice, section 24(1) requires of public authorities to offer a choice between the teaching of one of the recognised religions and non-denominational ethics until the end of compulsory education (*cf*. 3.2.1; 3.2.4.4). Section 24 includes mandatory neutrality of State education together with the freedom of choice of parents to choose between religious and non-religious schools (*cf*. 3.2.1.1; 3.2.4.4). Section 24(5) ensures equality between learners, parent/caregivers and educators (*cf*. 5.3.3).

Like Belgium parents, UK parents have the right to ensure respect for their religious and philosophical convictions (*cf*. 3.3.4.4). However, the view in the UK is that the

right to education is not necessarily confined to education at school, as the definition of education is more far-reaching. School education should therefore be in accordance with the wishes of the parent when compatible with the provisions of efficient instruction and training and avoids unnecessary public expenditure (DCA, 2006:27; Feikert, 2007:173).

Unlike Belgium and the UK where community schools are required to be neutral and have no religious character, while other categories of public schooling may have a religious character (*cf*. 3.2.1; 3.2.2), the SA Constitution does not make any provision regarding freedom of choice in terms of the religious, philosophical and moral views of learners and parent/caregivers within the right to education, but rather in terms of language. However, section 15 of the SA Constitution allows for freedom of religion, belief and opinion (*cf*. 2.2.1.11).

The freedom of choice South African learners and/or their parents/caregivers have with regard to language of instruction stems from the South African history and the fact that the country has eleven official languages. It is the opinion of the researcher that this choice, however, is largely hypothetical. In most instances black learners are left with very little choice and are mostly either taught in English and/or the vernacular most predominantly spoken in the region their school is situated in, whereas white English and Afrikaans learners have the freedom to choose mother-tongue instruction.

It is important to note that in none of the three countries is the right to education considered an absolute right to learn whatever you want wherever you want. The right to education places important responsibilities on learners to ensure that they enable educators to teach in an atmosphere of harmony and order. Therefore learners are required to adhere to school and classroom rules and may not disregard school rules in the name of exercising their right to education, while showing a disregard for their obligation to respect the rights of other learners and educators. At the same time, educators have to realise their obligation to maintain order by exercising their right to discipline learners (*cf*. 2.2.1.2; 3.2.4.4; 3.3.4.4).

Furthermore, South African educators are obliged to work towards the provision and protection of a homogeneous national education system focussed on redressing the injustices of the past while working towards the advancement of a democratic transformed society, the eradication of racism and sexism, as well as any form of discrimination (*cf*. 2.2.1.2; 84 of 1996:Preamble).

Section 36 of the SA Constitution (1996) allows for the limitation of rights in a fair and justifiable manner. Educators have the right to limit the right to basic education of ill-disciplined learners in order to ensure the right to education of other learners. Suspension and expulsion are recognised forms of correction (84 of 1996:sec.9) for learners found guilty of misconduct after a fair hearing. Returning to the dilemma of SA educators (*cf*. 2.2.1.1; 5.3.1) being forced to endure the continued presence of ill-disciplined learners past the age of compulsory education and compulsory schooling continually disrupting classes and infringing on the right to a basic education of other learners, the question arises: What is the position of these educators and where does their obligation lie? Educators in the UK have the right to punish learners (as long as the penalties do not amount to ill-treatment) proportionate to the infringement, while suspension and expulsion are also recognised as ultimate forms of punishment (*cf*. 3.3.4.4; 3.3.4.5).

5.3.3 The right to equality

In all three countries discrimination on a variety of grounds is prohibited (*cf*. 2.2.1.3; 3.2.4.1; 3.3.4.1).The word discrimination refers to differentiation in treatment without proper justification in a manner that includes aspects of injustice (Maile, 2002:636 & 638). In the *Hofmann v South African Airways* case, Judge Ngobo stated that the crux of the constitutional prohibition against discrimination is for equal dignity to be bestowed upon everyone, regardless of their position in society (*cf*. 2.2.1.4). Although these words were spoken by a South African judge, it has universal meaning. In principle, the right to equal treatment in the three countries is very similar with minor differences mirroring the unique history and current situation of each country.

Equality is ensured in section 9 of the SA Constitution (*cf*. 2.2.1.3) and in sections 10 and 11 of the Belgium Constitution (*cf*. 3.2.4.1). The list of grounds on which discrimination is prohibited in the Belgian Constitution is less extensive than the one found in the SA Constitution. However, since Belgium is part of the EU, the grounds listed in the ECHR become relevant to the stipulations in the Belgian Constitution (*cf*. 3.2.3). Prohibition against discrimination in the UK is found in article 14 of the ECHR found in schedule 1 of the HRA and the Equality Act 2010 (*cf*. 3.3.4.1). The list of grounds included in article 14 closely resembles the listed grounds found in sections 9(3) of the SA Constitution. Article 14 ends the list of grounds with the words *other status* in order to allow for inclusion of other types of personal status, but this is not

considered completely unlimited (DCA, 2006:25). Moreover, the Equality Act 2010 provides a further list including some of the grounds found in article 14 and adding other grounds.

Section 9 of the Bill of Rights in the SA Constitution uses the word ‘discrimination’ in its *neutral non-pejorative* sense, while the qualifier *unfair* provides the distinction that indicates prejudice or disadvantage (*cf*. 2.2.1.3). Thus, the SA Constitution guarantees that the law will protect and benefit people equally, prohibiting unfair discrimination. The right is applied both horizontally and vertically as the stipulations in section 9(3) refer to the application of the right concerning the relationship between the State and individuals, while section 9(4) refers to the application of the right within the relationships between individuals. Section 9(5) allows for justification of discrimination in certain circumstances, as South African history has necessitated the inclusion of such a stipulation. The grounds listed in sections 9(3) and (4) are mirrored in the Employment Equity Act (55 of 1998:sec.6(1)), while family responsibility, HIV status and political opinion are added to the list.

The Belgium Constitution prohibits any class distinction. As in the case of South Africa, Belgians are guaranteed equality by law and equality between genders, while equal enjoyment of rights and freedoms are provided for in section 11 (1993). Unlike the SA Constitution, the Belgian Constitution only uses the word discrimination with no mention of fair or unfair discrimination (*cf*. 3.2.4.1). The Belgium Constitution also makes no reference to direct and indirect discrimination, while section 9(3) and (4) of the SA Constitution (1996) and section 13 and 19 of the Equality Act 2010 clearly prohibit direct and indirect discrimination (*cf*. 2.2.1.3). The Equality Act 2010 (UK, 2010a:sec.14) then includes combined discrimination, which is seen as direct discrimination because two protected characteristics combined (*cf*. 3.3.4.1), are not considered in either of the other countries.

In South Africa and Belgium a person wanting to make use of protection against non-discrimination will use the relevant sections in the respective constitutions. The protection against discrimination in the UK differs from that in South Africa and Belgium, in that article 14 of the HRA provides no general right to protection against discrimination, but protection based on the listed grounds. In terms of the HRA a person in the UK would have to identify an ECHR right and show that discrimination on the grounds of the specific right can be proven (*cf*. 3.3.4.1).

In addition to article 14 of the HRA, the UK Equality Act 2010 provides the right to equal treatment in the workplace and wider society. The Equality Act 2010 protects against discrimination on listed grounds, or characteristics, similar to those listed in the SA Constitution. As in the case of South Africa where the grounds listed in section 9(3), and those added by section 6(1) of the Employment Equity Act (55 of 1998) mirror important societal issues, so do the listed grounds protected by the Equality Act 2010. The Equality Act 2010 lists grounds such as gender reassignment, civil partnership and maternity not found in either the SA Constitution or Belgium Constitution (*cf*. 2.2.1.3; 3.2.4.1; 3.3.4.1). Interestingly, the Equality Act 2010 does not only prohibit discrimination, as the SA and Belgian Constitutions do, but prohibits discriminatory *conduct*, specifically harassment (UK, 2010a:sec.26) and victimisation (cf. 3.3.4.1; UK, 2010a:sec.27).

All South African educators, both DBE and SGB employees, are protected from unfair discrimination. The *Larbi-Odam v Member of the Executive for Education* case held that the equality principle even protects the employment rights of foreign residents with permanent residence status. In the appointment of schools, educators may not be unfairly discriminated against on any of the grounds listed in section 9(3) and (4), while the listed grounds may not be used to unduly influence an appointment while other better qualified applicants are available (*cf.* 2.2.1.3). Educators, as employees and applicants in the UK, are protected from discrimination, harassment and victimisation by employers and by qualification bodies when conferring qualifications (*cf*. 3.3.4.1).

Stipulations relating to equality in the workplace in the UK are much more extensive than in South Africa and Belgium. The Equality Act 2010 requires a non-discrimination rule included in occupational pension schemes, equal pay for equal work, a maternity equality clause in the employment contracts of women and special protection regarding disability. Information regarding disabilities is protected by the Equality Act 2010 as well as the Data Protection Act 1998. Educators with a disability which is not clearly visible have a choice whether to disclose the disability to colleagues and management. However, disabled teachers are entitled to specialist equipment, extra funding, specialised trainee programmes during their training and support from their employers (*cf*. 3.3.4.1; 3.3.5.9). The Equality Act 2010 contains a stipulation prohibiting employers from preventing or restricting employees to disclose

particulars about their pay to others (*cf*. 3.3.4.1). No similar stipulations could be found in the legislation of the other two countries.

In the South African situation the HIV/AIDS pandemic has a significant influence on the education sector. HIV/AIDS is not a disease of adults only, but has become a disease of learners. Therefore the government released the HIV/AIDS Policy (SA, 1999a) aiming at the promotion of effective prevention and care within the public education system (*cf*. 2.2.1.3). Educators need to ensure that they are aware of the stipulations within the HIV/AIDS Policy, especially article 3 which prohibits unfair discrimination, albeit direct or indirect, and requires of educators to be aware of any accusations against any person suspected of having the disease.

Differentiation in treatment of infected educators has to be fair and justifiable, while any actions should be in the best interests of everyone involved. Moreover, testing employees to determine HIV/AIDS status is prohibited except when the Labour Court determines such testing is needed (55 of 1998:sec.7(2)).Thus, educators may not be forced to undergo HIV/AIDS testing or to disclose their status. Based on the ruling by the Constitutional Court in *Hofmann v South African Airways* nobody, including educators, may be refused appointment or promotion, neither be dismissed, refused a renewal of their contract or continuation of their contract on the grounds of their HIV/AIDS status. Educators may also not be prevented from teaching on the grounds of their HIV/AIDS status (*cf*. 2.2.1.3).

Both the Employment Equity Act (55 of 1998) and the HIV/AIDS Policy legally bind educators to ensure that no direct or indirect unfair discrimination happens due to the HIV/AIDS status or perceived status of a person. This duty includes insuring that other educators do not refuse to teach or to work with HIV positive educators, or that educators refuse to teach learners that are HIV positive, or perceived to be so. Educators are required to educate all learners, parent/caregivers and other role players in this regard (*cf*. 2.2.1.3).

Section 9(2) of the SA Constitution (1996) refers to the possibility that labour legislation should allow for affirmative action towards previously disadvantaged people to ensure the promotion of achieving equality and therefore the Employment of Educators Act (76 of 1998) addresses affirmative action in the appointment of educators extensively (Bray & Beckmann, 2000:437; 2001:117; Malherbe, 20004:10). Women and disabled people constitute two of the groups considered previously disadvantaged. The stipulations in the section 3 and 6 of the Equality Act

2010 (UK, 2010a) resemble the concept of fair discrimination and affirmative action found in the SA Constitution (1996). These sections call for awareness by public authorities of differing needs while taking into consideration the necessity to treat some people more favourably than others in certain circumstances (*cf*. 2.2.1.3; 3.3.4.1).

Gender inequality in the education sectors of all three countries is particularly evident especially within management (*cf*. 2.2.1.3; 3.2.4.1; 3.3.4.1). In the primary school sector 76% of South African educators are female, while the secondary school sector is more balanced with 52% of all educators being female. When one considers the female representation of educators, it is disconcerting to note that only 36% of principals and 40% of deputy principals are females, with the highest representation of females in leadership positions being in pre-primary and primary schools. It is very clear that gender discrimination when considering managerial positions are still evident. The matter becomes more disconcerting when one takes the findings of Bosch (2011:71) that females within the social services sector experience a glass ceiling in terms of salary and potential participation at senior management levels into consideration (*cf*. 2.2.1.3).

The picture shows even greater disparity in Belgium. Female educators in Belgium constitute more than 70% of the educator population, while on average only 40% of management positions are held by females (*cf*. 3.2.4.1). Gender distribution in the UK education sector is similar to that of Belgium (*cf*. 3.3.4.1). In England, 73% of educators are female and in Wales 75% of educators are female.

Similar to South Africa, the gender imbalance is greater in primary schools, where only 12% of educators are male, as opposed to the 38% in secondary schools in English schools. Welsh primary schools experience the same phenomenon. Although the UK is the only oneof the three countries where there are also more female head teachers than male head teachers, the gender distribution is still skewed when one takes the female representation within the teaching workforce into consideration. Given that females represent nearly 75% of the workforce, but only make up 65% of management in England and approximately 55% in Wales, it is clear that gender inequality is evident within the echelons of management. Particularly disturbing are the statistics relating to primary education in England where only 16% of educators are male, but 32% of the men working in this sector are in senior management. In Wales increases in female head teachers seem to be

predominantly in primary schools, as only 26% of head teachers in secondary schools are female (*cf*. 3.3.4.1).

In the UK, the primary school milieu is becoming increasingly female and low in status. However, males working in the primary school environment achieve disproportionate power and status as they are considered a rare commodity. The feminisation of a profession leads to a lowering in status of the profession, while leading to certain concerns. One such a concern is the lack of male role models within the education field (*cf*. 2.2.1.3; 3.2.4.1; 3.3.4.1). A lack of males within the profession is seen as problematic, leading to a lack in quality (*cf*. 3.2.4.1) resulting in a difficulty to attract male candidates, which impacts on specialised subjects which conventionally attract more male than female learners (*cf*. 2.2.1.3), .

In Belgium, the unfairness of the compensation raises concerns regarding the possibility of discrimination (*cf*. 3.2.4.1). Educators' salaries are linked to their initial training and the type of qualification obtained. Thus, two teachers at the same school with the same task requirements may receive different salaries. Moreover, salaries of educators teaching in the different levels of education may differ with as much as 25% (Michielsens, 1995:24; McKenzie *et al*., 2004:22; Sclafani & Tucker, 2006:44; OECD, 2011a:74). Despite the stipulations relating to pay discrepancies found in the Equality Act 2010, female educators in the UK, whose work does not differ in type or value from male educators, earn on average £3300 less than their male counterparts (Henshaw, 2013).

In a multi-cultural society, such the South African one, schools must consider dress code requirements for learners and educators very carefully as such restrictions may constitute indirect discrimination against certain religious groups. To the same extent, requiring educators to work on weekends in order to accommodate working parents/caregivers may also lead to indirect unfair discrimination against religious groups who regard Saturday or Sunday as their day of faith or even unfair discrimination on gender grounds resulting from the adverse effect such arrangements may have on mothers with young children (*cf*. 2.2.1.3).

Changes over the last few decades in Europe have led to a more diverse society in both Belgium and the UK. Educators in Belgium are required to ensure equal opportunities for all pupils who meet certain socio-economic indicators by the *Decreet betreffende Gelijke Onderwijskansen-I* (*cf.* 3.2.4.1). Similar provisions are found in the Equality Act 2010 where educators as representatives of schools have a

duty to show awareness for the need to remove or minimise disadvantages suffered by certain groups of people, take steps to meet differing needs and encourage people sharing a protected characteristic to share in public life. In the UK, minority ethnic educators participating in a long term study indicated the need for more of them to cater for the needs of ethnic minority learners, while concerns were raised about inflexibility of head teachers concerning the content and delivery of the national curriculum for ethnic minority learners and unwillingness of White colleagues to research and embrace the cultures of minority learners. Despite the stipulations found in the Equality Act 2010 prohibiting discrimination on the grounds of race, ethnic minority educator participants not trained in England reported that although they fulfil requirements, they were discriminated against when it came to permanent appointments, while being exploited as supply teachers. Ethnic minority teachers trained in England did not have the same experience as long as they stayed within the areas with greater educator and pupil diversity (*cf*. 3.3.4.1).

It is important for educators to consider the definition of discrimination used by Maile (2002:636 & 638) in order to realise that discrimination should not be confused with differentiation. Currie and De Waal (2006:230) advise that a sound point of departure is to ensure that people similarly situated in relevant ways should be treated similarly (*cf*. 2.2.1.3). The equality principle allows for educators to make distinctions between groups depending in their needs and interest. Thus, what may be classified as unfair in one context, may not necessarily be unfair in another context, as made clear by the Constitutional Court ruling in *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC). Particularly disciplining different learners, educators need to ensure substantive equality and that any differentiation, especially when gender and race as grounds of differentiation are involved, is justifiable and fair (*cf*. 2.2.1.3).

Within the South African context, educators often have to deal with learners and their parent/caregivers who consider themselves equal to educators in every facet, disregarding the authority relationship educators have with learners. Educators need to educate learners and their parents/caregivers on the equality principle, to create an awareness of the fact that within the education environment, the right to equality does not imply equality of status, but rather equality of value. Moreover, educators should not hesitate to make learners and their parents/caregivers aware of fair discrimination, substantive equality and the need for educators to maintain authority

(*cf*. 2.2.1.3). The afore-mentioned will hold true for educators in Belgium and the UK as well, not only for South African educators.

Part 6 of the Equality Act 2010 deals with matters directly related to education and contains stipulations regarding the treatment of learners (*cf*. 3.3.4.1). Once again these matters are not as extensively stipulated in the Acts of South Africa and Belgium, but hold true for educators and learners in Belgium and South Africa under the equality provisions in the respective constitutions and the ECHR. Learners may not be discriminated against, harassed or victimised on the grounds of maternity, pregnancy and gender reassignment, with regard to admission or treatment. Moreover, learners, acting in good faith, may not be victimised as a result of their parents or siblings making or supporting a claim of discrimination, even if the claim is untrue.

5.3.4 Human dignity

Human dignity is considered a right underlying many, if not all, other rights as it is intrinsic to every human being and refers to being worthy of respect and honour by oneself, as well as others (*cf*. 2.2.1.4; Bray, 2004:37). Human dignity is one of the values considered when the legality of a limitation of a right is considered, because when a fundamental right is violated, the violation often constitutes an infringement of human dignity as well. According to section 10 of the SA Constitution (1996), *everyone has inherent dignity and the right to have their dignity respected and protected*. Section 23 of the Belgian Constitution (1993) gives everyone the right to lead a life consistent with human dignity (*cf*. 3.2.4.5), which implies being entitled to respect of one's dignity. The HRA makes no mention of the right to human dignity while the ECHR also has no article specifically dealing with human dignity.

The fact that the studied UK legislation does not mention human dignity does not mean that UK educators, like all other people in the UK, are not entitled to human dignity. Human dignity is not only a right everyone is entitled to, but also a responsibility of all human beings (Bray, 2004:42) and within the education sector an extremely fragile component of the different relationships role-players find themselves in (Malherbe, 2004 :11).

All human beings have an equal measure of human dignity and must, therefore, be treated equally worthy of respect (Currie & de Waal, 2006:273). Within the education sector, the relationship between educators and learners is inherently unequal

(Malherbe, 2004:11), requiring of educators to be extremely cautious of breaching this fundamental right (*cf*. 2.2.1.4). One of the responsibilities of educators is to maintain discipline in order to ensure an environment conducive to teaching and learning. However, when disciplining learners, educators must never forget that they have no right to humiliate learners, nor punish them in ways that may be considered inhumane.

Corporal punishment is prohibited by law in both South Africa and the UK (*cf*. 2.2.1.4; 2.2.1.5; 3.3.4.5) while Belgian legislation does not mention the use of corporal punishment as an allowed means of discipline (*cf*. 3.2.5.7). However, article 3 of the ECHR, relevant to both Belgium and the UK, prohibits inhumane punishment (*cf*. 5.3.5). The ruling of the Constitutional Court in the *Christian Education CC* establishing corporal punishment as an infringement of a number of rights, including human dignity, is most probably one of the most significant rulings in South African jurisprudence (*cf*. 2.2.1.4; 5.3.5).

Just as educators are required to acknowledge the respect learners are entitled to, learners and their parent/caregivers are required to show the same respect to educators. When one considers the behaviour of learners in both South Africa (*cf*. 2.2.1.4) and the UK (*cf*. 3.3.6.3), it becomes clear that educators are generally not respected by learners or their parents/caregivers. Although similar reports were not found in Belgium, one of the reasons Belgian educators leave the profession is due to the changes in the attitudes of learners, implying a degree of disrespect (*cf*. 3.2.6.2).

South African educators find themselves in situations where human dignity has become a right abused by learners and their parents/caregivers who blame educators for infringing on their right to human dignity when they reprimand learners, or raise their voices even when the learners were blatantly rude and have offended the dignity of the educator (Venter, 2005:7). Educators in the UK report an increase in verbal abuse from learners as well as parents/caregivers (*cf*. 2.2.1.4; 3.2.6.2) implying the same tendency as in South Africa.

5.3.5 Freedom and security of person

Section 12 of the SA Constitution allows every person the right to freedom and security of person as well as the right not to be treated in a vindictive, ruthless or undignified way (*cf*. 2.2.1.5). The protection against vindictive, ruthless or undignified

treatment is of particular relevance to education as it has a direct influence on the way in which learners may be disciplined. Article 3 of the ECHR prohibits torture or inhumane or degrading punishment or treatment, placing the same restrictions on the way learners in Belgium and the UK may be disciplined (*cf*. 3.2.3; 3.3.4.5).

In South Africa and the UK, this right is an absolute right. This right has been tested in a number of cases in South African jurisprudence with the *Christian Education* case being one of the most influential education-related cases in South African jurisprudence (*cf*. 5.3.4). In the judgement it was made clear that the explicit banning of corporal punishment found in section 10(1) and 10(2) of the SA Schools Act (84 of 1996) holds true for both public and independent schools. The wording of the stipulations prohibiting corporal punishment in the SA Schools Act makes it very clear that no-one may administer corporal punishment at a school and anybody transgressing these stipulations may be charged with assault. The use of the words *no person* legally binds educators not to knowingly allow parents/caregivers to administer corporal punishment to learners at school (*cf*. 2.2.1.5).

UK legislation mirrors the South African legislation in that it contains similar stipulations in the Education Act 1996 and the School Standards and Framework Act 1998. According to these two statutes no member of staff at schools may use any form of corporal punishment, as it cannot be justified in any way. Furthermore, the HRA stipulates that a positive obligation rests on the State to prevent contraventions of article 3 (UK, 1998a:sec.6) allowing for a public authority, such as a school, to be held responsible for the actions of their employees even if they had no knowledge of the acts or did not condone them (*cf*. 3.3.4.5).

It can be argued that all forms of discipline contain some element of vindictiveness or ruthlessness and therefore educators have to ensure that disciplinary measures can be justified under normal circumstances. Belgium, for instance, has a programme where suspended learners or learners who need guidance due to problematic absenteeism are given opportunities to take part in a farmers' project where such learners can complete worthwhile tasks under the guidance of a farmer or horticulturist (*cf*. 3.2.5.7).

South African educators and learners are further protected from all forms of violence from both public and private sources. The afore-mentioned stipulation in section 12 provides the right to safe schools. Various appeals by, among others, South African academics led to the promulgation of numerous policies in an attempt to make South

African schools safe, drug-free schools. South African educators need to be aware of the priority to ensure safe schools and not hesitate to take the correct steps when any suspicion of possession of drugs or dangerous weapons arises, in order to ensure that the best interests of all learners are held in high regard (*cf*. 2.2.1.1) and they fulfil their duty of care (*cf*. 2.4.2; 5.3.1).

5.3.6 The right to privacy

The right to privacy can be found in section 14 of the SA Constitution (*cf*. 2.2.1.6) and section 22(1) of the Belgian Constitution (3.2.4.3), while article 8 of the ECHR[280] includes among others respect for privacy (*cf*. 3.3.6.4). The South African stipulation includes the right to privacy of person, property, home and communication and prohibits searches and seizures (cf. 2.2.1.6), while the Belgian stipulation calls for respect of private and family life (*cf*. 3.2.4.3) and the ECHR, relevant to both Belgium and the UK, requires respect for private life and correspondence (*cf*. 3.2.4.3; 3.3.6.4). In the cases of all three countries the right to privacy concerns many issues and situations in education which may lead to infringement of the right. As the right provides for respect of private life, school rules regarding dress codes and appearance may be seen as limitations to the right (2.2.1.6; 3.2.4.3; 3.3.6.4).

However, the right to privacy is not an absolute right. In the South African context, the right to privacy may be limited in terms of section 36, while the Belgian Constitution contains an inherent limitation stipulating that the right should be respected, except in cases and circumstances determined by law. The ECHR right also contains an inherent limitation allowing for the limitation of the right on a legal basis, aiming to protect the rights and freedoms of others, as well as to ensure public safety, prevention of crime and protection of health and morals (*cf*. 2.2.1.6; 3.2.4.1; 3.3.4.6). The need to protect all learners and ensure their safety allows for more leeway within the education sector when it comes to personal searches, as long as reasonable pedagogical considerations can be provided as motivation (Malherbe, 2004:13). Both South Africa and the UK have seen a number of amendments to Acts and/or promulgation of policies relating to searches and seizure of learners in order to strengthen the legal authority of educators to control and discipline learners (*cf*. 2.2.1.6; 3.3.4.6).

[280] Relevant to both Belgium and the UK.

Within the South African context, searches of learners may be done by the principal or a delegate, should reasonable suspicion exist. The person searching must be of the same gender as the learner and a witness of the same gender should be present, and the search must be done in private while keeping the learner's right to human dignity in mind at all times. Persons entering school premises are required to subject themselves or their possessions to searches or examinations on request of the principal or HOD (*cf*. 2.2.1.6).

Amendments to UK legislation by the Education Act 2011 provide educators with increased authority in order to encourage good behaviour. As in the case of South Africa, the head teacher or authorised educator may search learners, should reasonable suspicion exist for items specified in legislation, or by school rules, while frisking is allowed for electronic devices. The same requirements regarding gender and witnesses exist as in South Africa (*cf*. 2.2.1.6). The UK amendments also allow for educators to use reasonable force to restrain learners when they deem it necessary to prevent the learner from committing an offence, cause personal injury, damage property or prevent extremely disruptive behaviour. Reasonable force may also be used to search learners for items on the prohibited list. Furthermore, should an educator reasonably believe it necessary to conduct a search immediately to avoid serious harm to a person, the educator may conduct such a search even if he or she is of the opposite gender without another staff member as witness. Educators are empowered to seize electronic devices should they deem it necessary, examine data or files on such devices should they deem it necessary and allow data or files to be erased from the device if they believe a good reason to do so exists. Educators cannot be held liable for the seizure of and loss or disposal of devices, data or files, or any damage arising from the afore-mentioned (*cf*. 3.3.4.6).

The right to privacy in the three countries insures educators of the right to privacy, which includes the monitoring of emails and phone calls and the imposition of mandatory dress codes, among others.

5.3.7 Freedom of expression

Freedom of expression as a fundamental right forms an integral part of a democracy, fosters the quest for truth and is a dignity-reinforcing value intrinsic to individuality of humans (Currie & De Waal, 2006:360). The right to freedom of expression in the SA Constitution includes the freedom to receive or impart information or ideas, freedom of artistic creativity and academic freedom (*cf*. 2.2.1.7). While the Belgian

Constitution guarantees the right to freely demonstrate one's opinion on all matters, prohibiting someone from exercising this right is punishable (*cf*. 3.2.4.2). Moreover, the ECHR provides Belgian and UK educators with the right to freedom of expression including the right to hold an opinion and to receive and impart information, while prohibiting interference by public authorities in article 10.1 (*cf*. 3.3.4.7). Section 10.2 of the ECHR and section 16(2) of the SA Constitution provide an inherent limitation to the right due to the duties and responsibilities the freedom carries (*cf*. 2.2.1.7; 3.3.4.7).

It is evident that in none of the countries does the right only refer to freedom of speech, but to much more. Freedom of opinion or expression encompasses aspects such as symbolic acts as well as physical gestures. Moreover, freedom of speech is a right held by both educators and learners. It is also a right that brings with it great responsibility as it may easily lead to infringements of the rights of others.

The Convention on the Rights of the Child (UN, 1989) stipulates in article 13(1) that children are entitled to the right to freedom of expression, including freedom to seek, receive and impart information and ideas, while at the same time recognising the need for certain limitations of the right ensuring protection of children from information detrimental to their well-being. Total freedom of expression within the school environment is impossible, particularly where it leads to disruptions to school activities or the infringement of others' rights, particularly the right to dignity (*cf*. 2.2.1.7). Thus, in order to ensure learners and educators the right to freedom of expression, while protecting other fundamental rights, places certain responsibilities on schools.

The South African Constitutional Court support, in *Pillay CC*, of the ruling made by the High Court, in *Pillay High Court*, illustrates the need to protect the right of learners to express their beliefs and opinions freely. Although it is true that the limitation of the right to freedom of expression should be done with circumspection, educators could be held liable for harm to their charges if the right is not limited. Therefore, if an educator can prove that some form of irreparable harm would have resulted if the right was not limited, the limitation will be deemed reasonable and justifiable (*cf*. 2.2.1.7).

The importance of limiting the right to freedom of expression is particularly evident when one considers that all learners are not equal in terms of age or life experience. The right to freedom of expression has to be exercised within an authority context in

which educators are allowed to weigh the right of freedom of expression in terms of the rights of others. Learners also have to be educated on how to exercise the right responsibly and to know there is a time and place for everything. Educators also have a responsibility to protect learners from obscene material, possible negative influences of electronic communication media and victimisation and abuse via the afore-mentioned by other learners, as well as to ensure reasonable censorship of school newspapers (*cf.* 2.2.1.7).

Within the South African milieu strict rules regarding the dress codes of both learners and educators have always been maintained. Although there is no immediate need to make drastic changes, the afore-mentioned rulings in the *Pillay* cases are a clear indication that schools have to keep in mind that the cultural composition has changed dramatically, which necessitates a more accommodative approach as well as a need for all educators to be aware of cultural and religious differences to avoid exploitation (*cf*. 2.2.1.7). A similar need arises with regard to educators from Belgium and the UK as their classes become more and more multi-cultural.

Education is closely linked to the right to freedom of expression, as education is all about expressing, conveying and receiving ideas and information, thus what is taught and learnt (Alston, 2001:533; Beckmann *et al.*, 2004:129; Malherbe, 2004:17). A number of stipulations in South African education legislation are indicative of the link between freedom of expression and education, as well as the importance of freedom of expression within the education milieu. Section 4(a)(iv) of the National Education Policy Act (27 of 1996) makes the importance of this right clear by mentioning of the right to freedom of expression, among others, to be considered when the national education policy is determined, while the preamble of the SA Schools Act (84 of 1996) also requires the upholding of constitutional rights. However, the SA Schools Act (84 of 1996) juxtaposes the upholding of rights with shared responsibilities in respect of the school (Wood, 1998:286).

The adoption of a Code of Conduct by a school is one of the shared responsibilities the SA Schools Act (84 of 1996:sec.8 & 20(1)) and the Code of Conduct Guidelines (SA, 1998) require. All role players, including learners and educators have a responsibility in this regard. The educator's role in the adoption of a Code of Conduct for a school is increased as they also share accountability for establishing an environment conducive to teaching and learning, while furthering fundamental rights and showing a commitment to teaching (*cf*. 2.2.1.7).

Learners from all three countries have to realise that their right to freedom of expression does not allow them to back chat an educator when reprimanded or to interrupt an educator while instructing just to make their opinions heard. At the same time, educators cannot disallow a learner to express views contradictory to those of the educator, school or even the State. Nobody is allowed to make indecent or lewd remarks or speeches towards other learners and educators (*cf*. 2.2.1.7).

Another aspect of freedom of expression is the right to academic freedom. Schools have traditionally been considered as the organisations with the responsibility to pass on cultural values. Taking into consideration that the ages and maturity levels of learners differ extensively and that educators are mostly state employers or employed by an organ of State, academic freedom of educators is greatly limited within the school context. Views differ about the extent of academic freedom educators have (Wood, 1998:266; Alston, 2001:546; Ruff, 2008:81; Smit *et al.* 2008:199; Wilson & Stewart, 2014). On the one hand, education in South Africa and the UK are seen as over-regulated with the enforcement of a prescribed curriculum considered an instrument to pursue State objectives. In the case of UK educators, educators are also guided on teaching strategies to be used (Wilson & Stewart, 2014), while school inspections evaluate adequacy and suitability of teaching and learning at schools (*cf*. 3.3.4.7; 3.3.8). On the other hand, nothing prohibits educators from encouraging their learners to think critically and move beyond the prescribed (Smit *et al.* 2008:199). In fact such educators are the best educators (*cf*. 2.2.1.7; 3.3.4.7). However, educators always have to keep in mind that they are working with impressionable young minds and should therefore speak their minds, carefully particularly on contentious issues (*cf*. 2.2.1.7; 3.3.4.7).

Educators enjoy the same rights with regard to expression of political views as any other person. The SA Constitution stipulates that no public servant, including educators employed by the DBE, may be prejudiced or favoured only because of the particular party or cause such an educators supports (1996:sec.197(3)). Moreover, public servants are prohibited from writing or delivering public speeches to promote or prejudice the interests of a particular political party (103 of 1994:sec.36).

5.3.8 Fundamental rights relevant to labour issues

The SA Constitution provides a number of labour rights to South Africans. Section 17 provides everyone with the right to peaceful, unarmed assemblies, demonstrations, pickets and/or to present petitions, while section 18 allows for freedom of association

(1996). Section 22 of the SA Constitution (1996) awards every citizen the right to choose a trade, occupation or profession, which may be regulated by law. Section 23 entitles all employees to fair labour practices (1996; *cf*. 2.2.1.8).

The stipulations found in section 23 of the SA Constitution (1996) protects the respective individual and collective labour relations of employees and employers, while providing for the adoptions of national legislation recognising and securing collective labour agreements (1996:sec.23(5)). As all employees in South Africa, educators are also afforded the right to form and/or join a trade union and to strike. The researcher of this study agrees with Beckmann *et al*. (2002:128) that strike action should be an absolute last resort, as the harm inflicted on learners is much greater than the harm inflicted on the employer. The harm inflicted and the resulting actions of learners copying the actions of their role models has never been more evident than in 2010 during and shortly after the general public servant strike (*cf*. 2.2.1.8). This researcher is of the opinion that industrial action by educators should take place outside school hours. In this way society can be made aware of the plight of educators, while no harm is inflicted on learners, illustrating professionalism and dedication.

Belgians are provided with the right to employment (1993:sec.23), which includes the right to freedom of choice of occupation, the right to fair employment terms and fair remuneration and the right to information, consultation and collective bargaining (1993:sec.23(1)). The labour rights found in the Belgian Constitution greatly resemble those found in the SA Constitution (*cf*. 2.2.1.8). However, a unique stipulation in the Belgian Constitution refers to the responsibility placed on the Belgian government to maintain a general employment framework designed to ensure a stable and high level of employment (*cf*. 3.2.4.5). The Belgian Constitution, like the SA Constitution, entitles Belgians to gather peacefully and without arms, as long as they adhere to the internal limitations contained in the right (1993:sec.26), as well as the right to freedom of association (1993:sec.27). Thus, like South African educators, Belgian educators are entitled to choose the trade union they want to belong to, as well as the right to strike (*cf*. 2.2.1.8; 3.2.4.5).

UK educators obtain the right to peaceful assembly and freedom of association from article 11.1 of the ECHR (UK, 1998a:schedule 1), which includes the right to form and join trade unions in order to protect the rights of individuals, as well as the choice not to join a trade union or association. Article 11.2 provides for the possible

limitation of the afore-mentioned right to protect the rights of others or to ensure public safety, among others (*cf*. 3.3.4.8). The ECHR does not contain other labour rights, but labour legislation in the UK contains stipulations ensuring fair labour practices (*cf*. 3.3.5).

The entitlement to just, lawful and procedurally fair administrative action awarded by section 33 of the SA Constitution (1996) provides educators protection against unlawful administrative actions, as well as unreasonable or unjustifiable administrative actions, thus requiring procedural and substantive fairness in administrative actions taken by the Head of Department, principal or School Governing Body (*cf*. 2.2.1.9). The concept of fair administrative actions is closely related to the common law rules of natural justice, although the two concepts are not synonymous (Squelch, 1999:363). Anybody adversely affected by administrative actions is entitled to access relevant information (1996:sec.33(2)). Precisely how clear reasons should be is not very clear, despite a court verdict[281] in this regard, although the presiding officer did indicate that more detailed reasons are needed when more drastic actions are taken (*cf.* 2.2.1.9).

The right to just administrative action does not only relate to administrative actions taken within the scope of employment, but also to disciplinary actions taken by educators in the classroom and school when disciplining a learner. The constitutional principle is expanded upon in the SA Schools Act (84 of 1996:sec.8(5)) which specifies that a Code of Conduct must contain provisions of due process in order to safeguard the interests of learners and other parties in disciplinary proceedings.

However, school discipline is one of the areas where section 33(1) (1996) presents the most problems. This right means that learners are entitled to procedural and substantive fairness during disciplinary hearings as well as when disciplined in class. In this regard, it is important for educators to have a sound understanding of the legal requirements governing a disciplinary process to ensure legal, reasonable and procedurally fair action. It is important to realise that due process in the classroom would have less rigid requirements with the focus being on reasonableness and providing learners with information regarding prohibited behaviour. Classroom discipline and learners' and parents'/caregivers' confusion regarding procedural and

[281] Moletsane v The Premier of the Free State 1996 (2) SA 95 (O)

substantive fairness are currently a dilemma faced by many South African educators (*cf*. 2.2.1.9).

South African subordinate legislation provides clear stipulations regarding the requirements for disciplinary hearings, including a requirement for impartiality, the need for an investigation into the alleged behaviour before the hearing can take place. Suspension and expulsion may only follow a fair hearing. The afore-mentioned requirement for an investigation before suspension can happen is impractical and problematic, especially when the situation involves learners threatening other learners, or even educators, or when learners deal in illegal drugs at school. South African principals have been faced by situations where it was deemed necessary to suspend a learner before the investigation only to be ordered by the DBE to reinstate the learner pending the outcome of the investigation. This situation leads to feelings of despondency among educators.

The amendment to the SA Schools Act allows for a stauncher stance and similar actions by South African governing bodies as found in the United States jurisprudence acknowledging situations where it is impractical to wait for the outcome of an investigation before suspending learners when such learners pose a threat to other people or property or even an ongoing threat of disrupting academic time. A stauncher stance against ill-disciplined learners is also evident in the case of the UK, where the amendments to legislation have given educators substantially more leeway to search learners without the traditional requirements of due process (*cf*. 2.2.1.9; 5.3.6).

South African educators seem to be reluctant to institute disciplinary procedures due to a number of factors. One such a reason is that educators feel a measure of sympathy towards learners and parents/caregivers. Another reason is the amount of red tape involved in conjunction with the overturning of decisions taken by School Governing Bodies to suspend or expel a learner. Often the overturning of a decision is due to a failure to apply the rules of natural justice, or to follow the correct administrative procedures. Training educators, management and School Governing Body members in the correct application of legal, reasonable and procedurally fair disciplinary procedures (*cf*. 2.2.1.9), is necessary.

5.3.9 The right to a safe environment

The SA Constitution guarantees the right to an environment not harmful to anyone's health or well-being. Legislation further ensures a safe environment for both educators and learners with specific stipulations in the Occupational Health and Safety Act (85 of 1993:sec.8(1)) and the Code of Conduct Guidelines (SA, 1998:art.4.6). In order to ensure a safe learning environment, discipline has to be maintained at schools, while all schools are also required to have a safety plan in place. Unfortunately, the South African school environment does not portray a picture of discipline enhancing effective teaching and learning, but rather a picture of a disorderly, disruptive, and at times unsafe environment (*cf*. 2.2.1.11). A similar stipulation is found in section 23(4) of the Belgian Constitution providing everyone with the right to the protection of a healthy environment (*cf*. 3.2.4.5).

Newspaper reports between 2006 and 2014 provide evidence of unsafe conditions at schools in South Africa, while a 2008 report by the South African Human Rights Commission provides evidence of overwhelming use of corporal punishment by educators at schools. In South Africa, the time has come for education officials and parent/caregivers to provide educators with the opportunities to manage schools and enforce school rules and for educators to realise their duties to protect learners from harm, either from others or themselves, by maintaining discipline (*cf*. 2.2.1.10).

The HIV/AIDS pandemic is a reality in the lives of many South Africans, including educators and learners. Previously it has been made clear that HIV positive educators and learners may not be discriminated against (*cf*. 2.2.1.3; 5.3.3) and are entitled to privacy (*cf*. 2.2.1.6; 5.3.6) regarding their status. However, the question arises: What happens to the right to an environment not harmful to the health and well-being of everyone – in particular educators and learners who are HIV negative? While the HIV/AIDS policy places a number of responsibilities and duties on educators when dealing with HIV positive learners and colleagues, it is silent on the entitlement of educators to a safe environment. The disregard of the policy for the safety of educators becomes even more disconcerting when one considers that the Recommendations Concerning the Status of Teachers (UNESCO, 1966:art.131) called for certain contagious diseases to be considered occupational diseases when educators contract these diseases due to exposure while working with learners (*cf*. 2.2.1.10). This is another aspect the afore-mentioned policy is silent on.

5.3.10 Right to freedom of religion, belief and opinion

All three countries acknowledge the right to freedom of religion, belief and opinion although there are differences in the respective stipulations. In the South African context, the right to freedom of religion, belief and opinion entitles educators and learners to practice their religion and have their convictions, while it is allowed for religious observances to be conducted at schools, although nobody may be forced to attend and observances must be conducted on an equitable basis (1996:sec.15; 84 of 1996:sec.7). However, religious instruction is not a constitutional right (cf. 2.2.1.11).

South African educators do not forfeit their right to freedom of religion because of their position. South African schools may profess a particular ethos, educators may speak about their beliefs and even engage with learners in this regard (Smit, *et al*., 2008:200), but it can never be forgotten that one party may never unduly influence another party in this regard. Two cases in the South African jurisprudence dealt with the religious rights of learners and their right to manifest their beliefs. In both instances the rights of the learners were upheld by the courts (*cf*. 2.2.1.11). Although the cases dealt with the rights of learners, educators have the same rights and should therefore not be withheld from the right to show their beliefs, among others, in the way they dress.

The Belgian Constitution provides for the right to worship, public practice as well as freedom to demonstrate opinions, while prohibiting persons from exercising the afore-mentioned right is a punishable offence (1993:sec.19). Furthermore, article 9.1 of the ECHR is as relevant to Belgians as to English and Welsh educators (*cf*. 3.3.4.2). Section 20 of the Belgian Constitution (1993) protects people from being obliged to take part in or contribute to religious acts and ceremonies, or to observe religious days of rest (*cf*. 3.2.4.2).

Sections 19 and 20 are very similar to the provisions found in the SA Constitution in section 15 (1996), with the major difference being the separation between State and Church (*cf*. 2.2.1.12; 3.2.4.2). The Belgian Constitution (1993) contains no stipulation allowing for religious observances at schools, but schools may include religious instruction in their curriculum. The State may inspect curricula, but have no direct influence on the individual curriculum of a school. In terms of the neutrality declaration educators in GO! education have to sign (*cf*. 3.2.5.2), such educators may make their personal views known when it fits into the teaching situation in a

thoughtful and distinguished manner, but may not indoctrinate or convert learners (*cf*. 3.2.4.2).

Article 9.1 (UK, 1998a:schedule 1) protects the right to freedom of thought, religion and conscience of UK educators. Although the right to hold a chosen belief, conscience or religion is absolute, the right to manifest thoughts and positions of conscience or religion may be limited in the UK, as long as certain requirements are met. The court ruling in *Azmi* (*cf*. 3.3.4.2) exemplifies the balancing of rights where the suspension of a teaching assistant, who refused to remove her face veils when working directly with children, by the LA was upheld and did not constitute discrimination. The ruling in the UK case contrasts the rulings in the South African cases, where the rulings allow for manifestation of the beliefs of the applicants. However, the main difference in the UK case was that the concerns arose from the fact that the veil interfered with the duties required of the teaching assistant (*cf*. 2.2.1.11; 3.3.4.2; 5.3.3).

Article 9.2 (UK, 1998a:schedule 1) protects schools with a religious character from claims of discrimination, by allowing for preference to be given to applicants who are sympathetic to the religious denomination of the particular school and even for exclusion of homosexual applicants (*cf*. 3.3.4.2). UK legislation contains a number of different stipulations regarding the way in which schools may act within the context of freedom of religion. Educators employed at certain schools in the UK, such as nondenominational maintained schools or foundation or voluntary controlled schools, may refuse to teach religious education, except if specifically appointed to teach the subject, but educators employed by a voluntary aided or faith school do not have the same privileges. Moreover, educators who refuse to teach certain content they disagree with on religious grounds, such as homosexuality, may not face disciplinary actions as it would constitute unlawful discrimination (*cf*. 3.3.4.2).

Since public school sectors in both Belgium and the UK have schools with specific religious characters which may enforce certain religious requirements, the right to freedom of religion has an implication in the choices parents in both countries make regarding the education of their children. In the UK, parents may request that their children to be removed from classes where they do not agree with the content taught (*cf*. 3.3.4.4). The School Standards and Framework Act (UK, 1998b:sec.70) stipulates that learners from maintained schools attend the daily collective worship arranged by the LA, school governing body and head teacher. Unlike South Africa,

where it is stipulated that any religious observances must be done on an equitable basis, the afore-mentioned stipulation clearly requires that collective worship must have a predominantly Christian character, but may not be distinctive of a particular Christian denomination. Parents may request for their children to be excused from religious observances (*cf*. 3.3.4.2).

Form the preceding discussion it is clear that the educators in all three countries are awarded the same protection as all other people. Whereas the SA Constitution provides for extensive protection of fundamental human rights, the Belgian Constitution is not as extensive. However, Belgian educators and UK educators may rely on the protection offered by the ECHR, as well as other legislation.

While a number of internal limitations can be found in the ECHR, the Belgian Constitution and UK legislation, only the SA Constitution contains both internal limitations to some rights and a general limitation clause. In this regard, section 36 (1996) requires a balancing of rights in order to ensure that limitations are reasonable and justifiable. A balance must be found between the limitation and its purpose, while the rights of the majority weigh more than the rights of an individual. South African educators need to take cognisance of section 36 and the importance to ensure that they understand the application of the section, as it is of particular importance when disciplining learners (*cf*. 2.2.1.12).

5.4 COMPARING AND CONTRASTING EDUCATORS' LEGAL STATUS AS EMPLOYEES

Different forms of legislation influence and determine education and the legal status of educators. In all three countries, there are education-specific legislation which is only relevant to the education sector and directly influences the legal status of educators, while certain general Acts impact on education as well as on the rest of society (*cf*. 2.3.1). The discussion below will focus on both general and education specific legislation governing the legal employment status of educators in the respective countries.

In Chapter Two, a number of Acts directly linked to the legal status of South African educators were discussed. The same was not done in the case of Belgium and the UK, as this would have made the study unnecessarily long and complex. Therefore only brief mention will be made of these South African Acts in the next paragraphs.

A number of Acts within the South African legal framework contain stipulations educators have to be aware of in order to ensure they act within the confines of the law. Closely related to section 33 of the SA Constitution (1996) and the SA Schools Act (84 of 1996) is the Promotion of Administrative Justice Act 3 of 2000 (*cf*. 2.3.2.1) and educators need to ensure they are aware of the requirements stipulated in said Act. The Children's Act 38 of 2005 (*cf*. 2.3.2.2) places important responsibilities on educators with regard to learners in their care.

The National Road Traffic Act 93 of 1996 (*cf*. 2.3.2.3) becomes relevant when educators are required to transport learners or act as the supervisors of learners being transported, while the Copyright Act 98 of 1978 (*cf*. 2.3.2.4) contains specifications regarding the copying of published documentation educators have to adhere to when they are searching for study material for their learners. Apart from aiming at providing for the health and safety of all workers, the Health and Safety Act (*cf*. 2.3.2.6) also pertains to the personal safety of educators and learners when involved in dangerous activities at schools in workshops, laboratories, kitchens and gymnasiums. Apart from the afore-mentioned Acts, the SA Schools Act (*cf*. 2.3.1.1) contains a number of stipulations imperative to the effective functioning of educators, pertaining to their duties and obligations regarding teaching and learning, school discipline and ensuring the safety of learners.

An employment relationship is considered a public-law relationship of authority where the employer exercises authority over the employee, while different rights and responsibilities flow from this relationship (*cf*. 2.3.3.1; Bray & Beckmann, 2000:431; Joubert, 2009b:7), as well as a relationship based on private law principles due to the employment contract between employer and employee. In each of the three countries, unionisation of the education sector has taken place and therefore the employment relationship can be seen as both individual and collective labour law (*cf*. 2.3.3.1; 3.2.2; 3.2.5; 3.3.5). At the same time, it is important to note that the status of educators differs from that of other employees in the public or private sector due to the nature of their employment and the needs of their clients (*cf*. 3.2.5).

In the South African context, the SA Constitution is considered the most important legal document in labour relations (*cf*. 2.2.3.1; 5.3.8: Rossouw, 2009:246; Rossouw, 2010:20). The Public Service Act 103 of 1994 recognises the status of educators in public service, which led to the adoption of legislation governing the employment conditions of educators in the public school system, and the Educators Act (76 of

1998) regulates the employment conditions of South African educators who are employed by the provincial departments of education. The Educators Act (76 of 1998) can be considered the main statutory instrument regulating publically employed educators and provides for minimum standards of employment (*cf*. 2.3.4). The terms and conditions of employment of public service educators are found in the PAM document (*cf*. 2.3.4.4). The SA Schools Act (84 of 1996) contains stipulations concerning the employment of educators by the School Governing Body of a school (*cf*. 2.3.3.1).

The employment of educators in GO! education in Belgium is governed by the GO! Decree (Be, 1991a) and they are seen as a type of public servant. While the employment of educators in subsidised education is governed by the Subsidised Education Decree (Be, 1991b) and they are seen as a type of employee, although all educators are paid by government (*cf*. 3.2.2). Both these decrees regulate recruitment, appointment, selection, promotion and discipline (*cf*. 3.2.5). In both South Africa and Belgium, collective labour agreements resulting from collective negotiation contributes to the conditions of service of educators (*cf*. 2.3.3.1; 3.2.2).

Unlike South Africa and Belgium, where some educators are civil servants and other are employees, all educators in the UK are employees (*cf*. 2.3.3.1; 3.2.5; 3.3.5). As per the Employments Rights Act 1996 educators like all employees must have a contract of employment or a letter of employment, which directs their employment rights. At the same time, the terms and conditions of educator employment have been regulated by statute since 1987. The movement away from the traditional idea of employment contracts based on negotiation and agreement between trade unions and employers, and the introduction of statutory terms and conditions imposed on educators created some controversy. Be it as it may, currently the Education Act 2002 contains the primary statutory provisions. Furthermore, the Conditions of Service for School Teachers in England and Wales supplement the provisions contained in the Education Act 2002.

Annually, the STRB acting on the submission of different role players, make recommendations to the Secretary of State regarding pay levels and structure, conditions of service relating to professional duties and/or working hours of educators, which are implemented as statutory orders and the Conditions of Service for School Teachers in England and Wales. Nothing contained in the employment contracts of educators may contradict the afore-mentioned orders (*cf*. 3.3.5).

The employment status of educators in the three countries will now be discussed by comparing and contrasting the relevant aspects as found in the relevant labour legislation.

5.4.1 Appointments

South African educators in service of a provincial education department are appointed, promoted or transferred by the relevant Head of Department after a recommendation from the School Governing Body of the relevant school or by the School Governing Body of a school (*cf*. 2.3.3.3; 2.3.4.1). Organising bodies within the Flemish Community may recruit, appoint and promote their own educators (*cf*. 3.2.2). In the case of UK educators, the type of school they are appointed at would indicate who their employer is. The school governing bodies of voluntary aided, foundation and foundation special schools are the employers of the educators at these schools, while the LA is the employer of educators employed by community, voluntary controlled or community special schools. The interwoven nature of the employment relationship of educators, school governing bodies and LAs in the UK has led to a situation where the precise scope of the governing bodies, of schools where the LA is the employe,r is not always clear (*cf*. 3.3.5.2).

In all three countries educators can be appointed in different capacities. South African educators may be appointed in a permanent capacity, a temporary capacity for a fixed period or on a special contract for a fixed period or special assignment (76 of 1996:sec.7(2)). Moreover, temporary appointments can be converted into a permanent position after consultation between the School Governing Body and the Head of Department. Educators appointed in a temporary capacity may be appointed on a full-time, part-time or shared basis, although educators are seldom appointed on a part-time basis and within the public school system never on shared bases (*cf*. 2.3.4.1). Educators appointed by School Governing Bodies may either be appointed on a permanent contract for an indefinite period of time, or on a fixed-term contract. The fixed-term contract is the one used predominantly by School Governing Bodies as it is more practical and would generally be for a period of one year. School governing body fixed-term contracts do not provide good job security. School Governing Body appointments are not governed by education-specific labour law, but rather by the individual contracts of employment and the Basic Conditions of Employment Act 75 of 1997 (*cf*. 2.3.3.3).

Belgian educators are at first appointed in a temporary capacity and after certain requirements are met in a TADD position. Before being appointed in a permanent capacity, Belgian educators have to meet further minimum requirements. At all times Belgian educators can elect to work in a part service position or a full service position (*cf*. 3.2.5.1), which will be similar to part-time and full-time positions in South Africa and the UK. Other than South African educators, who must obtain permission before engaging in any work outside their official work for which they receive remuneration (*cf*. 2.3.4.3), a Belgian educator may hold more than one occupation, full-time or part-time, as long as the number of days worked does not exceed that of one full-time position preformed during the same period. UK educators can be appointed in a permanent full-time or part-time position. Supply educators are short-term temporary educators holding an employment contract with governing bodies, LAs or teacher supply agencies. Supply teachers can work on a full-time or part-time basis and are often required to be available on very short notice (*cf*. 3.3.5.2).

In the South African education milieu, educators appointed by the School Governing Body do not resort under the statutory definition of an educator and therefore these appointees are not governed by education specific labour law, but by their individual employment contracts (*cf*. 1.4.1; 2.3.3.3). Similarly, educators employed by teacher supply agencies in the UK do not resort under the statutory definition of a school educator found in the Educators Act 2002, but do resort under the definitions of school educators found in the School staffing (England) Regulations 2009 and the Staffing of Maintained Schools (Wales) Regulation 2006. Both School Governing Body appointees in South Africa and supply educators, particularly the ones employed by supple teaching agencies in the UK, often find themselves in weaker positions than teachers employed in other categories (*cf*. 2.3.3.3; 3.3.5.2).

Whereas all newly appointed South African educators will have a probation period of at least 12 months, which may be extended for a maximum of 12 upon proof of good cause before being appointed permanently (SA, 1995; *cf*. 2.3.4.1), the educators in Belgium and the UK have to undergo a much more rigorous process before they can obtain a permanent position. Belgian educators start their careers as temporary educators. Temporary educators are appointed either in vacant positions or as a temporary replacement for fixed periods not exceeding one school year. Educators may only request a TADD position after working effectively for a minimum of 600 days in the position concerned, thus for three school years, calculated according to

legal stipulations. Thereafter, a permanent position can be applied for by an educator with at least 720 days of service of which 360 days have been in the position the educator is to be permanently appointed, calculated according to legal stipulations. TADD appointments provide more job security, while permanent appointments also provide more social benefits, such as a state pension and job security (*cf*. 3.2.5.1).

Belgian educators in permanent positions who are declared redundant continue to be employed and to be paid (*cf*. 3.2.5.3). Their names are placed on a reserve list, until they are 58 years of age, entitling them to preferential treatment when vacancies arise. The implication hereof is that if a permanent appointment educator is available, governing bodies may not appoint an educator without a permanent appointment. TADD appointees also enjoy priority over educators employed on a temporary basis. This regulatory framework provides considerable job security for senior educators, but on the other side beginner educators are left without job security for a long time and have to be content to teach for short periods of time as supply educators.

UK educators can either be considered qualified or unqualified. Qualified educators have satisfied specific regulations as found in legislation (UK, 2002:sec.132(1)), while certain activities may only be carried out by educators with QTS status as required by the Secretary of State or the Welsh National Assembly. Unqualified educators constitute overseas trained educators as well as persons in certain teacher training programmes. QTS is obtained when an aspirant educator has completed educators training (*cf.* 3.3.5.1).

However, newly trained educators in the UK are required to complete an induction period of at least one year, which means three school terms, after which an assessment must be passed. The minimum period counting towards an induction period is a school term, making completing the induction period difficult for supply educators in England. Welsh supply educators may complete their induction period doing short term supply work. Only one induction period is allowed, except under special circumstances, while an educator who failed the assessment may appeal against the decision. Public schools in the UK may only appoint educators who have successfully completed the statutory induction period, a requirement not relevant to educators teaching at academies. In England, educators who have not completed their induction period may only do supply teaching for five years from the time they

would have qualified for QTS, but in Wales the five year limitation has been lifted. There is no flexibility with regard to the induction period (*cf*. 3.3.5.1).

In order to assist first time applicants and educators returning from a break in service, the Head of Department may receive and process applications of such applicants. These afore-mentioned applications are matched to vacant positions at schools. The Head of Department may appoint such applicants to a vacant post after consultation with the School Governing Body of the school. It is the duty of the Head of Department to ensure that the appointee has the required qualifications and meets the requirements of the position (76 of 1996). To the same extent and seeing that currently at least one third of Belgian educators work as part-time educators (*cf*. 3.2.5.1), the replacement pool initiative of the Flemish government attempts to provide financial and employment security to newly trained educators by including their names in the replacement pool (*cf*. 3.2.6.3).

No appointments, transfers or promotions may be made by the DBE without the consent of the relevant educator or School Governing Body in South Africa. The transfer of educators by the DBE without their consent because of untested allegations against the educators has been ruled unconstitutional and unfair due to a lack of fair administrative action in *Simela* (*cf* 2.3.4.1).The court confirmed the legal stipulations requiring consent of the educator for a transfer (*cf*. 2.3.4.1). In Belgium, there are very few opportunities for promotion for educators while transfer of permanently appointed educators between schools does not happen (*cf*. 3.2.5.1). UK educators appointed by LAs can be transferred by the LA between schools in the area (*cf*. 3.2.5.1).

Retired South African educators may be reappointed upon approval of the Head of Department in the case of departmental positions, should no other applicants qualify for the position, and the appointment is deemed in the interest of education and the state. Such approval is not needed in the case of an appointment by the School Governing Body. Educators declared in excess due to operational requirements, not linked to rationalisation to effect equity, should be offered all vacancies at educational institutions, while every attempt possible should be made to accommodate displaced educators (*cf*. 2.3.4.1)

5.4.2 Requirements for appointment

South African educators qualify for appointment if they have a recognised three year qualification, which must include educator training, except when the appointment is considered a specified position requiring special skills (SA, 1999c:Chapter B item 2.2; SA, 2000a:reg.7). Furthermore, the exit level outcomes for educator training are contained in the Norms and Standards as the seven roles of educators, as well as the competences associated with these roles. The afore-mentioned roles and competences are an indication of what is considered being a competent educator (*cf*. 2.3.4.4; SA, 2000c). All South African educators must be registered with SACE, irrespective of who their employer is. When registering with SACE, educators are required to provide proof of qualification, as well as disclose any disciplinary action taken or pending disciplinary action by employers, previous convictions or pending criminal cases and any disciplinary actions taken or hearings conducted by SACE (*cf*. 2.5.1; SACE, 2011).

The minimum requirements for educators in Belgium differ depending on their type of appointment. The GO! Decree of 1991 and the Subsidised Education Decree of 1991 aspirant educators, applying for temporary employment, must have proof of the correct official qualification for the relevant position and a certificate of positive conduct confirming an irreproachable character, while specific requirements regarding language proficiency must be met. GO! education also requires a medical certificate of good health, issued in the preceding 12 months. Importantly, educators who do not comply with the linguistic requirements cannot qualify for permanent appointment (*cf*. 3.2.5.2).

Apart from the afore-mentioned requirements, educators employed in TADD and permanent positions have to be citizens of an EU Member State or an affiliated country, comply with language laws as well as provide evidence of a thorough knowledge of Dutch. Educators applying for TADD and permanent positions must comply with the specified required work days depending on the capacity they are applying for (*cf*. 3.2.5.1; 3.2.5.2; 5.4.1), while their last evaluation report had to have a positive outcome. Teaching must also be the applicant's main profession (*cf*. 3.2.5.2).

As in South Africa where the responsibility to ensure that the educator meets the requirements of the position lies with the Head of Department or the School Governing Body (*cf*. 2.3.4.1), it is the responsibility of the LA, or the employment

agency to ensure that an applicant meets the requirements to qualify for appointment. UK educators have to possess the required qualifications, meet the specified health and physical capacity requirements, while ensuring the applicant has not been barred from working with children and young people. Educators in Wales have to register with the GTCW (*cf*. 3.3.5.3). The Education Act 2002 stipulates that certain education activities may only be carried out by someone who meets the required conditions to health or physical capacity, while also providing for the power of the Secretary of State or the Welsh National Assembly to bar or restrict a person's employment as educator.

Due to concerns arising from incidents of sexual offences relating to learners by educators or other school staff, an extensive screening and barring system is in place in the UK. Education is considered an exempted position meaning that educators are required to disclose all information about previous convictions. All educators, no matter in what capacity they are employed in and support staff are required to undergo an enhanced disclosure check, which requires disclosure of all relevant information including child protection matters. Supply educators have to undergo a VBS check every three years, while also required to provide a VBS disclosure if the educator has not held a position for the previous three months or more. A duty rests on employers to refer information regarding persons considered to pose a potential threat to a vulnerable group to the relevant authorities. Concerns have arisen among educators regarding the lack of redress against unsubstantiated accusations of physical and sexual abuse. Amendments made to the Education Act 1996 by the Education Act 2011 provide protection for educators by prohibiting publishing of information identifying the educator until the matter is resolved or the educator goes public on the matter (*cf*. 3.3.5.3).

Although it is not clear who is supposed to ensure that Belgian educators meet all the requirements, it is clear that the requirements for educators in Belgium and the UK are more stringent than in South Africa. Given the actions of some educators in South Africa (*cf*. 1.1.2), it may be prudent to consider implementing some of the requirements from the other two countries.

5.4.3 Conditions of service

The duties and responsibilities of South African educators employed in the public sector can be found in the PAM document (*cf*. 2.3.4.4), while the contract of employment of educators employed by School Governing Bodies should contain

reference to the duties and responsibilities of these educators. Although nothing compels School Governing Bodies to do so, they should attempt to provide terms and conditions consistent with the PAM (*cf*. 2.3.3.3).

The conditions of service of Belgian educators are set out in the employment contract and job description of each educator according to the relevant labour regulations (*cf*. 3.2.5.3). The terms and conditions of educators in subsidised education must also be contained in their job description. Each educator in a Belgian appointed for a period of 104 days or more is required to receive a job description from the school's organising body, while educators appointed for a shorter period may receive a job description. The Education Act 2002 contains provisions regarding what the job of teaching in the UK entails (*cf*. 3.3.5.4). Said Act stipulates that the employment contract of educators may not contain any provisions regarding duties or working time differing from the Act. In the UK the conditions of employment of part-time educators must mirror those of full-time educators, while it is the duty of the LA or school governing body as employer to ensure that the contracts of aprt0time educators adhere to relevant legislation and do not breach legal provisions regarding equal opportunities and unlawful discrimination (*cf*. 3.3.5.4).

Duties

The duties of South African educators differ depending on the post level of the educator, while the principal of the school may allocate certain specialised duties and responsibilities to staff members (*cf*. 2.3.4.4). PAM contains a list of extensive core duties educators are required to do. Core duties are to be done within the formal school day. It is also expected of educators to complete certain core duties, including planning, preparation and evaluation, extra- and co-curricular duties, professional duties and professional development outside the formal school day. The job description for educators contained in PAM specifies the scope of classroom duties to include not only an academic component, but also administrative, educational and disciplinary components, as well as a duty to organise extra-and co-curricular activities for the promotion of learner education. Moreover, the job description specifies the requirement to carry out lawful verbal and written instruction, with the option to request a confirmation of a verbal instruction in writing and to complain about verbal instructions to the employer (SA, 1999c:Chapter A item 3.1).

Unlike the general job description found in the South African PAM, the job description of Belgian educators aims at motivation and support of the individual educator to ensure professional development. Local context and needs are also taken into account. Job descriptions of Belgian educators consist of three parts, namely tasks and institution-related assignments, school-specific objectives and rights and obligations regarding further training and continuing education, with the fundamental focus being teaching, while a limited number of specific assignments may be included. Belgian educators enjoy a high degree of autonomy in the classroom. Teaching does not only cover presentation, but also planning and preparation, within-class learner-counselling, assessment, professional development and co-operation with other role players – duties similar to the South African core duties contained in the PAM document. Since 1997, a negative list of tasks has been in force. This list contains tasks which may not be included in the job description of educators, such as using their free afternoons and school holidays to assist learners to catch up, and giving extra classes before or after school (*cf*. 3.2.5.3).

Although job descriptions should be individual documents drafted after an agreement reached between the first evaluator of the educator and the educator, an assessment of job descriptions in 2008/09, a year after implementation in primary schools, found that the majority of schools modelled their job descriptions on one of the available models, with only 33% of job descriptions being individualised. Moreover, nearly 75% of the participants indicated that they were not involved in the drafting of their job descriptions. Furthermore, educators indicated that they were experiencing stress due to a high number of tasks listed in their job descriptions. Belgian educators also indicated that, due to economic, social and cultural changes experienced across Europe, they experience being assigned tasks beyond the scope of their profession, particularly when it comes to integration of special needs learners and immigrant children (*cf*. 3.2.5.3).

The School Teachers' Pay and Condition document contains a list of duties, similar to the South African PAM. No particular requirement regarding job descriptions were found, but the Employment Rights Act 1996 stipulates that the required written statement containing particulars of employment should provide detailed particulars (*cf*. 3.3.5). Thus, the details regarding duties and responsibilities should be contained in the employment contract of individual educators. Both part-time and supply educators are required to carry out all tasks and functions specified in the School

Teachers' Pay and Conditions document, but the conditions of their contract with regard to days and hours they are working have to be considered (*cf*. 3.3.5.4).

Unlike in South African and Belgium, there are clear stipulations requiring UK educators to provide support to future educators, as well as newly trained educators, while educators who accept duties relating to initial educator training activities may receive additional payment (*cf*. 3.3.5.1; 3.3.5.4). Educators in all three countries are required to stand in for absent colleagues (*cf*. 2.3.4.4; 3.2.5.3; 3.3.5.4), but only in the UK is any limitation set to the time an educator may be required to stand in for absent colleagues. Educators in all three countries are required to work additional hours, outside the formal school day if needed, in order to fulfil their professional duties. However, UK educators must be given periods of PPA time according to the stipulations found in the Education Act 1996. Furthermore, due to concerns regarding the work stress experienced by educators (*cf*. 3.3.6.3), school governing bodies and principals in the UK are required to consider the needs of educators to have a healthy work-life balance and therefore to adhere to work time limits set in relevant legislation (*cf*. 3.3.5.4).

Working hours

South African educators are required to work 1800 actual working hours per year and are therefore required to work no less than seven hours during a formal school day. The seven hours include break times and periods during which learners are not at school. Although the scheduled teaching time during a formal school day differs depending on the post level of an educator and the size of a school, the guidelines found in the PAM document proposes that the scheduled teaching time of post level 1 educators at primary schools must be 85% - 92% of the formal school day, while the scheduled teaching time of post level 1 educators at secondary schools should be 85% - 90%. In the case of post level 2 educators the respective scheduled teaching time should be 85% - 90% for primary school educators and 85% for secondary school educators. The remaining 10 – 15% should be utilised to perform other core activities. Moreover, South African educators may be required to attend CPD programmes taking up no more than 80 hours per annum outside the formal school hours and during school holidays (*cf*. 2.3.4.4).

The required working hours of Belgian educators are not stipulated in legislation as in the case of South Africa. The working time of Belgian educators is specified in their individual contracts of employment like their duties. However, maximum and

minimum teaching times are prescribed and differ from one teaching group to the other. In Belgium, teaching time refers to the total number of 50 minute teaching periods specified in official education policy during which a full-time appointed educator is obliged to teach. Teaching times exclude time devoted to other duties including preparation, staff meetings and in-service training. Educators required to supervise learners after school must receive additional remuneration for the service (*cf*. 3.2.5.3).

UK principals determine the amount of time educators should be available to perform duties at school or other places. There is no regulation specifying maximum teaching time, but the balance between teaching time and PPA is regulated. Educators have to receive 10% of their timetabled teaching time for PPA, while PPA periods have to be at least 30 minutes and educators must not be required to fulfil other duties during PPA time (*cf*. 3.3.5.4). Furthermore, UK educator's time is divided into directed and non-directed time. Educators are required to work 1265 hours over a maximum of 195 days per year. Of the 195 days, 190 must be days learners attend school and during which educators may be expected to teach as well as perform other duties, which constitutes directed time and 5 days non-directed time. Non-directed time refers to the obligation on educators to work such additional hours as may be necessary to complete other duties.

When calculated, the required hours per week constitute approximately 45 hours per week. However, in an annual DfE survey, participants teaching at primary schools indicated that in term time they work an average of 59.3 hours per week, while secondary school educators indicated that they work 55.7 hours per week. Of the working time reported, nearly a quarter is spent working out of school time, either early in the morning, in the evenings or on weekends. Even more disturbing is that the average primary school educator spends only 19 hours a week on timetabled teaching and secondary school educators spend 19.6 hours. Moreover, 45% of participants to the survey reported that what they consider unnecessary or bureaucratic tasks have increased with the biggest cause of unnecessary paperwork originating from preparation for Ofsted inspections (*cf*. 3.3.5.4).

Salaries

The post level of South African educators determines within which salary range or band they fall (*cf*. 2.3.4.4). Within each salary band there are a number of salaries. Educators are generally appointed at the lowest position within a salary band, while

promotion leads to advancement of a salary band. Educators reappointed after a break in service must be placed on a salary level most beneficial to the appointee. Qualifications higher than the minimum required qualification for a salary band and improvement in education-related qualifications hold financial benefits in the form of bonuses for educators. From time to time, usually annually, cost of living adjustments are made to salaries. Furthermore, a 1 percent notch increment per year is given to educators who have received an evaluation of acceptable or satisfactory in the yearly performance measurement. Educators not evaluated through no fault of their own will still receive the salary progression. Educators receive different non-pensionable allowances for a variety of extra duties, as well as a variety of other benefits including partial contribution to medical aid contribution and state housing among others. Educators prepared to teach at remote schools, schools in difficult urban areas, and certain other posts identified, receive an incentive for each applicable position (*cf*. 2.3.4.4).

The salaries of Belgian educators are determined by the Flemish government and paid by the government (*cf*. 3.2.2; 3.2.5.3). The salary of a Flemish educator is calculated on the number of teaching periods of 50 minutes taught and an educator can choose the number of periods they wish to teach. On average, primary school educators teach between 24 and 28 teaching periods a week, while secondary school educators teach a minimum of 20 and a maximum of 29 periods a week. Both the GO! Decree of 1991 and the Subsidised Education Decree of 1991 place the responsibility to provide educators with resources on the local school board and provide for reimbursement of educators for expenses made with the permission of the principal. However, educators in Belgium have expressed concerns regarding professional expenses as they have to fund their own books and teaching materials in most cases (*cf*. 3.2.5.3).

UK salary scales, according to which all educators except those teaching at academies are paid, appear in the School Teachers' Pay and Conditions document and are revised annually. Academies are not bound by the afore-mentioned document and set their own pay rates. The salaries of educators at secondary academies are on average £900 less than those earned by educators in LA maintained secondary schools, while school leaders earn £1000 more (*cf*. 3.3.5.4; 3.3.8). Before September 2013, educators were paid on the same basis as South African educators, where educators automatically moved up a pay point on the main

pay scale yearly. However, a new pay system has been implemented in September 2013 according to which pay progression of educators is linked to individual performance in the form of annual written evaluations. Minimum and maximum pay levels are set by government, with certain points in between as guidance to schools. Four different pay ranges are included in the national pay framework – a main pay range, an upper pay range, a pay range for leading practitioners and the pay range for unqualified educators. Similar to South Africa, where educators teaching at remote schools, among others, receive an incentive, English educators teaching in schools in London and fringe areas are paid according to higher pay bands (*cf*. 3.3.5.4)

The new pay framework provides schools with much more freedom when it comes to attracting and recruiting the best educators, as well as pay excellent educators more to keep them in the classroom. Schools are not obliged to match the existing salary of an educator when recruiting such an educator anymore, but movement between pay ranges is permanent for the time an educator remains with the same employer. However, schools in disadvantaged areas are enabled to recruit and retain the best educators (*cf*. 3.3.5.4). LAs and school governing bodies are required to have a pay policy, which must be reviewed annually, linked to their evaluation system clearly stipulating pay procedures that are objective, open and accountable and which should contain procedures for pay hearings and appeal procedures. Consultation with educators and trade unions is required not only in the formulation, but also before changes are made (*cf*. 3.3.5.4). Reaction to the changes has not been favourable with a number of possible problems being identified, particularly regarding implementation. As the first performance-related pay progression is to happen in September 2014 only time will tell how effective the new pay framework is, taking into consideration the fact that the budgets of most schools are either static or declining. UK educators may also receive allowances, similar to the South African situation, for certain extra duties or when teaching in special needs education.

Part-time educators are paid a pro-rata proportion of the full-time equivalent if employed as a full-time educator, which is calculated according to the total number of the school's timetabled teaching week (*cf*. 3.3.5.4). Part-time educators may agree to work additional hours when requested, but may not be required to work on or attend non-pupil days or a part thereof. The relevant body of a part-time educator teaching at more than one school has to combine the different hours and calculate a

pro-rata remuneration due to the educator. Supply educators employed by LAs and schools are entitled to be paid according to the School Teachers' Pay and Conditions document, but as in the case with full-time educators, academies are not bound by the document, neither are agencies. However, the Agency Workers' Regulation 2010 has improved the working conditions of supply educators, particularly when employed for longer periods. Supply educators can either be paid according to a daily or hourly rate, depending on circumstances, but when employed for a full year may not be paid more than an educator in regular employment. Supply educators seldom receive allowances for anything other than experience and qualifications, but it is not impossible, particularly when required to teach special classes (*cf*. 3.3.5.4).

Required conduct

The SACE Code of Ethics contains clear stipulations on the required conduct of all South African educators, no matter the nature of their employment, in regard to the different role players within the education sector (*cf*. 2.5.1), while the seven roles of educators as found in the Norms and Standards also provide guidance on the required conduct for educators (*cf*. 5.4.2). Most importantly, the SACE Code of Ethics stipulates that, among others, educators have to acknowledge the education profession as a noble calling, while practising self-discipline and dedication and to uphold the Constitutional rights of all. The conduct of South African educators is regulated by SACE which is given the authority to discipline educators in terms of the SACE Act (31 of 2000) should they make themselves guilty of unprofessional conduct.

Both the GO! Decree of 1991 and the Subsidised Education Decree of 1991 place specific requirements on educators regarding conduct, very similar to the required conduct found in the SACE Code of Ethics (*cf*. 3.2.5.3). Belgian educators may not accept any gifts, rewards or anything that may benefit such an educator. Both decrees place an obligation of service on Belgian educators, which restricts the use of their authority for political or commercial purposes and obliges them to maintain professional secrecy. Belgian educators employed by GO! education are required to sign three documents when recruited in terms of neutrality in which they acknowledge their dedication to principles, values and general aims of GO! education, as well as their realisation of the importance of teaching and education in

the development of learners, ensuring their co-operation, loyalty and support (*cf*. 3.2.5.3).

The new Teacher Standards implemented in September 2012 in England is expected to contribute positively to raising the status of the profession. The Teachers Standards are divided into three parts, a preamble which provides a detailed summary clarifying the expected practices and attitudes required from educators, part 1 which contains eight standards of teaching and part 2 which contains the standards for Professional and Personal Conduct (*cf*. 3.3.5.4). The Teachers Standards set out a clear baseline of what is expected of educators and is used to assess teacher performance annually in terms of the evaluation arrangements. Moreover, the Teachers Standards are used to assess trainee educators for QTS, as well as at the end of the induction period of newly trained educators (*cf*. 3.3.5.1; 5.4.2).

The Practising Teacher Standards are found in the GTCW Guide of Professional Conduct and Practice, and set out the understanding, knowledge and values educators are expected to demonstrate throughout their careers, as well as meet at the end of their induction period. The Practising Teacher Standards enables educators to identify performance-related objectives and appropriate professional development activities. As in the case of the English Teachers' Standards, the Practising Teacher Standards are sorted under three main categories, namely professional values and attributes, professional knowledge and understanding, and professional skills (*cf*. 3.3.5.4). The standards provided to educators in England and Wales are similar in nature to the requirements found in the SACE Code of Ethics and the stipulations found in the 1991 Belgian Decrees (*cf*. 2.5.1; 3.2.5.3).

Evaluation

Evaluation of educators constitutes a key element of the educational process and therefore the educators in all three the countries are evaluated on a regular basis as a developmental process (*cf*. 2.3.4.4; 3.2.5.3; 3.3.5.4). Evaluation of educators is regulated by government in all three countries. In the case of South African and Belgian educators, the responsibility for evaluation lies with the school, while in the UK it lies with the relevant body. Educators in South African and the UK are evaluated on a yearly basis, while an evaluation cycle for Belgian educators stretches over four years, except when an educator receives as unsatisfactory

evaluation. Then the educator must be evaluated again after 12 months (*cf*. 2.3.4.4; 3.2.5.3; 3.3.5.4).

Although the evaluation procedures differ, the evaluation in all three countries involves collaboration between the evaluator and evaluated. The implication of the outcome of evaluations differs for the educators of the three countries. Educators in South Africa whose evaluation is satisfactory, receive a 1% salary increment ((*cf*. 2.3.4.4), while the outcome of evaluations of educators in the UK are used to decide on salary progression with the implementation of the performance-related pay structure (*cf*. 3.2.5.4). The Belgian evaluation system does not afford formal reward for efficient educators, but allows for sanctioning of inefficiency. Educators in temporary positions are dismissed after an insufficient evaluation. Permanently appointed educators are dismissed after two consecutive final insufficient evaluations or three insufficient scores (*cf*. 3.3.5.3). Procedures for grievances and appeals are available to educators in all three countries (*cf*. 2.3.4.4; 3.2.5.3; 3.3.5.4).

All South African educators are evaluated (*cf*. 2.3.4.4). In Belgium, educators who do not have a job description may not be evaluated. This means that educators employed for periods less than 104 days of the school year and do not have a job description, are not evaluated (*cf*. 3.2.5.3). In the UK educators under capability procedures are not evaluated. Unqualified educators in Wales are included in the regulations governing evaluation, while English educators undergoing their induction period are subject to evaluation arrangements. Due to the temporary nature of their work, supply educators are denied access to performance management (*cf*. 3.3.5.4).

Leave

Even though the wording and specifications in the respective regulations differ from one another, the educators in the respective countries all qualify for generally the same types of leave, such as yearly leave, sick leave, maternity leave and leave to fulfil civic duties, among others (*cf*. 2.3.4.4; 3.2.5.3; 3.3.5.4). Within the South African context, no specification was found with regard to paternity leave, while both Belgian and UK legislation allows for paternity leave. Belgian educators are entitled to take career breaks of up to five years full time and five years part time before the age of 55, while after 55 they may decide on the length of their career breaks until they retire. Educators receive an allowance during a career break, but are not required to work (*cf*. 3.2.5.3).

Within the South African context, the PAM provides for the refusal of sick leave when patterns of utilisation of sick leave have been established (*cf*. 2.3.4.4.), South African and UK educators who have suffered work-related injuries or contracted a disease while executing their duties, are granted certain privileges. South African educators will be granted occupational injury or disease leave. Occupational injury leave requires of the educator to claim for compensation and a reimbursement of the employer's costs to the accident as far as possible. Fully paid special leave will be granted to educators who have to be quarantined due to exposure to a contagious disease, upon submission of a medical certificate (*cf*. 2.3.4.4). Similarly, UK educators absent from work due to accidents, injuries, assault arising out of or in the course of their duties, or contagious or infectious illnesses, shall not have the days absent deducted from their yearly sick leave entitlement (*cf*. 3.3.5.4). As in the case of South African educators, UK educators who receive compensation from a claim for damages are required to refund money, or part there off, received as sick leave pay. UK educators whose absence is due to their own negligent actions or whose actions may have delayed recovery may forfeit the right to any sick leave payment or the right to have their sick leave extended (*cf*. 3.3.5.4).

5.4.4 Termination of services

South African educators employed by the DBE, as well as UK educators employed after January 2007 retire at the age of 65 (*cf*. 2.3.4.2; 3.3.5.6). South African educators may request to retire at 55. Moreover, educators may retire before 55, should enough reason exist which does not relate to ill-health, while the employer considers the retirement to be advantageous to the State (*cf*. 2.3.4.2). There are no stipulations on the retirement age of educators employed by school governing bodies. Educators in Belgium retire at the age of 58 (*cf*. 3.2.6.3). UK educators employed prior to January 2007 may retire at the age of 60, but may continue to work until age 65. Furthermore, UK schools may extend the contract of educators after 65 upon mutual agreement (*cf*. 3.3.5.6).

A 90 days' notice period is required for resigning South African educators employed by the DBE, although a shorter period may be approved upon request, particularly when the educator's new position is in jeopardy. Educators struck from the role by SACE are deemed to have resigned and their 90 days' notice period starts on the day immediately following the day their names were struck from the role (*cf*. 2.3.4.2).

The resignation period for educators in employed by school governing bodies is determined by the terms of their employment contract.

Belgian educators in temporary positions are required to give 7 working days' notice and educators in permanent and TADD positions, 15 working days. A shorter notice period can be arranged for subsidised educators (*cf*. 3.2.5.4). The employment contract of UK educators differs from other employees in the UK, as well as educators in South Africa and Belgium, in that their contracts can only be ended on three days in the year (*cf*. 3.3.5.6). Furthermore, the notice period for resignation and termination differs between 60 days and 90 days, depending on the date of resignation. Temporary educators employed as substitute for a permanent educator, or for at least a term, are bound by the same notice period, except if their contract stipulates differently (*cf*. 3.3.5.6).

Possible reasons for termination of services of South African educators include, among others, continuous ill-health, incapacity, redundancy, misrepresentation in application for a position and when an appointment is not confirmed after the probation period (*cf*. 2.3.4.2). Educators employed in a permanent capacity who are absent from work for a period longer than 14 consecutive days without permission, will be considered discharged, while no hearing is required as it is deemed that the educator has terminated his/her employment contract.

Employers who suspect that educators are incapable of performing the duties attached to their positions or that they are unable to carry out those duties efficiently, may take action against the educators, but are required to follow the prescribed procedures (*cf.* 2.3.4.2). Within the South African education legislative framework, a distinction is made between misconduct and serious misconduct. Misconduct refers to a breakdown in the employment relationship and includes a variety of actions relating to an abuse of a position held by an educator or the infringement of rights. Employers have to follow the prescribed procedures as found in the Educators' Act (76 of 1998) when educators face charges of misconduct, as in the case of incapacity. Serious misconduct is considered serious in nature and refers to offences that could harm learners and lead to an abuse of the educator's position of trust and educators found guilty of serious misconduct have to be dismissed (*cf*. 2.3.4.2). Whereas disciplinary matters, and in particular misconduct and serious misconduct of educators employed by the DoE, are addressed by sections 17 and 18 of the Educators Act (76 of 1998), the applicable Act relating to disciplinary matters in

regard to school governing body appointees is the Labour Act (66 of 1995). However, the Labour Act (66 of 1995) contains no provisions equivalent to sections 17 and 18, making it the responsibility of the School Governing Body to determine their own standards of conduct, or rely on basic common law principles (*cf*. 2.3.3.3). This may lead to a situation where a school governing body may act harsher on a transgression than the DoE.

Belgian staff in permanent positions may only be dismissed in a limited number of cases, requiring the employer to follow strict procedures (*cf*. 3.2.5.4). Belgian educators, in permanent and TADD positions in GO! education, found guilty of offences against the provision found in the GO! Decree 1991, will be sanctioned using the disciplinary measures as stipulated in said Decree, while still having to face criminal procedures if applicable (Be, 1991a:sec.12(1)). Educators have the opportunity to defend themselves, while a record of the proceedings will be placed in the evaluation file of the educator (Be, 191a:sec.12(2)). The Subsidised Education Decree of 1991 does not contain a similar provision. In fact, said Decree stipulates that disciplinary action may not be taken against educators if the actions in contention are private and irrelevant to the educator learner relationship (*cf*. 3.2.5.4).

Moreover, educators employed in a permanent capacity may be dismissed formally without notification should they receive two consecutive negative evaluations or as a result of a disciplinary hearing. Temporary educators can be dismissed as a result disciplinary measures, but must receive a 30 days' notice period. However, if the dismissal is considered a case of dismissal for urgent reasons, no notice period is required. All Belgian educators, no matter in which capacity they are appointed, may be dismissed without prior notice if they are absent without any legitimate reason for 10 or more continuous days (*cf*. 3.2.5.4).

Cases of less serious misconduct and less serious incompetency in the UK are dealt with by the relevant body, while serious misconduct cases are dealt with by the TTA in England and the GTCW in Wales (*cf*. 3.3.5.5; 3.3.6). Agencies are responsible for the discipline, dismissal and suspension of supply educators in their employ. Educators about whom serious concerns regarding the competent performance of their duties arise will be subjected to capability procedures.

South African educators found guilty of charges against them may face a variety of sanctions ranging from fines to imprisonment. Educators have the right to appeal. Employers are required not only to provide the SACE Council with records of

proceedings of an enquiry where steps were taken against the educator (*cf*. 2.3.4.2). Belgian schools have the authority to sanction educators who fail to comply with regulations of the profession, keeping the relevant stipulations in mind. Sanctions include official blame, wage reduction, suspension, demotion and dismissal. Educators dismissed lose their pension rights (*cf*. 3.2.5.4).

UK educators may be suspended by the LA or the school governing body depending on the type of school the educator is teaching at (*cf*. 3.3.5.5). However, only governing bodies may end the suspension of an educator. UK schools must inform an LA of the intended dismissal of an educator. LAs have 14 days to notify the educator. The notification must include, among others, the intended date the employment contract ends. UK educators' contracts contain stipulations regarding notice periods, but a contract may be ended without notice if the circumstances surrounding the dismissal require such action. Educators employed at more than one school will only be required to stop working at the school where the problem arose. English schools are required to report cases they deem necessary to the Secretary of State, while Welsh schools are required to report cases of professional incompetence where the educator was dismissed to the GTCW (*cf*. 3.3.5.5).

5.4.5 CPD

South Africa is in the process of implementing an official CPD programme. The programme forms part of the mandate of SACE (*cf.* 2.3.4.4). While post level two educators will start their CPD programme in 2015, post level 1 educators will be required to start their CPD programme in 2016. The CPTD system will be compulsory and educators will have to earn 150 personal development points in a three year cycle (*cf*. 2.3.4.4). In Belgium, how pedagogical study days are used, is usually determined by the school leaders, although educators may request to attend a course or other development opportunity (*cf*. 3.2.5.5). CPD is compulsory and mostly free of charge when organised by the ministry or local authority. Educators who do not take part on CPD may be penalised or their unwillingness may have a negative effect on their evaluation. Educators at primary schools are required to spend 1½ days and at secondary schools 1 day per year on activities (*cf*. 3.2.5.3; 5.4.3). CPD of the whole school workforce, not only educators, is a priority for the UK government and includes a wide variety of formal and informal developmental activities designed to improve teachers' practice (*cf*. 3.3.5.7). Schools are required to have a CPD plan, taking into consideration the developmental needs identified by

the educators. The minimum time per year prescribed for CPD is 35 hours and educators are required to be available at school for 5 days during which learners are absent (*cf*. 3.3.5.4; 3.3.5.7; 5.4.3). CPD depends on the professional needs of educators and may comprise of a few hours of training to a few days to full- or part-time studies. Depending on the school's resources, the school governing body may subsidise CPD undertaken outside school hours. The wishes of educators who are unable to or do not wish to attend CPD activities in the evenings, over weekends and during holidays must be considered (*cf*. 3.3.5.7).

5.4.6 Duty of care

Educators in all three countries have a duty of care towards their learners. In the South African and UK context the legal duty to protect the health, safety and welfare of learners derive from the common law duty of care principle and a statutory duty, while the duty may also arise from the contract of employment of UK educators, as well as South African educators employed by School Governing Bodies (*cf*. 2.4.2; 3.3.5.8). In Belgium the duty to prevent harm to learners derives from the general law as applied by the courts.

The South African and UK common law duty of care is founded in the *in loco parentis* principle, which places the responsibility on educators to maintain authority as well as to care for the learners in their care like a caring supervisor. In both countries, jurisprudence has made it clear that a higher form of care is required of educators, given the fact that they are trained to care for children and young people (*cf*. 2.4.1; 2.4.2; 3.3.5.8). Educators in Belgium and the UK may find themselves being held responsible for harm to others because of the acts of the learners in their care. The researcher of the study believes the same will hold true for South Africa. In all three countries vicarious liability lies with the State, in the form of the DoE in South Africa, LAs and schools as employers in the case of the UK, and local school boards in Belgium (*cf*. 3.2.5.6; 3.3.5.8). The ruling in *Louw* (*cf*. 2.3.5) made it clear that the vicarious liability of the DBE also includes educators employed by school governing bodies (*cf*. 2.3.5). Local school boards in Belgium have to insure educators in their employ against claims (*cf*. 3.2.5.6).

Just as educators have a duty of care towards the learners in their care, so do schools have a similar duty towards the educators employed at the school. Both South African and UK courts have dealt with the matter and ruled in favour of the educators (*cf*. 2.4.2; 3.3.5.9). Belgian local school boards are legally required to

provide legal assistance to educators who wish to institute a claim against a third party for damages suffered in the course of their duties (*cf*. 3.2.5.6). UK educators who are victims of violent or criminal assault arising from their duties shall receive monetary compensation from their employer (*cf*. 3.3.5.9).

5.4.7 Regulation of the profession

In both South African and the UK, agencies are tasked with the role of regulating the education profession. The SACE Act (31 of 2000) provides for the registration of educators, the promotion of professional development (*cf*. 2.3.4.4; 5.4.5), as well as maintaining and protecting ethical and professional standards for the employed by the DBE and School Governing Bodies (*cf*. 2.5.1). The Council has the legal authority to strike the names of offending educators from the register, making it impossible for such educators to teach any longer. In order to maintain and protect ethical and professional standards, the SACE Code of Ethics guides educators to act in a professional manner in their relationship with other education role-players (*cf*. 2.5.1).

Belgian educators are provided with a professional profile by the *Besluit van de Vlaamse Regering Betreffende het Beroepsprofiel van de Leraren* and the *Besluit van de Vlaamse Regering Betreffende de Basiscompetenties van de Leraren*, despite the fact that no organisation or professional body is in place to regulate education as profession (*cf*. 3.2.5.8). The afore-mentioned documents contain an official professional profile as well as the basic or core competencies deduced from the generic professional profile respectively. In England the disbandment of the General Teaching Council for England and the establishment of the TTA as regulator of the profession led to certain changes and is considered a controversial move (*cf*. 3.3.5.10; 3.3.6). Registration by educators with the TTA is not required, but the agency has a regulatory function and is involved in the investigation of cases of serious misconduct, which may lead to baring an educator from teaching (*cf*. 3.3.5.10). Welsh educators are required to register with the GTCW, similar to South African educators. The role of the GTCW is also very similar to that of the SACE Council. Like the SACE Council, the GTCW is responsible to ensure that Welsh educators have the required qualifications and that educators act in a professional manner, as well as investigate breaches of the Code (*cf*. 3.3.5.10).

5.5 SUMMATIVE REMARKS

A comparative view of the legal status of educators in the three countries was provided in this chapter. By comparing and contrasting the legal status of educators concerning fundamental rights, legislation regulating employment and current issues experienced by educators in the three countries, the researcher provided a picture of similarities and differences in the legal status of educators in the three countries (*cf*. 5.1).

Whereas educators in South Africa and Belgium can be either civil servants or regular employees (*cf*. 1.1.2; 2.3.3.1; 3.2.1.1; 3.2.5; 5.2.1; 5.2.2), educators in the UK are employees of the school or LA (*cf*. 3.3.5; 5.2.3). In all three countries educators can be appointed in different capacities (*cf*. 2.3.4.1; 2.3.3.3; 3.2.51;.3.3.5.2). However, in the South African context educators are very seldom appointed within the public school system on a shared basis and never on a short term supply basis.

All three countries experience educator shortages (1.1; 5.1), while clarity surrounding the professional status of educators is absent in all three countries to a differing degree due to many factors leading to a decline in status of educators and a deterioration in the attitudes of learners and parents/caregivers towards educators (*cf*. 1.1; 1.1.2; 2.1.1;3.2.6.2; 3.3.6.1; 5.2). Another aspect of concern in all three countries is the workload of educators and the resulting stress experienced by educators (*cf*. 1.1.2; 3.2.6; 3.3.6; 5.2).

Educators in all three countries are entitled to the protection of their fundamental rights, as any other inhabitants of these countries (*cf*. 1.11; 5.3). Whereas South African has constitutional supremacy (*cf*. 2.1; 5.3), the Belgian Constitution is the overriding authority (*cf*. 3.2.3), while the UK has parliamentary supremacy (*cf*. 3.3.3). Both the Belgium and the UK are bound by the ECHRC as members of the EU (*cf*. 3.2.3; 3.3.3). Of particular significance in the all three countries is the clear evidence of gender inequality, particularly within the management sectors of the education systems of the respective countries (*cf*. 2.2.1.3; 3.2.4.1; 3.3.4.1).

Although the employment situation of educators is similar in many ways in the three countries, there are marked differences. Of particular interest is the more rigorous process required of both Belgian and UK educators before they can be permanently appointed, opposed to South African educators (*cf*. 2.3.4.1; 3.2.5.1; 3.3.5.1; 5.4.1),

the new movement in the UK towards performance-related pay for educators (*cf*. 3.3.5.4; 5.4.3) and the impact the evaluation processes in Belgium and the UK may have on educators (*cf*. 3.2.5.3; 3.3.5.4; 5.4.3).

In the next chapter, an analysis and interpretation of the data obtained during the empirical phase of the study will be presented.

CHAPTER SIX
QUANTATIVE DATA ANALYSIS

6.1 INTRODUCTION

One of the five objectives of the research study was to determine the perceptions of the South African school community concerning the status of educators. This chapter provides an analysis and interpretation of the empirical data obtained from the questionnaires that aimed at determining the perceptions learners, educators and parents/caregivers have regarding the status of the educators by identifying factors that contribute to these perceptions, thus attempting to determine the perceptions of the South African school community (*cf*. 1.1.2). Since South African role players took part in the quantitative component of the study, cross references will only be made to information concerning South Africa in Chapter One and Chapter Two. The data analysis and interpretation will be dealt with by first providing the biographical information of the three participant groups respectively. Thereafter an analysis of the responses received from the participants in the respective groups will be presented and lastly, the data will be interpreted in order to search for correlation among responses.

The researcher made use of factor analyses (*cf*. 4.2.6.1). The responses of the three groups of participants were not only used in the factor analyses to determine the emerging factors, but the emerging factors were also correlated with the literature study, as well as the qualitative component.

13 schools, primary and secondary, formed part of the study (*cf*. 4.2.2). Although the response rates (*cf*. 4.2.2) were generally low, 52.5% for learners, 36.9% for educators and 31.7% for parents/caregivers, the oversampling (*cf*. 4.2.2) provided that the number of questionnaires received back were more than the suggested sample size, except for the parents/caregivers, where 425 questionnaires were returned, 25 short of the suggested 450.

6.2 KEY FOR SYMBOLS USED IN THE DATA ANALYSIS

The symbols and abbreviations used during the data analysis are indicated below:

frequency	*f*
valid response	N
p-value, probability value, significance of a test	p
mean	$\bar{x}$
standard deviation	s
Cohen's D	*d*

Although in general, Cohen's D (*d*) values are taken as lying between 0 and 1 (Cohen, Manion & Morrison, 2007:521), the values for large effects are frequently exceeded in practice with values for Cohen's *d* greater than 1.0 not uncommon (Institute for Digital Research and Education, 2014). Moreover, Coe (2002) points out the possibilities of achieving 3.0 and higher effect sizes. In several instances below, such values greater than 1.0 implied a consistent difference between the viewpoints of the three participant groups.

The next section focuses on the biographical information of the participants who took part in the study. Data are displayed in tables and graphs.

6.3 BIOGRAPHICAL INFORMATION OF THE PARTICIPANTS

Each of the respective questionnaires asked information regarding the age, gender and ethnic origin of the participants. In the case of learners, the participants were asked to indicate whether they were in Grade 7 or 10. Educators were asked to provide their highest qualification and indicate whether they taught Grade 7 and/or Grade 10 learners. Parents/caregivers were asked to indicate the grade level of their children/charges, their highest qualification and their relationship to the relevant learner.

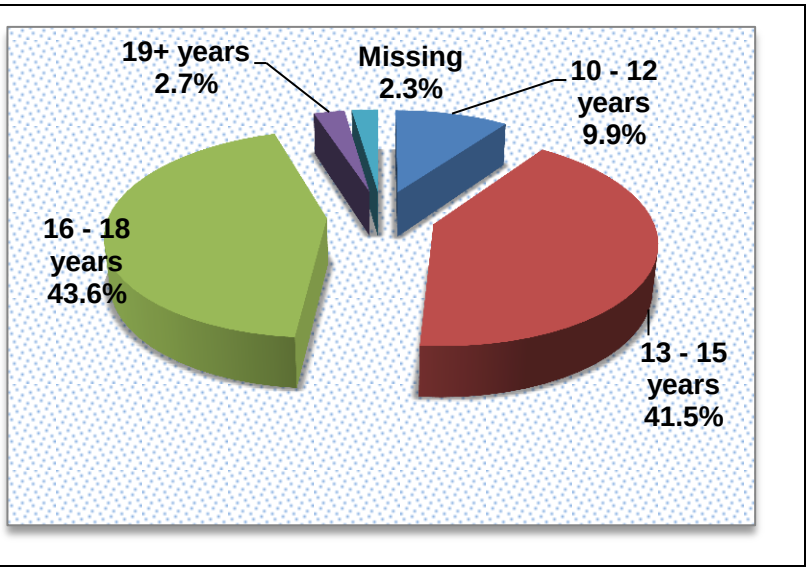
6.3.1 Biographical information – learners

According to Maree and Petersen (2007b:164), biographical questions provide important information as they not only allow the researcher to establish whether the profile of the sample is representative of the population, but also provide for the option to explore the possibility of relationships between biographical variables and other variables.

Table 6.1 below presents the data on the age of the participating learners.

Table 6.1: Age of learners

Age	*f*	%
10-12 years	70	9.9
13-15 years	292	41.5
16-18 years	307	43.6
19+ years	19	2.7
Missing	16	2.3
Total	704	100

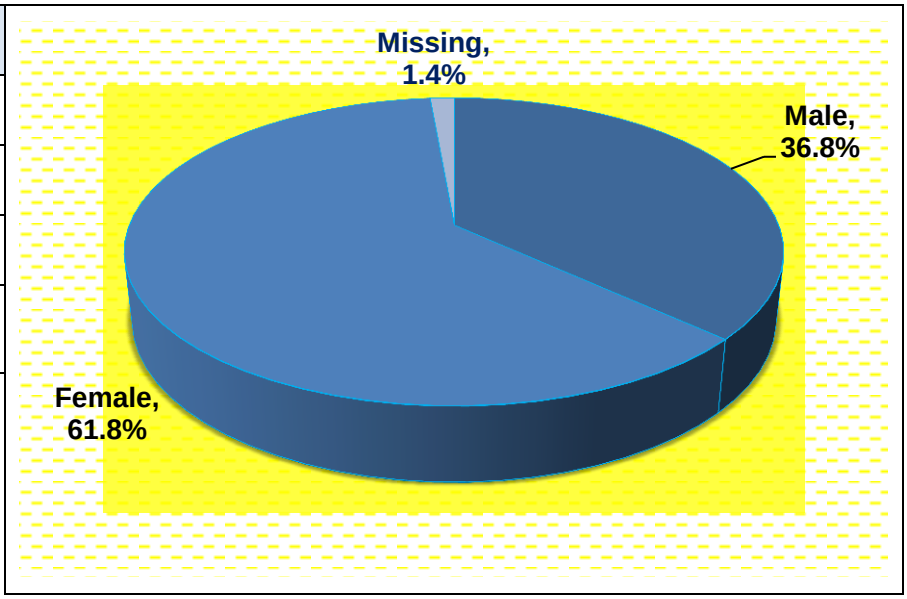


As seen in Table 6.1, the majority of the learners were between the ages of 13-15 years (41.5%) and 16-18 years (43.6%) – generally accepted as the range of ages of Grade 7 and Grade 10 learners respectively.

Table 6.2 below presents the data on the gender of the participating learners.

Table 6.2: Gender of learners

Gender	*f*	%
Male	259	36.8
Female	435	61.8
Missing	10	1.4
Total	704	100

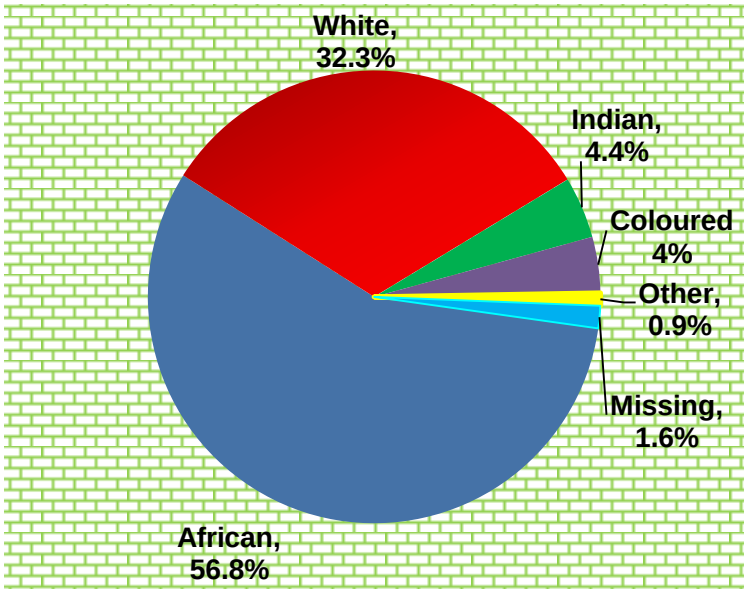


From the data above, it is clear that the majority of the learner participants were females (61.8%); with male learners in the minority (36.8%).

Table 6.3 below presents the ethnicity of the learners.

Table 6.3: Ethnicity of learners

Ethnicity	*f*	%
African	400	56.8
White	228	32.3
Indian	31	4.4
Coloured	28	4.0
Other	6	0.9
Missing	11	1.6
Total	704	100

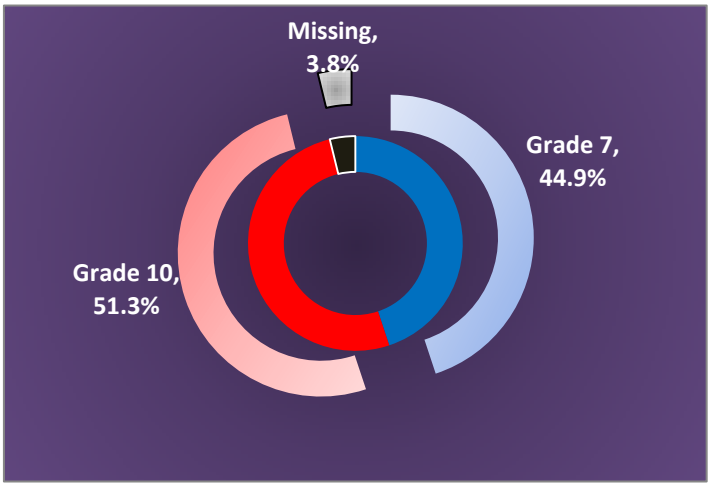


Although the ethnic distribution of the learners does not reflect the ethnic distribution of the general population in South Africa, it reflects the expected distribution, given the decision to include all different types of schools in the sample.

Table 6.4 below presents the respective grades of the learner participants.

Table 6.4: Grades of learners

Grade	*f*	%
Grade 7	316	44.9
Grade 10	361	51.3
Missing	27	3.8
Total	704	100



From the data displayed in Table 6.4, it is clear that slightly more Grade 10 learners (51.3%) participated in the study than Grade 7 learners (44.9%).

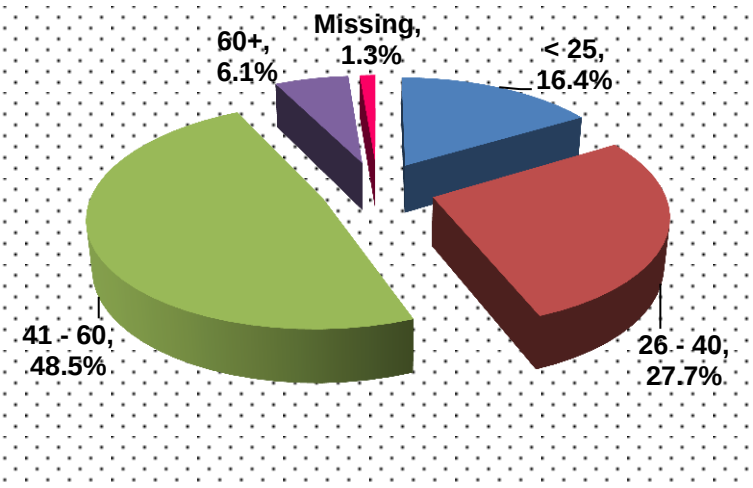
The next section contains the biographical data of the participating educators as indicated by them.

6.3.2 Biographical information - educators

Table 6.5 below presents the distribution data of the educator participants.

Table 6.5: Age of educators

Age	*f*	%
<25	38	16.4
26-40	64	27.7
41-60	112	48.5
60+	14	6.1
Missing	3	1.3
Total	231	100

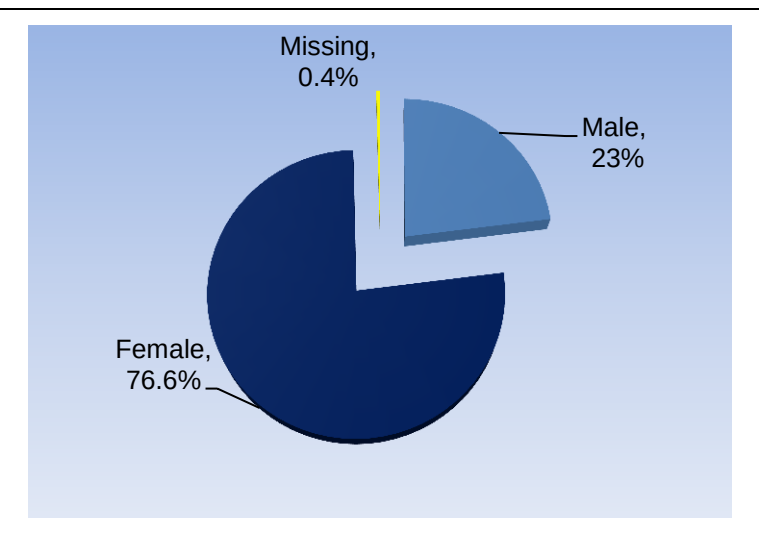


The majority of the educator participants were 41-60 years of age (48.5%), as seen in Table 6.5, while 27.7% of them were 26-40 years of age. The data portray and support the aging profile of educators (*cf*. 3.3.5.6) – a world-wide problem.

Table 6.6 below provides a summary of the gender distribution of the educator participants.

Table 6.6: Gender of educators

Gender	*f*	%
Male	53	23
Female	177	76.6
Missing	1	0.4
Total	231	100

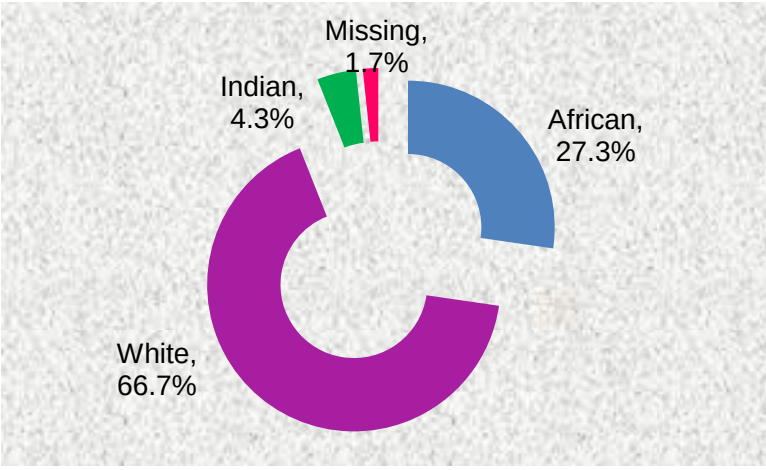


The data portrayed in Table 6.6 reflect the statistics provided in Chapter Two and the predominance of females in education (*cf*. 2.2.1.3; 3.2.4.1; 3.3.4. 1).

Table 6.7 below presents the ethnic distribution of the educator participants.

Table 6.7: Ethnicity of educators

Ethnicity	*f*	%
African	63	27.3
White	154	66.7
Indian	10	4.3
Missing	4	1.7
Total	231	100

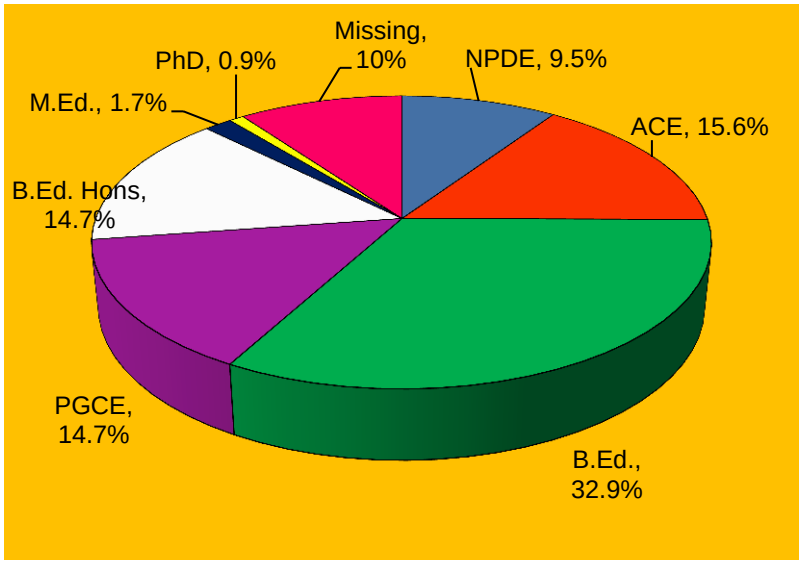


As in the case with the learners, the data found in Table 6.7 do not reflect the ethnic distribution of the general South African population, but in sampling the schools, the decision was to include different schools, leading to more town schools being involved, which created a situation where the majority of educators were white (66.7%) as the majority of educators in town schools are white.

Table 6.8 below provides an overview of the highest education qualification of the educator participants.

Table 6.8: Educator qualifications

Qualification	*f*	%
NPDE	22	9.5
ACE	36	15.6
B.Ed.	76	32.9
PGCE	34	14.7
B.Ed. Hons	34	14.7
M.Ed.	4	1.7
PhD	2	0.9
Missing	23	10
Total	231	100

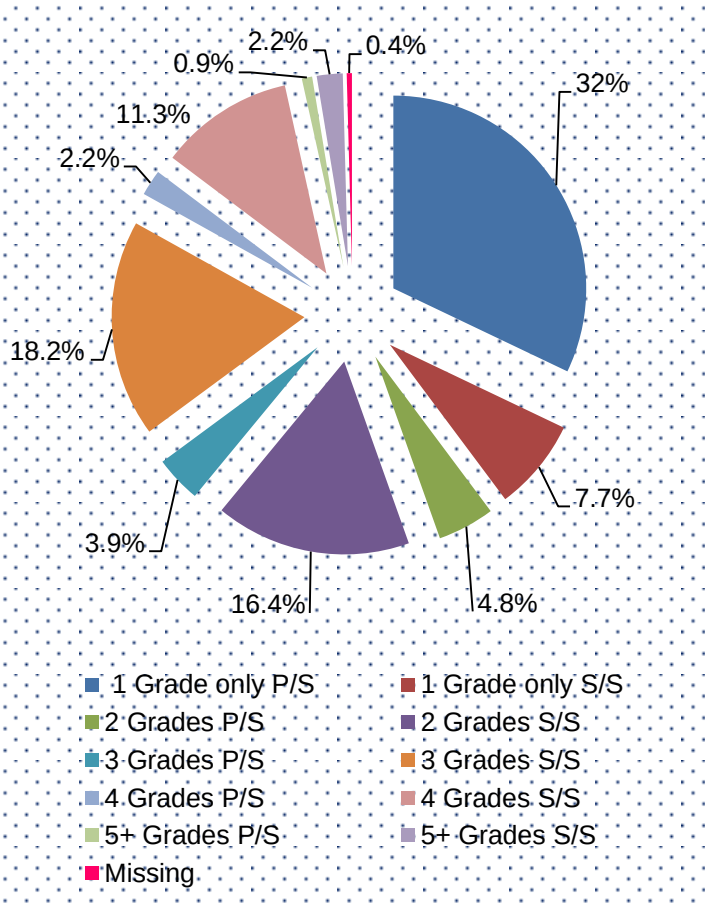


A B.Ed. degree was the most predominant education qualification among educators in the study (32.9%). The researcher finds it disconcerting that 10% of the educators did not indicate what their highest qualification was. A possible reason could be that the educators had a qualification which is not considered an education qualification, or that they were still in the process of obtaining an education qualification (*cf*. 2.3.4.4).

Educator participants were required to indicate the grade or grades they taught. The combination of responses varied a great deal, therefore the researcher decided to group responses together according to the school level and the number of different grades the educators taught. Table 6.9 below provides the data received in this regard.

Table 6.9: Number of grades taught by educators

Number of grades taught per school type	*f*	%
1 Grade only P/S[282]	74	32
1 Grade only S/S[283]	18	7.7
2 Grades P/S	11	4.8
2 Grades S/S	38	16.4
3 Grades P/S	9	3.9
3 Grades S/S	42	18.2
4 Grades P/S	5	2.2
4 Grades S/S	26	11.3
5+ Grades P/S	2	0.9
5+ Grades S/S	5	2.2
Missing	1	0.4
Total	231	100



The data in Table 6.9 indicate that 32% of participating primary school educators taught a particular grade, as opposed to only 7.7% of participating secondary educators.

[282] P/S indicates primary school.

[283] S/S indicates secondary school.

Secondary school educators taught different grades: 18.2% taught three different grades and 16.4% taught two different grades. Additionally, the data in Table 6.9 point to the workload of participating educators as differing greatly. Teaching different grades would involve different planning for each grade, while recognising that for secondary school educators teaching one or two grades only would imply less planning, but more marking, as they may have many classes within the same grade. A primary school educator teaching only one grade could also have more planning as such an educator may be teaching a variety of subjects, while the educators teaching a variety of grades may have many classes and thus a lot of marking.

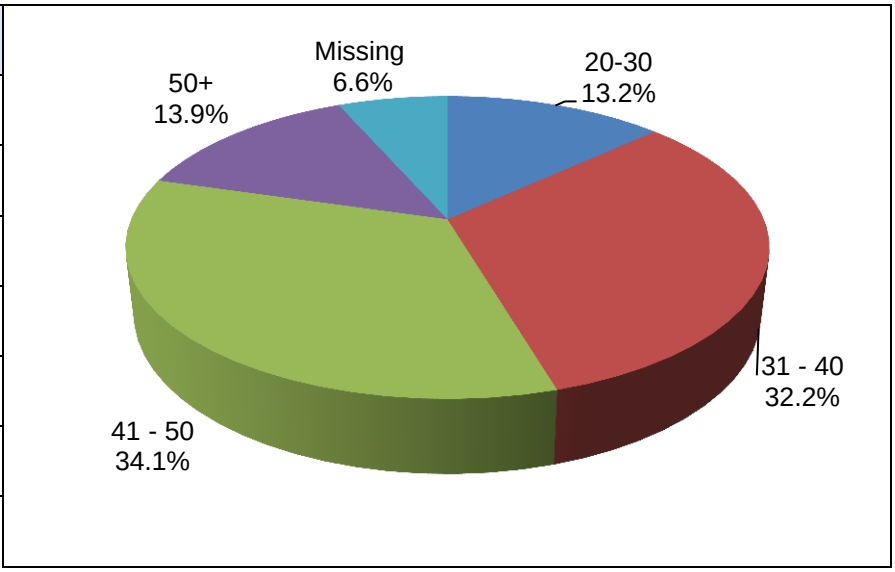
The following section provides the biographical data of the parents/caregivers.

6.3.3 Biographical information - parents/caregivers

Table 6.10 below presents the age distribution of the parent/caregiver participants.

Table 6.10: Age of parents/caregivers

Age	*f*	%
20-30	56	13.2
31-40	137	32.2
41-50	145	34.1
50+	59	13.9
Missing	28	6.6
Total	425	100

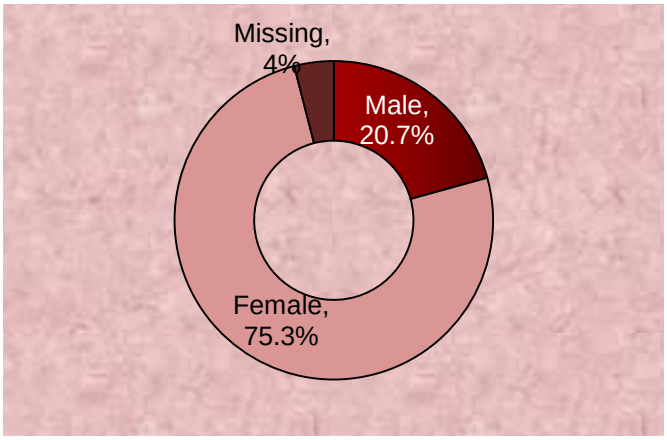


As portrayed in Table 6.10 above, the majority of participating parents/caregivers fell in the age category of 41-50 years, which was expected, given the grades the learner sample was taken from. The researcher finds the missing information (6.6%) difficult to explain and can only wonder if it was purely because the participants were hasty or did not consider the information important.

Table 6.11 below presents the gender distribution of the parent/caregiver participants.

Table 6.11: Gender of parents/caregivers

Gender	*f*	%
Male	88	20.7
Female	320	75.3
Missing	17	4
Total	425	100

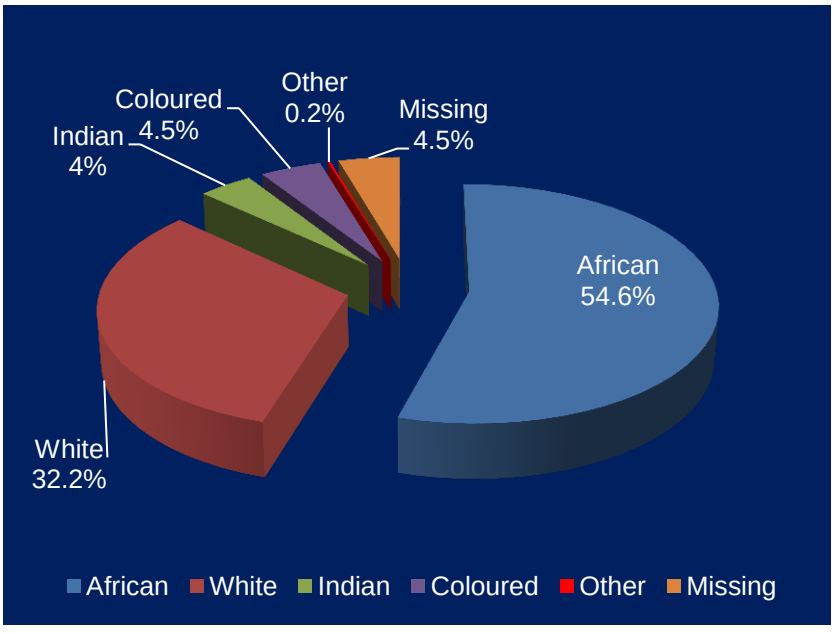


As in the case with the learner and educator participants, the majority of the parent/caregiver participants were female (*cf*. Table 6.11). Only one parent/caregiver per family was required to complete the questionnaire.

Table 6.12 below presents the data regarding the ethnic distribution of the parents/caregivers.

Table 6.12: Ethnicity of parents/caregivers

Ethnicity	*f*	%
African	232	54.6
White	137	32.2
Indian	17	4.0
Coloured	19	4.5
Other	1	0.2
Missing	19	4.5
Total	425	100



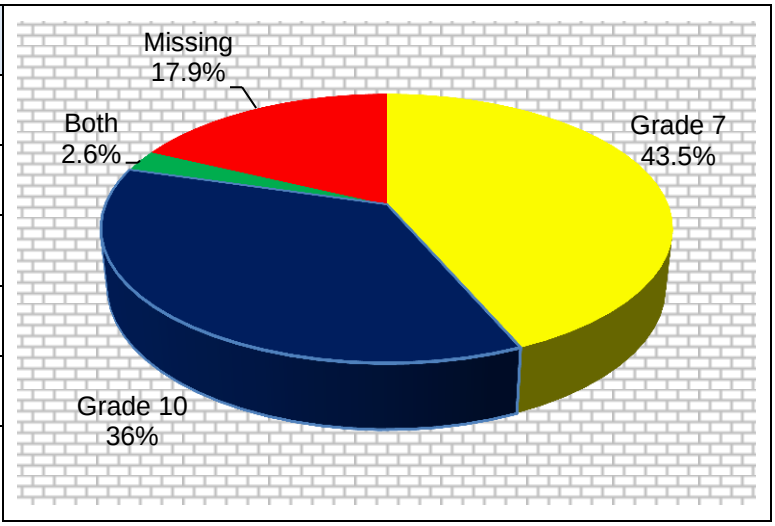
As in the case with the ethnic distribution of the learner participants (*cf*. 6.3), the sample distribution of parents/caregivers does not reflect the ethnic distribution of the general South African population, but does reflect the ethnic distribution of the population of the

schools sampled. The missing responses of 4.5% deserve consideration and may be ascribed to reluctance by participants to make their ethnicity known.

Table 6.13 below presents the distribution of parents/caregivers according to the grade or grades their children were in.

Table 6.13: Grade/s of parents/caregivers' children

Grade of children	*f*	%
Grade 7	185	43.5
Grade 10	153	36
Both	11	2.6
Missing	76	17.9
Total	425	100



According to the data in Table 6.13 above, more Grade 7 parents/caregivers (43.5%) completed questionnaires, while the majority of learner participants were in Grade 10 (51.3%; *cf*. Table 6.4). The researcher ascribes the difference to the age of the learners in the respective grades. Talking from own experience, the younger Grade 7 learners are generally more inclined to hand correspondence from schools to their parents/caregivers, while Grade 10 learners are more inclined not to do so. The missing responses of 17.9% could perhaps indicate that the parents/caregivers were unsure of their children's grade levels.

Table 6.14 below presents the data regarding the relationship between learners and parents/caregivers.

Table 6.14: Learner-parent/caregiver relationship

Relationship to learner	*f*	%
Parent	338	79.5
Caregiver	56	13.2
Missing	31	7.3
Total	425	100

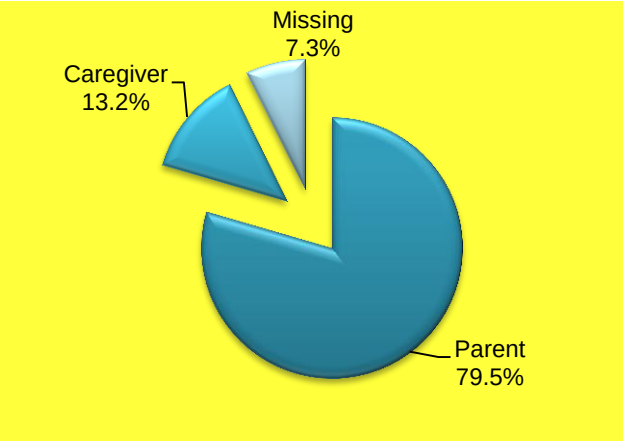
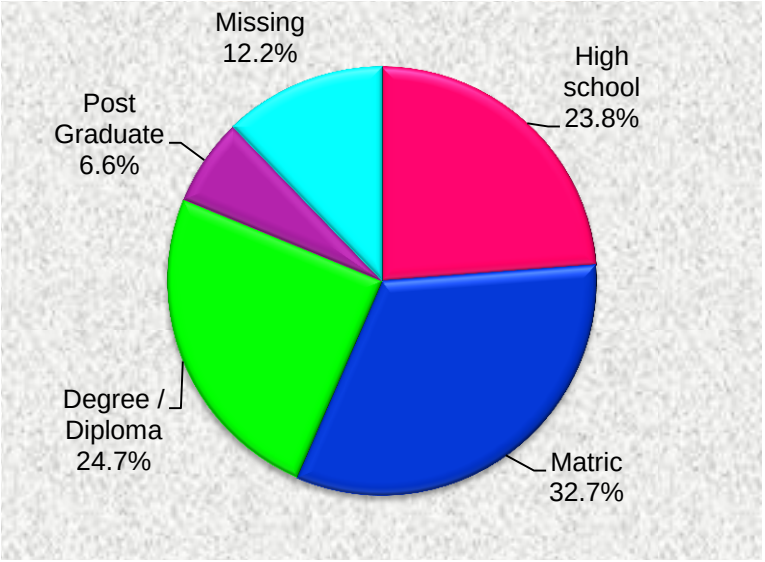


Table 6.14 above shows that the majority of the learner participants were in the care of a parent, with 13.2% in the care of caregivers. The missing responses of 7.3% could possibly be ascribed to caregivers not being sure exactly what their role was in relation to learners, as the arrangement could have been an informal one and learners landed in their care purely because no one else was available to care for them. On the other hand, the caregiver may also have been a sibling still at school.

Table 6.15 below portrays the data regarding the highest qualifications achieved by parents/caregivers.

Table 6.15: Parent/caregiver qualifications

Highest qualification	*f*	%
High school	101	23.8
Matric	139	32.7
Degree/Diploma	105	24.7
Post graduate	28	6.6
Missing	52	12.2
Total	425	100



The data in Table 6.15 above indicate that the majority of participating parents/caregivers had obtained a formal qualification: matric (32.7**%**) or a first degree

or diploma (24.7%). Close to a quarter of them had never completed high school; yet 6.6% of the parents/caregivers had a post graduate qualification. While the three formal qualification categories added up to 64.0%, which was a positive indicator concerning potential parental/caregiver support, the 23.8% without any qualifications and the 12.2% who did not complete the questionnaire item were disconcerting: as a serious note of concern, 35% of these participants appear to need formal education themselves.

This section presented the biographical data of the three participant groups. The next section will present the data analysis and interpretation of the learner, educator and parent/caregiver participants' quantitative responses. In the analysis, comparisons were made between the three main groups only.

6.4 DATA ANALYSIS AND INTERPRETATION: LEARNER, EDUCATOR AND PARENT/CAREGIVER QUANTITATIVE RESPONSES

The responses of the three groups were grouped into factors, by means of factor analyses. Moreover, the same factors were used in terms of the data received from the learners, educators and parents/caregivers in order to establish the relationship between variables (*cf*. 4.2.6.1).

Values for skewness and kurtosis are used to determine whether the distribution of the data is normal. In a normal distribution the values of skewness and kurtosis should be zero. The further the values are from zero, the less likely that the data are normally distributed (Field, 2009: 138, 139). Positive skewness and kurtosis are noted only for Section B (1.83; 5.78), as these values are further from zero than the values reported for Sections C, D, E and F, which appear to be normally distributed. A possible reason for the huge negative response rate, *strongly disagree*, in Section B could be that learners and their parents/caregivers are ignorant as to what would be the correct expectations concerning how educators should act in general at any school.

Table 6.16: Descriptive statistics

	Std.Dev.	Skewness	Kurtosis
	Statistic	Statistic	Statistic
B_Tot	0.41	1.83	5.78
C_Tot	0.42	0.26	0.31

D_Tot	0.55	0.23	-0.38
E_Tot	0.50	0.27	0.30
F_Tot	0.51	0.57	-0.14
Valid N (listwise)			

6.4.1 Section B – Expectations held about educator demeanour in general

This section was based on determining the responses of learner, educator and parent/caregiver participants concerning expectations that reflect on educator demeanour in general – not at their schools specifically. Two significant factors emerged from the factor analysis done on the items in Section B of the three groups of participant responses (*cf*. Table 6.19).

Table 6.17: Explained variance by two-factor model

	Original Eigen values		
Factor	**Total**	**% variance**	**Cumulative %**
1	4.795	39.96	39.96
2	1.430	11.91	51.87

From the table above, it is clear that the two factors explained 51.87% of the total variance.

Table 6.18: Component matrix

	1	2
B1		.85
B2	.66	
B3	.76	
B4	.62	
B5	.72	
B6	.74	
B7	.66	

B8	.70	
B9		.54
B10	.70	
B11	.50	
B12	.71	

The items within the two factors will be listed in Table 6.19 below, where after a detailed discussion regarding the factors will follow.

Table 6.19: Factors identified from the responses of the participants – Section B

Factor	Items	Learners	Educators	Parents/Caregivers
	I think an educator at *any* school should...			
FACTOR B1 Expected demeanour of educators in general	B2	...communicate well with all kinds of learners.	...be able to communicate well with all learners.	...be able to communicate well with all kinds of learners.
	B3	...prepare well for every lesson.	...be well prepared for every lesson.	...be well prepared for every lesson
	B4	...respect the learners' human rights.	...respect learners' human rights.	...respect learners' human rights.
	B5	...make sure classrooms are organised.	...make sure classrooms are organised.	...make sure classrooms are organised.
	B6	...use good language in classes.	...use proper language in class.	...use correct language in class.
	B7	...teach the learners by using different plans.	...use different teaching strategies.	...teach by using different plans.
	B8	...bring new information to classes.	...bring new information to class.	...bring new information to class.
	B10	...respect the parents/caregivers of learners.	...respect the parent/caregivers of learners.	...respect us as parents/caregivers.
	B11	...know the different customs/beliefs of the learners.	...know the different customs/beliefs of the learners.	...know the different customs/beliefs of the learners.
	B12	...make learners feel safe.	...make learners feel safe.	...make my child/children feel safe.

Factor	Items	Learners	Educators	Parents/Caregivers
	I think an educator at *any* school should...			
FACTOR B2 Expected valuing of learners	B1	...not only listen to the opinions of adults.	...only consider/respect the opinion of adults.	...only consider and respect the opinions of adults.
	B9	...allow learners to correct their teachers.	...accept being corrected by learners.	...accept it when learners correct them.

The items included in Section B of the questionnaires (*cf*. Addenda E1-3) were based on general expectations regarding educator demeanour, derived from the SA Constitution (*cf*. 2.2), SACE Code of Ethics (*cf*. 2.5) and the seven roles of educators found in the Norms and Standards (*cf*. 2.3.4.4). The items within Factor B1 can be described as demeanour expected to be displayed in fulfilling the general day-to-day activities of educators in the classroom, while the two items in Factor B2 can be linked to the way in which the educators value learners.

In order to establish the reliability of the factor analyses, the Cronbach Alpha coefficients based on the inter-item correlations of the different items in the different sections were calculated where possible and measured against the ranges proposed by Clark and Watson (1995:316) and Simon (2008; *cf*. 4.2.3.2). The Cronbach Alpha coefficient of 0.88 and inter-item correlation of 0.43 of Factor B1 fell within the accepted ranges. These calculations were not possible for Factor B2, as it only consisted of two items.

6.4.1.1 Factor B1: Expected demeanour of educators in general

The researcher used ANOVA in order to compare the average response scores of the three groups (Pietersen & Maree, 2007a:229; Babbie, 2010:492; Muijs, 2011:175; *cf*. 4.2.6) for Factor B1. There was a significant difference among the group means of the learner and educator subsets and the educator and parent/caregiver subsets, as shown in Table 6.20 and Table 6.21 below.

Table 6.20: ANOVA and Tukey HSD – Expected demeanour of educators: learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.46	0.017	0.000	0.67	Medium
	Parents	231	1.30	0.24			

Table 6.21: ANOVA and Tukey HSD – Expected demeanour of educators: educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	231	1.30	0.24	0.014	0.42	Small
	Parents	425	1.40	0.21			

While the effect size of the differences between the learner and educator groups had a *medium* practical effect, the practical effect between the educator and parents/caregivers subset was *small*. The responses received (*cf*. Addendum F) illustrate that educators either *strongly agreed* or *agreed* with the statements exemplifying the expected demeanour of educators in the fulfilling of their daily tasks, as found in the SACE Code of Ethics (*cf*. 2.5) and the Norms and Standards (*cf*. 2.3.4.4) that reflect a respect for the fundamental rights of others (*cf*. 2.2). Although the majority of participants in the learner and parent/caregiver subsets also either *strongly agreed* or *agreed* with the statements, a higher percentage of the participants in these two groups either *disagreed* or *strongly disagreed* with the statements (*cf*. Addenda F & G). The latter responses indicated a disconcerting tendency of some educators at the participating schools not to act according to the expectations created by the SA Constitution, the SACE Code of Ethics or the Norms and Standards (*cf*. 1.1.2; 2.2; 2.3.4.4; 2.5), as became clear in the responses of the learners and the parents/caregivers in Section C (*cf*. 6.4.2), Section D (*cf*. 6.4.3), Section E (*cf*. 6.4.4) and Section F (*cf*. 6.4.5) discussed below. These responses support evidence in the literature of unacceptable educator conduct (SACE, 2008-2012; Graph 1.1; *cf*. 1.1.2).

The biggest differences in responses between the groups relate to statements B2, B4, B7 and B11. Item B2 stated that *an educator at any school should communicate well with all kinds of learners* (*cf*. 2.3.4.4; Addenda E1-3). The researcher finds it strange that 6.3% of learners either *disagreed* or *strongly disagreed* with the statement. Just as incomprehensible are the responses regarding respect for learners' human rights (SACE; SA, 2000d:item 3.1; *cf*. 2.2; Item B4 Addenda E1-3) and the need for educators to have knowledge of the different customs/beliefs of

learners (SA, 2000d:item 3.1; *cf*. 2.2; Item B11 Addenda E1-3). With regard to showing respect for a learner's human rights, 5.9% of the parents/caregivers (*cf*. Addenda F & G) either *disagreed* or *strongly disagreed* with the statement, while 10.4% of the learners and 7.8% of the parents/caregivers *disagreed* or *strongly disagreed* with the statement that educators should *know the different customs/beliefs of learners* (*cf*. Addenda F & G). The responses of the learners and parents/caregivers contradict the consulted literature, which points to learners and their parents/caregivers being *over aware* of their rights, indicated by several authors, including Rossouw, (2003:413), Roos & Wolhuter, (2004:2), (Venter, 2005:1) Burton (2008) and Marais and Meier (2010:50) (*cf*. 1.1.2; 2.2.1.3; 2.2.1.4; 2.2.1.7). Participating learners (7.5%) and parents/caregivers (4.5%) indicated that they either *disagreed* or *strongly disagreed* with the need for educators to teach by using different plans (*cf*. 2.3.4.4; Item B7 Addenda E1-3; Addenda F & G). The consulted literature did not address the use of eclectic teaching methods and is therefore seen to be a new contribution to the study.

The questions arise: Why do some learners and parents not see the value of sound communication? Why are some of them unconcerned about educators' knowledge of learner customs and beliefs? Why do some of them not support respect for learners' human rights? Why do some of them not acknowledge eclectic teaching methods? Perhaps these indicators of parental/caregiver indifference can be explained partially by referring to the data in Table 6.13, Table 6.14 and Table 6.15: the 17.9% missing parent/caregiver grade level data in Table 6.13 could indicate indifference toward education. Secondly, the 7.3% missing parent/caregiver relationship data in Table 6.14 could indicate indifference toward their children. Thirdly, the 23.8% parents/caregivers who had not completed high school and the 12.2% missing responses in Table 6.15 could indicate that those parents/caregivers were not aware of the significance of these aspects towards their children's education.

The role of the modern educator has changed drastically from that of educators teaching in the early 1900, with an increasing responsibility not only to teach, but to educate. The changing roles of modern educators, whose responsibilities extend beyond the classroom into society (Vongalis, 2004:488; DoE, 2005:60) on the one hand, and the conduct of some educators leading to a loss of faith in the education profession by the society they serve (*cf*. 1.1.2) on the other hand, may contribute to

the lack of knowledge and understanding displayed by some parents/caregivers, particularly the less formally educated.

6.4.1.2 Factor B2: Expected valuing of learners

The ANOVA and Tukey HSD indicated that the means of all three subsets differed significantly from one another for Factor B2 as illustrated in Tables 6.22-6.24 below.

Table 6.22: ANOVA and Tukey HSD – Expected valuing of learners: learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.66	0.24	0.000	1.38	Large
	Parents	231	2.24	0.42			

Table 6.23: ANOVA and Tukey HSD – Expected valuing of learners: educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	231	2.24	0.42	0.000	0.74	Medium
	Parents	425	1.93	0.03			

Table 6.24: ANOVA and Tukey HSD – Expected valuing of learners: learners and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.66	0.02	0.000	9.0	Large
	Parents	425	1.93	0.03			

Whereas the practical effect of the difference between the learner and educator subsets, and the learner and the parent/caregiver subsets was *large* (*cf*. Table 6.22 & Table 6.24), the practical effect of the difference between the educator and

parent/caregivers subsets was *medium* (*cf*. Table 6.23). The *large* effect size implied a consistent difference between the viewpoints of participating learners and those of the participating educators and parents/caregivers.

Figure 6.1 below illustrates the difference in perceptions held by the three groups graphically with regards to item B1.

Figure 6.1: Comparison of the three groups' responses to B1

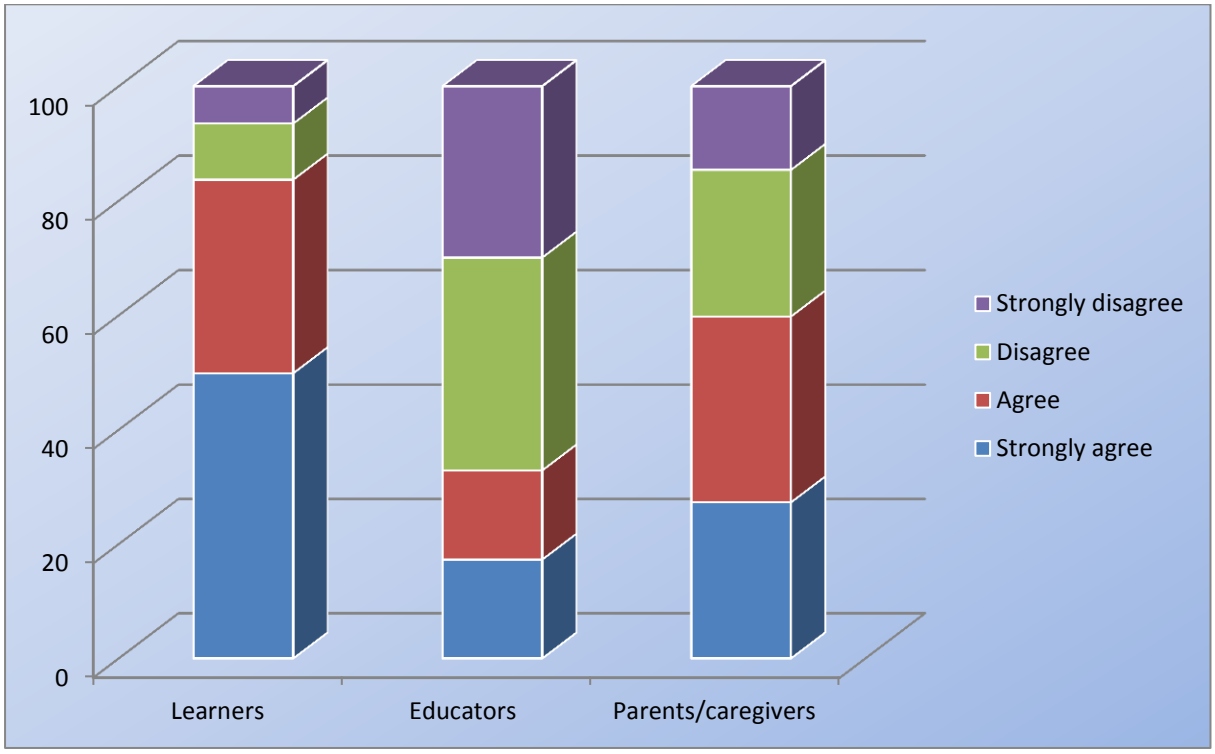


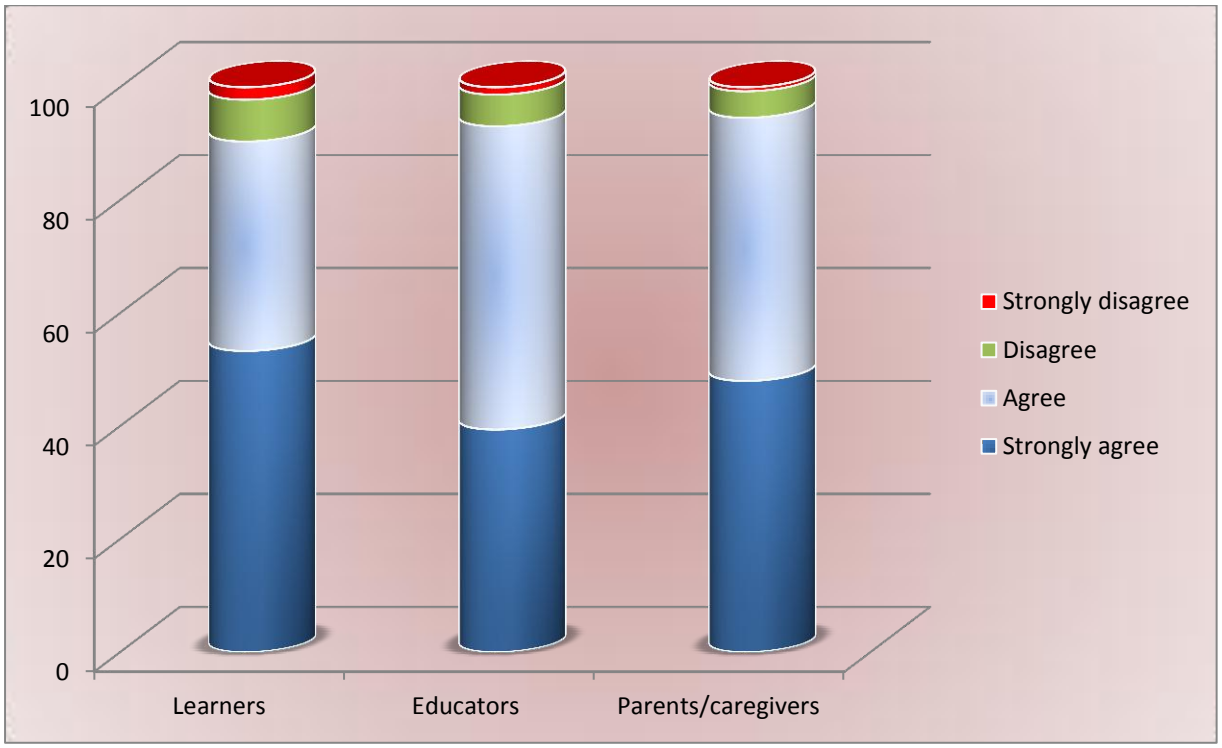
Figure 6.1 above illustrates that the majority of the participating learners did not place a high value on educators paying attention to their opinions, as 49.9% *strongly agreed* and 33.8% *agreed* (83.7%) with the statement that educators should *only consider and respect the opinion of adults* (SACE; SA, 2000d:item 3.14; *cf*. Item B1 Addenda E1-3). To the same extent the majority of parents/caregivers, like their children, did not place as high a value on the opinion of learners being heard. However, they were more divided, as 27.3% *strongly agreed* and 32.5% *agreed* (59.8%) that educators should only consider the opinion of adults; and the minority of 40.2% *disagreed* and *strongly disagreed* (broken up into 25.6% & 14.6%) with the statement (*cf*. Addendum F).

On the other hand, 37.2% of the participating educators *disagreed* and 29.9% *strongly disagreed* (67.1%) that educators should only consider the opinion of adults,

thus indicating awareness among educators that learners' right to freedom of expression imposes a duty on them as educators to acknowledge the right as required by the SA Constitution (Kocks-De Waal, 2009:2; *cf*. 1.1.2; 2.2.1.7) and item 3.14 of the SACE Code of Ethics (SA, 2000d). Venter (2005:5) points out the need for educators to allow learners to express their opinions, while teaching them the correct way to do so (*cf*. 2.2.1.7). While this need was clearly recognised by the responses of participating educators, the question arises as to whether the responses of participating learners, particularly, but also of their parents/caregivers did not indicate the same need? In searching for an answer to this question, the reader is reminded of several authors (Olivier & Venter, 2003:186; Rossouw, 2003:413; Botha, 2005:12; Rademeyer, 2005a:4; Rademeyer, 2005b:4; Venter, 2005:1; Malan, 2006:9; Joubert, 2009c:109; Prinsloo, 2009a:42) who refer to a lack of discipline at schools; learners disrupting classes; and a disregard for the rights of others by learners (*cf*. 1.1.2; 2.2.1.2). The researcher is of the opinion that some participating learners and their parents/caregivers may have reached a stage where they had become frustrated by the situation at South African schools, as emerged from the literature, and therefore perceived educators allowing other learners to voice their opinion as contributing to the disruption which occured in their classrooms. This perception may explain the responses of some of the participating learners and their parents/caregivers, as their responses contradict the literature, which indicates negative learner behaviour, such as verbal and physical abuse of educators and negative attitudes (Rossouw, 2003:413; Burton, 2008; *cf*. 1.1.2; 2.2.1.2; 2.2.1.7).

Figure 6.2 below illustrates the difference in perceptions held by the three groups graphically with regards to item B9.

Figure 6.2: Comparison of the three groups' responses to B9



As far as Item B9 was concerned – *Educators at any school should accept it when learners correct them* (SACE; SA, 2000d:item 3.14) – there was greater agreement between the respective groups (*cf*. Addenda E1-3). Although the positive responses of the three participant groups were very similar, the difference between the percentage of participating learners and parents/caregivers who *strongly agreed* and the percentage of participating educators who *strongly agreed* evoked interest. Whereas 53.3% of the learners *strongly agreed* with the statement, 39.4% of the educators and 48% of the parents/caregivers *strongly agreed* with the statement. Thus learner and parent/caregiver participants placed a high value on being allowed to correct educators on a mistake made. These responses of the majority of the three participant groups support the importance of Item 3.14 of the SACE Code of Ethics (SA, 2000d), although the consulted literature points to possible abuse of privileges, such as the afore-mentioned, by learners and their parents (Malherbe, 2004:1; Malan, 2006:9, Prinsloo, 2009c:109; *cf*. 1.1.2; 2.2.1.3; 2.2.1.7).

According to the SACE Code of Ethics, educators should, in appropriate instances, recognise learners as partners in education (SA, 2000d:item 3.14), while the Code of Conduct Guidelines describe education as a platform for learners to practise the required conduct necessary to become part of a democracy based on a culture of

human rights (SA, 1998:art.1.4). Educators should therefore allow learners to correct them, as such an allowance would show recognition for the learner as a partner in education and teach learners that one may make mistakes. Why did the participating educators feel less strongly about the statement? A difference of 13.9% lies between the percentage of participating learners who *strongly agreed* and the participating educators who *strongly agreed*. Reports of verbal and emotional violence faced by many educators as reported in the literature (Rademeyer, 2008; SAHRC, 2008:10; *cf*. 2.2.1.4) may provide insight into a reluctance of some participating educators to strongly agree to learners correcting them.

Although all three groups agreed that it was important for educators to communicate well with learners, ensure sound preparation and an organised, versatile learning climate while showing respect for the fundamental rights of learners and parents/caregivers, educators placed a higher importance on these aspects of expected educator conduct. On the other hand, learners placed the highest importance on educators allowing them to correct an educator when a mistake was made. Thus all three participant subsets recognised the importance of a harmonious and orderly teaching and learning climate (SA, 1998:art.1.1) in which the protection of the best interests of all parties are emphasized (Joubert, 2000:444; *cf*. 2.2.1.2). Although no clear indicators could be found in the consulted literature explaining why participating learners and their parents would place a lower value on the opinions of learners being heard, or why a lower percentage of participating educators *strongly agreed* when it came to learners correcting them, the responses received in Sections C (*cf*. 6.4.2) and E (*cf*. 6.4.5) of the questionnaires (*cf*. Addenda E1-3) may provide insight into these responses – and these will be pointed out below.

6.4.2 Section C – General characteristics of educators

Four significant factors emerged from the factor analysis done on the items in Section C of the participant responses (*cf*. Table 6.27).

Table 6.25: Explained variance by four-factor model

	Original Eigen values		
Factor	**Total**	**% variance**	**Cumulative %**
1	5.175	24.64	24.64
2	2.904	13.83	38.47
3	1.469	7.00	45.47
4	1.394	6.64	52.11

From the table above, it is clear that the four factors explained 52.11% of the total variance.

Table 6.26: Component matrix

	1	2	3	4
C1		.78		
C2		.61		
C3		.75		
C4		.58		
C5			.44	
C6		.68		
C7		.62		
C8		.56		
C9				.63
C10	.68			
C11	.65			
C12	.69			
C13	.66			
C14			.67	
C15	.48			

C16	.57			
C17	.68			
C18	.63			
C19				.72
C20				.60

C21 did not fall significantly within one of the factors and was therefore removed. The four factors will be explained in Table 6.27 below, where after a detailed discussion regarding the factors will follow.

Table 6.27: Factors identified from the responses of the participants – Section C

Factor	Items	Learners	Educators	Parents/Caregivers
	At our school...			
FACTOR C1 Positive characteristics	C6	...teachers respect the learners.	...educators respect the learners.	...teachers respect the learners.
	C7	...teachers pay attention to my opinion.	...educators pay attention to learners' opinion.	...teachers pay attention to the learners' opinions.
	C8	...teachers are like parents/caregivers to us.	...educators act as learners' parents/caregivers.	...educators act as parents/caregivers while learners are at school.
	C10	...teachers respect our human rights.	...educators respect learners' human rights.	...teachers respect learners' human rights.
	C11	...teachers respect the different cultures/beliefs.	...educators respect the different cultures/beliefs.	...teachers respect the different culture/beliefs.
	C12	...teachers are patient with all learners.	...educators are patient with learners.	...teachers are patient with the learners.
	C13	...teachers show kindness to learners with problems.	...educators show understanding for learners' problems.	...teachers show understanding for the problems of learners.
	C15	...teachers talk about other teachers in a good way.	...educators talk about their colleagues in a respectful way.	...teachers talk about other teachers in a respectful way.
	C16	...teachers worry if learners get hurt at school.	...educators are worried whether learners get hurt at school.	...teachers worry if learners get hurt at school.
	C17	...teachers have the respect of all of us.	...my fellow educators have my respect.	...learners respect their teachers.
	C18	...teachers make sure that we respect the differences between groups.	...educators ensure that learners resect the differences between groups.	...teachers make sure that learners respect the differences between groups.

Factor	Items	Learners	Educators	Parents/Caregivers
	At our school...			
FACTOR C2 Positive experiences	C1	...teachers see teaching as a special job.	...educators see teaching as a special job.	...teachers see teaching as a special job.
	C2	...teachers carry out an important service.	...educators deliver an essential service.	...teachers deliver an important service.
	C3	...teachers are excited about teaching.	...educators are dedicated to teaching.	...teachers are dedicated to their job.
	C4	...teachers are happy in their job.	...educators are happy in their job.	...teachers are happy in their job.
	At our school...			
FACTOR C3 Educator attitudes	C5	...teachers respect each other.	...educators respect each other.	...teachers respect each other.
	C14	...teachers keep learners' sensitive information a secret.	...educators discuss sensitive information of learners with colleagues.	...teachers keep learners' sensitive information private.
	At our school...			
FACTOR C4 Educator conduct and respect	C9	...teachers sometimes humiliate us.	...educators sometimes humiliate learners.	...teachers sometimes humiliate learners.
	C19	...teachers come to school or class late.	...educators arrive late at school/in class.	...teachers arrive late at school/in class.
	C20	...we have more rights than our teachers.	...learners have more rights than the educators.	...learners have more rights than teachers.

The items included in Section C of the questionnaires were based on how the participants responded to general characteristics of the educators at their schools. The characteristics included in the 21 statements (C1-C21; *cf*. Addenda E1-3) were derived from the SA Constitution (*cf*. 2.2) to some extent; the SACE Code of Ethics (*cf*. 2.5.1) influenced several Section C questionnaire items; and the seven roles of educators that are found in the Norms and Standards (*cf*. 2.3.4.4) also inspired several items. Participants were required to indicate whether the educators at their specific school displayed the characteristics mentioned in each of these questionnaire statements.

In order to establish the reliability of the factor analysis, the Cronbach Alpha coefficients based on the inter-item correlations of the different items in the different sections were calculated where possible and measured against the ranges proposed by and Clark and Watson (1995:316) and Simon (2008; *cf*. 4.2.3.2). The Cronbach Alpha coefficients and inter-item correlations for the four factors derived from Section C are shown in Table 6.27 below.

Table 6.28: Cronbach Alpha coefficients & inter-item correlations – Factors C1-C4

SECTION C FACTORS	CRONBACH ALPHA	INTER-ITEM CORRELATION
Factor C1	0.90	0.44
Factor C2	0.75	0.43
Factor C3	-	-
Factor C4	0.37	0.17

The Cronbach Alpha coefficients and inter-item correlation of Factors C1 and C2 fell within the acceptable ranges as postulated by Clark and Watson (1995:316) and Simon (2008; *cf*. 4.2.3.2). The Cronbach Alpha coefficient and inter-item correlation could not be calculated for Factor C3 as it consisted of only two items, too few to do the required calculations. The Cronbach Alpha coefficient and inter-item correlation of Factor C4 did not fall within the acceptable ranges as postulated by Clark and Watson (1995:316) and Simon (2008; *cf*. 4.2.3.2). Although the items emerged as a factor, there was no or little correlation between the items and the results were therefore not reliable. The researcher decided not to discuss the factor, apart from mentioning that the means of the groups in this instance hardly differed and it seemed to be the only matter on which the three groups agreed.

6.4.2.1 Factor C1: Positive characteristics

The items within Factor C1 can be described as positive characteristics displayed by the educators at the schools that participated in the study. The characteristics listed in the separate items referred to the respect educators, at the participants' schools, showed for fundamental rights of learners (*cf*. 2.2), their empathy for the learners in their care (*cf*. 2.4.1; 2.4.2; 2.5) and their deportment towards colleagues at the school (*cf*. 2.5).

The ANOVA used to compare the average response scores of the three groups (Pietersen & Maree, 2007a:229; Babbie, 2010:492; Muijs, 2011:175; *cf*. 4.2.6) indicated that there was a significant difference between the group means, while the Tukey HSD displayed that the responses received from the three groups differed significantly, as illustrated in Tables 6.29- 6.31 below.

Table 6.29: ANOVA and Tukey HSD – Positive characteristics: learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	2.10	0.02	0.000	15.5	Large
	Educators	231	1.79	0.02			

Table 6.30: ANOVA and Tukey HSD – Positive characteristics: educators and parents

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	1.79	0.02	0.000	6.67	Large
	Parents	425	1.99	0.03			

Table 6.31: ANOVA and Tukey HSD – Positive characteristics: learners and parents

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	2.10	0.02	0.003	3.67	Large
	Parents	425	1.99	0.03			

In each instance, Cohen's D indicated a large practical effect concerning the differences between the respective groups (*cf*. Tables 6.29-6.31). The *large* effect size implied a consistent difference between the viewpoints of participating learners, educators and parents/caregivers.

Educators viewed their own characteristics and those of their colleagues (*cf*. Addenda F & G) at their school more positively than parents/caregivers and learners did. Learners had a bleaker view on the characteristics of their educators with their responses veering more towards the middle of the scale (*cf*. Addendum G). The views of the parents/caregivers not only differed from those held by the learners, but were also significantly less positive than those of the educators (*cf*. Addendum G) as illustrated in Table 6.32.

Table 6.32: Comparison of responses to items in Factor C1

		Learners		Educators		Parents/ Caregivers	
Item	**Educator characteristics:** ***Educators...***	**Positive**	**Negative**	**Positive**	**Negative**	**Positive**	**Negative**
C6	...respect learners	66.1%	33.9%	94.4%	5.6%	73.4%	26.6%
C7	...consider learner opinion	65.6%	34.4%	92.6%	7.4%	74.6%	25.4%
C8	...act as parent/caregivers	71%	29%	94.8%	5.2%	87.3%	12.7%
C10	...respect human rights	65.2%	34.8%	95.2%	4.8%	78.8%	21.2%
C11	...respect different cultures/beliefs	77.8%	22.2%	96.5%	3.5%	80.2%	19.8%

		Learners		Educators		Parents/ Caregivers	
Item	**Educator characteristics:** ***Educators...***	**Positive**	**Negative**	**Positive**	**Negative**	**Positive**	**Negative**
C12	...are patient	44.6%	55.4%	87%	13%	69.4%	30.6%
C13	...show kindness	76%	24%	92.6%	7.4%	76%	24%
C15	...respect colleagues	73.4%	26.6%	85.2%	14.8%	80%	20%
C16	...worry about learner safety	75.8%	24.2%	95.2%	4.8%	86.8%	13.2%
C17	...have the respect of learners	64.8%	35.2%	97%	3%	71.3%	28.7%
C18	...respect differences between groups	79.7%	20.3%	96.1%	3.9%	86.1%	13.9%

As indicated by the above table, positive answers by participating learners constituted between 60% and 70% of their responses, with the highest percentage of positive responses being 79.7% of those who reacted positively to item C18 (*cf*. Addenda E1-3). Item C12 (*cf*. Addenda E1-3) had the lowest percentage of learner positive responses. Educators, on the other hand, responded very positively. The positive responses received from participating educators averaged a positive response rate above 90% and above, with the lowest positive response rate being 85.2% concerning Item C15 (*cf*. Addenda E1-3). The positive response rate received from participating parents/caregivers was mostly in the 70-80% range, with the highest percentage of positive responses being 87.3% concerning Item C8 and the lowest being 69.4% concerning Item C12 (*cf*. Addenda E1-3; Table 6.31).

The researcher identified four items for which the responses required special mention, namely Items C6, C7, C12 and C17. Item C6 (SA, 2000d:item 3; *cf*. 2.2.1.4; Addenda E1-3) required of the participants to indicate whether the educators at their school *respected the learners*. In response to this item, 33.9% of the learners (*cf*. Addenda F & G; Table 6.32), 5.6% of the educators (*cf*. Addenda F & G; Table 6.32) and 26.6% of the parents/caregivers (*cf*. Addenda F & G; Table 6.32) either *strongly disagreed* or *disagreed* with the statement. There was thus a significant difference between the

experiences of participating learners and parents/caregivers and the way in which participating educators viewed educators' respect for learners.

Item C10 (educators respect human rights) linked closely to Item C6 (educators show respect). With regard to educators respecting learners' human rights (SACE; SA, 2000d:item 3.1; *cf*. 2.2; 2.3.4.4; Item C10 Addenda E1-3), 34.8% of the learners perceived a lack of respect for their rights (*cf*. Addenda F & G; Table 6.32), while 4.8% of the educators (*cf*. Addenda F & G; Table 6.32) and 21.1% of the parents/caregivers (*cf*. Addenda F & G; Table 6.32) perceived the same lack of respect for learner's rights. These negative responses were very similar to the responses in Item C6, particularly in the case of the learners (0.9%) and educators (0.8%): the responses of both groups painted a contrasting picture to what was found in the literature where it is indicated that learners are seen as the culprits when it comes to disrespecting human rights (Malherbe, 2004:1; Venter, 2005:1; Rademeyer, 2005a:4; Rademeyer, 2005:20; Viljoen, 2006:4; *cf*. 1.1.2; 2.1.1; 2.2.1.4).

The consulted literature is rife with references to a general disrespect of learners towards educators and their rights (Van der Bank, 2000:302; Malherbe, 2004:1; Rademeyer, 2005b:20; Venter, 2005; Viljoen, 2006; Rademeyer, 2008; SAHRC, 2008:10; Marais & Meier, 2010; *cf*. 1.1.2; 2.1.1; 2.2.1.4). Moreover, according to the literature, misconceptions concerning a respect for rights are held by both learner and their parent groups (Van der Bank, 2000:302; Malherbe, 2004:1; Venter, 2005; *cf*. 2.1.1). A portion of the differences between the responses of participating learners, parents/caregivers and educators may be because the misconceptions held by learners and their parents/caregivers could have led to a confusion of what constitutes disrespect for learners and what is actually purely discipline (Van der Bank, 2000:302; Malherbe, 2004:1; Venter, 2005; *cf*. 1.1.2; 2.1.1; 2.2.1.4). However, the researcher is convinced that misconceptions are not the only possible reason for the differences in perceptions of the three participant groups. The breakdown of complaints received by SACE between 2008 and 2012 (*cf*. 1.1.2) paints a disturbing picture of a lack of respect by some educators towards learners, particularly as some participating educators *disagreed* with the statements and at least one educator strongly *disagreed* with Item C6.

Item C7 tested whether educators paid attention to the opinion of learners. Once again, responses of the three groups differed extensively (SACE; SA, 2000d:item 3.14; *cf*. Addenda E1-3). More participating learners (34.4%) perceived a disregard for their

opinion (*cf*. Addenda F & G; Table 6.31), whereas 7.4% of the educators (*cf*. Addenda F & G; Table 6.31) and 23.4% of the parents/caregivers (*cf*. Addenda F & G; Table 6.31) indicated that the opinions of learners did not receive attention. The responses to the afore-mentioned item confirmed the responses of the educators to Item B1 (*cf*. 6.4.1.2), where 67.1% of them *disagreed* and *strongly disagreed* that educators should only consider the opinion of adults. The SACE Code of Ethics require of educators to consider learners as partners in education (SA, 2000d:item 3.14) while the Norms and Standards (SA, 2000c:art.3) calls for educators to act as learning mediators, thus implying learner opinions being heard. These above negative responses do not support the consulted literature.

The literature, however, provides evidence of learners disrupting classrooms and then claiming an infringement of their right, among which is the right to express themselves (Rademeyer, 2005a:4; Rademeyer, 2005b:20; Venter, 2005:4; *cf*. 1.1.2; 2.2.1.3; 2.2.1.7). According to the consulted literature, learners and their parents/caregivers generally misconstrue the right to equality to refer to an equality of status (Venter, 2005; *cf*. 2.2.1.3) expecting learners to voice their opinion when they want to, how they want to. Learners need to be taught that there is a time and place for everything (Venter, 2005:4-5; *cf*. 2.2.1.7). Thus while participating learners and their parents/caregivers perceived a lack of acknowledgement of the opinion of learners, it could be that the learners did not exercise their right to voice an opinion in the correct manner. However, the differences in opinion between groups were large. There was a 27% difference between the responses of learners and educators, while the difference between parents/caregivers and educators was 16%. The researcher is of the opinion that the differences between the views of participating learners and parents/caregivers and the views held by educators were too large to ascribe only to an abuse of their rights by learners. The researcher postulates that although participating educators were predominantly aware of the need to recognise the opinions of learners, this did not necessarily happen in all the participating educators classrooms.

Item C12 (SACE; SA, 2000d:item 3.2; *cf*. Addenda E1-3) evoked special concern since it required participants to indicate whether educators *are patient with the learners*: 55.4% of the learners (*cf*. Addenda F & G; Table 6.32), 13% of the educators (*cf*. Addenda F & G; Table 6.32) and 30.6% of the parents/caregivers (*cf*. Addenda F & G; Table 6.32) either *strongly disagreed* or *disagreed* with the statement. The negative responses of all three participant groups were the highest for all eleven items, which

clearly indicated a real dilemma. As SACE calls for acknowledging learners' specific needs and uniqueness, the implication would be that educators demonstrate amongst others patience (SA, 2000d:item 3.2). The negative responses received from the participants do not support the literature. However, the literature indicates educators as working under stress (*cf*. 1.1) – from increased workloads to educators' having to deal with large educator-learners ratios (Olivier & Venter, 2003:186; DoE, 2005:60; *cf*. 1.1.2). While a possible reason for educator impatience could thus be found in the stress under which they work, it still cannot be condoned.

Lastly, Item C17 (SACE; SA, 2000d:item 3.10; *cf*. Addenda E1-3) referred to the respect that was shown to the educators. This item gave rise to an unexpected response: learners (35.2%) and parents/caregivers (28.7%) indicated that they did not perceive respect for educators from learners (*cf*. Addenda F & G), while only 3% of educators (*cf*. Addenda F & G; Table 6.32) had the same negative perception. The negative responses received contradicted the literature, as the Code of Conduct Guidelines describe education as the platform for learners to practise the required conduct necessary to become part of a democracy based on human rights (SA, 1998:art. 1.4), which would imply learners practising respect for educators' fundamental human rights also.

When the responses above are taken into consideration, some of the responses in Section B could be explained. The Preamble of the SA Schools Act (84 of 1996) calls for laying a sound basis for developing learners' talents and capabilities, promoting the democratic transformation of society and combatting racism and poverty, which implies constitutional behaviour which supports, among others, mutual upholding of each other's rights. The latter would also imply educators not being patient, not showing respect for learner rights and not regarding their opinions as not leading to the platform for learners to practise conduct required in a human rights culture (SA, 1998:art.1.4).

6.4.2.2 Factor C2: Positive experiences

The items in Factor C2 referred to the way in which the different groups perceived educators' experiences of their profession – how positive or negative educators felt about their jobs (*cf*. 2.5). Thus the four items made reference to educators' view of teaching as a special job (SACE; SA, 2000d:item 2(1)) and important service (SACE; SA, 2000d:item 2(2)), as well as how excited (SACE; SA, 2000d:item 2(2)) and happy (SACE; SA, 2000d:item 2(2)) they were perceived to be in their chosen profession (cf. Addenda E1-3). The ANOVA for Factor C2, once again, indicated a significant

difference in the means of the respective subsets, and the Tukey HSD was indicative that the learner subset differed significantly from the educator and the parent/caregiver subset.

Table 6.33: ANOVA and Tukey HSD – Positive experiences: learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	2.04	0.02	0.000	9.0	Large
	Educators	231	1.77	0.03			

Table 6.34: ANOVA and Tukey HSD – Positive experiences: learners and parents

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	2.04	0.02	0.000	8.33	Large
	Parents	425	1.79	0.03			

The respective Cohen's D values indicated that the practical effect of the difference between the learner-educator groups and the learner-parent/caregiver groups are large, which implied a consistent difference between the viewpoints of participating learners and those of the educators and parents/caregivers.

Learners seemed to have a less positive view of the way educators at their school viewed their jobs (SACE; SA, 2000d:item 2.1; *cf*. Addenda F & G) than the educators (*cf*. Addenda F & G) and the parent/caregivers (*cf*. Addenda F & G). 21% of the learners and 15.5% of the parents/caregivers indicated that the educators at their school did not *see teaching as a special job*, as opposed to 9.1% of the educators. One of the objects of the SACE Act (31 of 2000; cf. 2.5.1) is to maintain and protect ethical and professional standards for educators. However, over the last decade some South African learners have had to experience a shortage of competent educators, as well as disruption of the education system by national educator strikes during which unprofessional conduct is rife (Carstens, 2006:1; Makwabe & Govender, 2006:4; Rademeyer, 2006:5; Viljoen *et al.*, 2006:5; Deacon, 2012:1; Prinsloo & Beckmann, 2012:5-7; *cf*. 1.1.2). Additionally, when one considers the complaints received by SACE

(*cf*. 1.1.2; Graph 1.1), it is understandable that some of the participating learners and parents/caregivers saw educators as having a negative attitude towards education as a special job. The consulted literature is therefore in general supported by the responses.

Participants predominantly perceived educators to *deliver an important service* (SACE; SA, 2000d:item 2.2), with only 12.3% of the learners, 1.7% of the educators and 5.8% of the parents/caregivers who *strongly disagreed* or *disagreed* with the statement. According to the consulted literature, some South African educators are faced with unmotivated, ill-disciplined, disrespectful learners in their classroom on a daily basis (Maithufi, 1997:259; Bray, 2000a:282; Van Wyk, in Olivier & Venter, 2003:186; Olivier & Venter, 2003:186; Rademeyer, 2005b:20; Venter, 2005:1; Viljoen, 2006:4; Marais & Meier, 2010; *cf*. 1.1; 1.1.2; 2.2.1.2; 2.2.1.4). Learners who are not dedicated to expanding their development and learning (*cf*. SA, 1998:art. 4.7.4) would also not perceive education as an important service.

Items C3 and C4 referred to the dedication shown to their jobs by educators and whether educators appeared happy in their jobs respectively (SACE; SA, 2000d:item 2.2; *cf*. Addenda E1-3). Responses by learners to Item C3 were more negative than those of the other two participant groups. 39% of the learners did not perceive educators as *dedicated to their jobs*, while only 4.8% of the educators and 14.3% of the parents/caregivers shared that perception. Not only 33.6% of the learners, but also 36.4% of the educators and 23.3% of the parents/caregivers indicated that educators were unhappy in their jobs at their schools (*cf*. Addenda E1-3). Consulted literature on the working conditions of educators in South Africa and also across the world paints a picture of difficult working conditions, job stress and educator burnout (Van Wyk in Olivier & Venter, 2003:186; UNESCO, 2004; *cf*. 1.1.1; 1.1.2). There is a growing flight from the profession worldwide, as well as a reluctance to become educators, due to poor working conditions and a lack of respect and appreciation for educators (*cf*. UNESCO, 1966; UNESCO, 2004; Education International, 2004; *cf*. 1.1.1). Therefore the responses of the participants in this regard came as no surprise and support the consulted literature. Educators are unhappy with their situation, which may result in a lack of dedication in some of them.

6.4.2.3 Factor C3: Educator attitudes

Factor C3 referred to the attitude of educators at the school towards both learners and colleagues, especially concerning showing respect towards colleagues (1996:sec.10; SA, 2000d:item 6.1) and learners (1996:sec10 & 14; SA, 2000d:item 3.1**;** *cf*. Addenda

E1-3). The ANOVA for Factor C3 displayed a significant difference among the respective groups; while Tukey HSD indicated that in this instance the learner and the parent/caregiver groups did not differ significantly; and the responses of the educator group differed from the other two groups. The practical effect size of the differences was large, which implied a consistent difference between the viewpoints of participating learners and parents/caregivers and those of the participating educators.

The effect size of the differences is portrayed in Tables 6.35-6.36 below.

Table 6.35: ANOVA and Tukey HSD – Educator attitudes: learners and educators

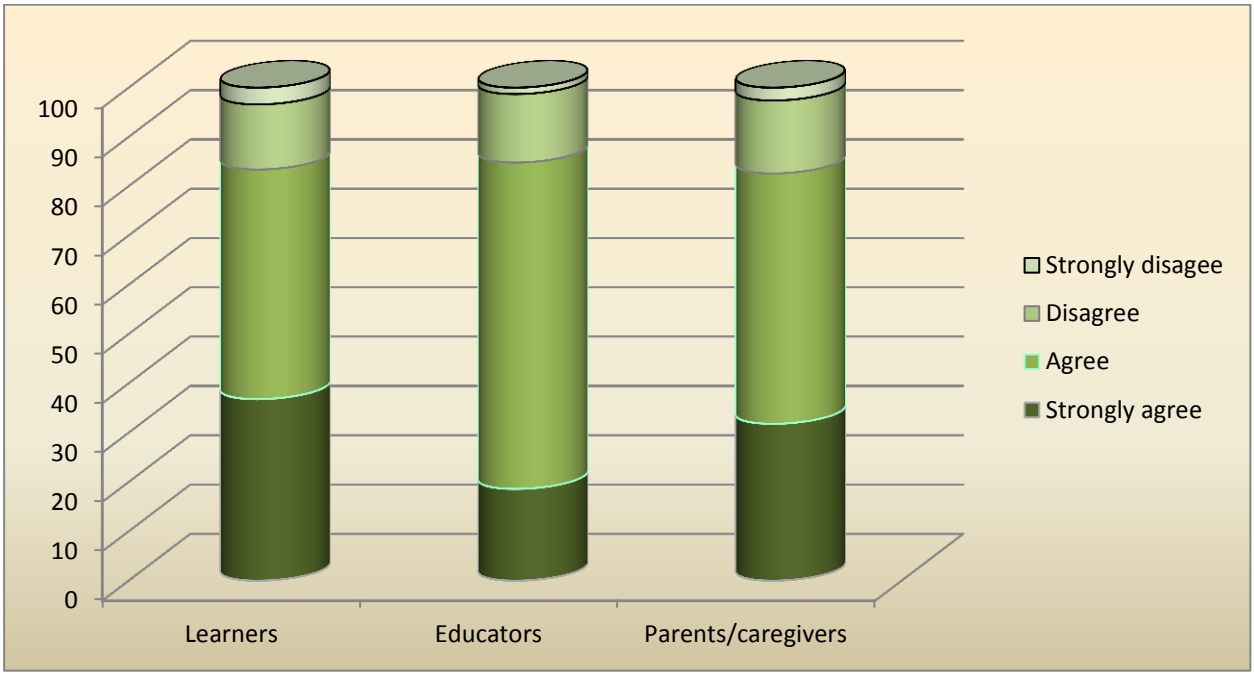
ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.88	0.03	0.000	11.0	Large
	Educators	231	2.21	0.03			

Table 6.36: ANOVA and Tukey HSD – Educator attitudes: educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	2.21	0.03	0.000	10.0	Large
	Parents	425	1.91	0.03			

Learners and parents perceived educators at their school to respect one another (SACE; SA, 2000d:item 6.1), as well as the learners, by keeping sensitive information shared by learners secret (SACE; SA, 2000d:item 3.1). Educators had a bleaker view as illustrated in Figures 6.3 and 6.4 below.

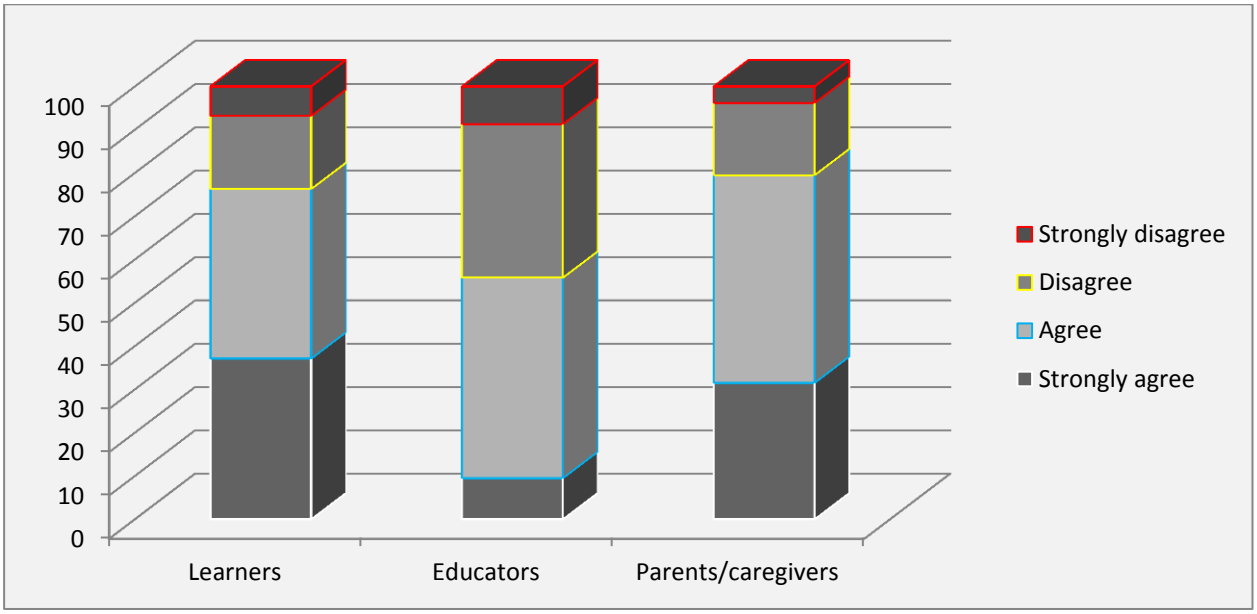
Figure 6.3: Comparison of responses to Item C5 – learners, educators and parents/caregivers



From Figure 6.3, it can be deduced that learners (36.8%) and their parents/caregivers (31.8%) tended to *strongly agree* to a greater extent with the statement that *educators respect each other*, than the educators (18.6%). The majority of the participating educators (66.2%) agreed with the statement, in agreement with 46.6% of the learners and 50.8% of the parents/caregivers. The main discrepancy in these responses lay in the afore-mentioned differences. The participants *disagreeing* with the statement, 13.2% of learners, 13.9% of educators and 14.8% of parents/caregivers, as well as those *strongly disagreeing* with the statement, 3.4% of learners, 1.3% of educators and 2.6% of parents/caregivers show very little difference in perceptions of the three participant groups. The SACE Code of Ethics calls for educators to uphold human rights embodied in the Constitution (SA, 2000d:item 2.3), as well as to respect and acknowledge the responsibilities and status of colleagues (SA, 2000d:item 6.1 & 6.2). Participating learners and their parents/caregivers could only base their responses on interactions among educators when they were present. Therefore they may have perceived respect among educators as the norm. Educators, on the other hand, could base their responses on the interactions among educators when learners and parents/caregivers were present, as well as when only educators were interacting. The differences in the responses may be explained by the afore-mentioned, as strife among colleagues may not be evident to learners and their parents/caregivers, but to the rest of

the educators at a school. Thus the responses of the learners and parents/caregivers support the literature, while the negative responses of the educators did not support the literature.

Figure 6.4: Comparison of responses to Item C14 – learners, educators and parents/caregivers



The responses of the participants to Item C14 (SACE; SA, 2000d:item 3.1 & 3.2; *cf*. Addenda E1-3), *At our school educators keep learners' sensitive information private*, indicated that more positive perceptions were held by learners and parents/caregivers than by educators. In this instance, 37.1% of the learners and 31.5% of the parents/caregivers *strongly agreed* with the statements, while only 9.5% of the educators made the same selection. As in the case of Item C5 (SACE; SA, 2000d:item 6.1), educators (46.3%) were more inclined to *agree* with the statement, while 37.1% of the learners and 31.5% of the parents/caregivers *agreed* with the statement. Whereas 35.5% of educators *disagreed* with the statement, only 16.9% of the learners and 16.7% of the parents/caregivers *disagreed*. Even when it comes to *strongly disagreeing* with the statements, educators (8.7%) once again had the highest response rate (*cf*. Figure 6.4). As before, the difference in the responses of the respective participant groups could be ascribed to the difference in the viewpoints from which the response is made. Participating learners and their parents/caregivers responded from their personal experiences with educators, who either respected the learners' right to privacy (*cf*. 2.2.1.6) or not. Educators would know if the sensitive information was discussed with colleagues unnecessarily, showing disrespect for the learners' right to privacy (1996:sec.14; *cf*. 2.2.1.6).

The responses of the learners and the parents/caregivers support the consulted literature as they indicate that educators are perceived by them to act as required by the SA Constitution (1996:sec.14), the SACE Code of Ethics (SA, 2000d; *cf*. 2.5), the Norms and Standards and the PAM document (*cf*. 2.3.4.4), while the higher percentage of negative responses of the participating educators do not support the literature.

The responses received from the three subsets of participants showed a clear discrepancy between the views held by learners and parents/caregivers, and those held by educators. The actions of educators during strikes over the last decade displayed in the media (Carsten, 2006:21; Makwabe & Govender, 2006:4; Burton, 2008; Prinsloo & Beckmann, 2012:7; *cf*. 1.12.), as well as the unprofessional conduct of some educators (SACE, 2008-2012; Graph 1.1; *cf*. 1.1.2) could explain why **l**earners displayed a more negative view concerning (1) the way in which educators acted towards learners (*cf*. Factor C1) and (2) the way educators felt about their jobs (*cf*. Factor C2). As pointed out in the literature, some educators, on the other hand, have to deal with disrespectful, ill-disciplined and unmotivated learners and may therefore experience their working conditions as stressful and unpleasant (Olivier & Venter, 2003:186; Department of Education, 2005:60; Viljoen, 2006:4; *cf*. 1.1; 1.1.2; 2.2.1.3).

Thus the responses support different facets expounded upon in the consulted literature. In both these instances, educators had the most positive outlook. However, concerning respect shown towards colleagues and learners (*cf*. Factor C3), educators perceived a lack of respect displayed among colleagues and learners. The latter view was not shared by learners and parents/caregivers, who held a slightly more positive view. The experiences of educators regarding the attitudes displayed by their colleagues when learners and parents/caregivers were not present could provide insight into the more negative view harboured by this participant group.

6.4.3 Section D – Actions of educators

Only one significant factor emerged from the factor analysis done on the items in section D of the learner responses. The factor will be explained in Table 6.37 below, after which a detailed discussion regarding the factor will follow.

Table 6.37: Factors identified from the responses of the participants – Section D

Factor	Items	Learners	Educators	Parents/Caregivers
	At our school...			
FACTOR D1 Positive educator conduct	D1	...teachers dress carefully.	...educators dress appropriately.	...teachers dress suitably.
	D2	...teachers listen to the ideas of learners.	...educators consider the views of learners.	...teachers consider the views of learners.
	D3	...teachers are fair.	...educators act fairly in all aspects.	...teachers are fair.
	D4	...teachers listen when learners speak to them.	...educators listen when children talk to them.	...teachers listen when learners speak to them.
	D5	...teachers try to get better in how they teach us.	...educators try to improve on the way we teach.	...teachers try to improve on the way they teach.
	D6	...teachers are careful what they say when they scold us.	...educators are careful what they say when they scold learners.	...teachers are careful what they say when they scold learners.
	D7	...teachers stick to the school rules.	...educators help to implement the school rules.	...teachers follow the school rules.
	D8	...teachers give advice to learners with problems.	...educators offer advice to learners with problems.	...teachers offer advice to learners with problems.
	D9	...teachers have the trust of the learners.	...act in a trusting manner towards learners.	...teachers have the trust of the learners.
	D10	... teachers tell the parents/caregivers of our well-being	...educators keep parents/caregivers informed on the well-being of the learners.	...teachers keep me informed of my child/children's welfare.
	D11	...teachers still hit learners as punishment.	...educators still hit learners as punishment.	...teachers still hit learners as punishment.

Section D of the respective questionnaires referred to the actions of educators at school and the items were derived from relevant documents regulating educator conduct: the SACE Code of Professional Ethics, the Code of Conduct Guidelines, the Norms and Standards (*cf*. 2.2; 2.3.1.1; 2.5.1), and common law principles (*cf*. 2.4; Addenda E1-3). The Cronbach Alpha coefficient (0.85) and inter-item correlation (0.34) of Factor D1 fell within the acceptable ranges as postulated by Clark and Watson (1995:316) and Simon (2008; *cf*. 4.2.3.2). The ANOVA indicated a significant difference among the respective subsets. Furthermore, the Tukey HSD displayed a significant difference in the means of the respective subsets, while the practical effects in each instance were large (*cf*. Table 6.38-6.40) pointing to consistent difference between the viewpoints of the three participant groups.

Table 6.38: ANOVA and Tukey HSD – Educator conduct: learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	2.11	0.02	0.000	16.0	Large
	Educators	231	1.63	0.03			

Table 6.39: ANOVA and Tukey HSD – Educator conduct: educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	1.63	0.03	0.000	12.67	Large
	Parents	425	2.01	0.03			

Table 6.40: ANOVA and Tukey HSD – Positive educator conduct: learners and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.97	0.02	0.000	6.0	Large
	Educators	231	1.79	0.03			

The responses of all three participant groups indicated that educators at the respective schools *almost always* or *often* displayed the actions listed in the respective items (*cf*. Addenda E1-3; H & I). However, it was evident that the educators had a marked more positive response, with a 89.4% average when the *almost always* and *often* responses for the eleven items were added together, as opposed to a 54.16% average for the learners responses and a 69.6% average for the parent/caregiver responses. Participating learners were clearly the most negative about the conduct of educators. The negative responses of not only the participating learners, but also of their parents/caregivers reflect the disregard for educators by some learners (Rademeyer, 2005b:20) as evident in the literature where learners, often supported by their parents/caregivers, consider themselves equal to educators in all regards (Venter, 2005:1; *cf*. 1.1.1; 1.1.2; 2.2).

Three items are especially noteworthy and worth special attention, namely Items D3, D6 and D9 (*cf*. Addenda E1-3). Item D3 (SACE; SA, 2000d:item 3.10; *cf*. 2.4.3) referred to fairness of educators at the participants' school. More than half of the learners (50.8%) indicated that educators were either *sometimes* (40.6%) or *almost never* (10.2%) fair (*cf*. Addenda F & G), while 42.3% of the parents/caregivers (*cf*. Addenda F & G) responded in the same manner. Participating educators, however, had a completely different view, as 35.1% indicated that educators at their schools were *almost always* fair, and 51.1% indicated that the educators at their school were *often* fair (*cf*. Addenda F & G). Educators have a legal obligation to treat learners equally (1996:sec.9; *cf*. 2.2.1.3) and to ensure that they act appropriately towards learners in such a way as to elicit respect from learners (SA, 2000d:art.3.10). Educators must also realise that just as they are entitled to fairness and reasonableness in a disciplinary hearing, so learners are entitled to the same consideration when disciplinary measures are instituted against them (Roos et al., 2009a:111; *cf*. 2.4.3). Whereas the educator responses support the literature, the responses of the learners and the parents/caregivers do not support the responses.

According to the consulted literature, some learners and their parents/caregivers are not always clear on the difference between the concepts differentiation and discrimination (Venter, 2005:1; *cf*. 2.2.1.3), especially in the South African context where some learners, often with parental support, consider themselves equal to educators in all regards. Some of the participants may not have a good understanding of differentiation and therefore consider actions as unfair when they are purely differentiation, which

provide motivation for part of the responses. However, the fact that some of the participating educators (13.9%) and a relatively high percentage of parents/caregivers (42.3%) acknowledge unfairness, leaves no doubt that in some situations educators act unfairly. The data thus do not support the literature.

Another item to which the learners and parents/caregivers responded differently was Item D6 in which the participants had to respond to the statement, *At our school educators are careful what they say when they scold learners* (SACE; SA, 2000d:item 3.10; *cf*. Addenda E1-3). The majority of the learners responded negatively to the statement (53.2%) with 35.2% of them indicating that the statement held true *sometimes*, and 18.0% who responded that this *almost never* happened. Educators perceived matters differently. While 32% of them indicated that the statement held true *almost always*, 45% of them indicated that educators *often* think what they say when infuriated. Only 1 educator responded with *almost never*. Parents/caregivers agreed with learners. Whereas 53.2% of the learners responded negatively, 48.3% of the participating parents/caregivers responded similarly. In their responses, 35.8% of the parents/caregivers indicated that the statement only held true *sometimes*, while 12.5% indicated that the statement *almost never* held true (*cf*. Addenda F & G). The responses would mean that the participating learners and parents/caregivers did not perceive educators as using appropriate language in order to elicit respect (SA, 2000d:item 3.10), while disregarding the learners' rights to human dignity (1996:sec.10; cf. 2.2.1.4) when they were disciplining learners. Since the consulted literature (SAHRC, 2008:10; Marais & Meier, 2010; *cf*. 2.2.1.4) points towards learners and parents verbally abusing educators and vice versa (SACE 2008-2012; Graph 1.1; *cf*. 1.1.2), the responses of the participants support the literature.

The third statement, Item D9 (*cf*. 2.4.3; Addenda E1-3), referred to the trust educators evoked in learners. In their responses only 54% of the learners indicated that they trusted educators *almost always* or *often*, while 93.5% of educators responded similarly. Parents/caregivers responded similarly to learners, with 58.8% who reacted positively (*Almost always* (26.6%), *Often* 32.2%) to the statement (*cf*. Addenda F & G). The consulted literature does not address this aspect and, Therefore it is seen to be a new contribution to the study.

As in Section C, educators responded more positively than learners and parents/caregivers did. The difference in viewpoints may be attributed on the one hand to the times we live in, where educators have to struggle both for recognition of their

expertise in educational matters (Vongalis, 2004:488) and for recognition that they are also bearers of human rights. On the other hand, South African educators have been displayed negatively in the media over the last decade due to the unprofessional conduct of some educators, in the classroom as well as while striking (Carsten, 2006:21; Viljoen *et al.*, 2006:5; SACE 2008-2012; *cf*. 1.1.2; Graph 1.1). Both these aspects may have led to a situation where learners and their parents could have developed a negative perception of educators. Thus the responses support the consulted literature.

6.4.4 Section E – Reflections on educator demeanour

Only one significant factor emerged from the factor analysis done on the items in Section E of the learner and educator/parent participant responses. The factor will be explained in Table 6.40 below, after which a detailed discussion regarding the factor will follow.

Table 6.41: Factor identified from the responses of the participants – Section E

Factor	Items	Learners	Educators	Parents/Caregivers
	I think the teachers at *my* school...			
FACTOR E1 Actual educator demeanour at the school	E1	...do not only listen to the opinions of adults.	...do not only consider and respect the opinions of adults.	...do not only consider and respect the opinions of adults.
	E2	...talk well with all of us learners.	...communicate well with all kinds of learners.	...communicate well with all kinds of learners.
	E3	...are well-prepared for all lessons.	...are well prepared for every lesson.	...are well prepared for every lesson.
	E4	...respect our human rights.	...respect learners' human rights.	...respect learners' human rights.
	E5	...make sure our classrooms are organised.	...make sure the classrooms are organised.	...make sure the classrooms are organised.
	E6	...use good language in our classes.	...use correct language in class.	...use correct language in class.
	E7	...teach us by using different plans.	...teach by using different plans.	...teach by using different plans.
	E8	...bring new information to our classes.	...bring new information to class.	...bring new information to class.
	E9	...allow us to correct our teachers.	...accept it when learners correct them.	...accept it when learners correct them.
	E10	...respect our parents/caregivers.	...respect the parents/caregivers.	...respect us as parents/caregivers.
	E11	...know our different customs/beliefs.	...know the different customs/beliefs of the learners.	...know the different customs/beliefs of the learners.
	E12	...make us feel safe.	...make learners feel safe.	...make my child/children feel safe.

The questionnaire statements used in Section E mirrored the statements that were made in Section B (*cf*. 6.4.1), with the main difference in the perspective from which the responses had to be made. Section B referred to expectations regarding the demeanour of educators in general, while Section E required reflection on how educators at the participant's school were viewed concerning expected demeanour (*cf*. 2.2; 2.3.4.4; 2.4; 2.5; Addenda E1-3). Whereas two factors emerged in Section B, the responses of the participants in Section E all resorted under a single factor. The Cronbach Alpha coefficient of 0.89 and the inter-item correlation of 0.41 fell within the acceptable ranges as identified by Clark and Watson (1995:316) and Simon (2008; *cf*. 4.2.3.2).

The ANOVA displayed a significant difference among the three subsets. The Tukey HSD showed significant differences in the means of the learner and educator subsets, but not those of the learner and parent/caregiver subset, with a large practical effect (*cf*. Tables 6.42 & 6.43). The large effect size implied a consistent difference between the viewpoints of participating learners and parents/caregivers and those of the participating educators.

Table 6.42: ANOVA and Tukey HSD – Educator demeanour: learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.97	0.02	0.000	6.0	Large
	Educators	231	1.79	0.03			

Table 6.43: ANOVA and Tukey HSD – Positive educator demeanour: educators and parents

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	1.79	0.03	0.015	3.67	Large
	Parents	425	1.90	0.02			

The responses to Factors B1 and B2 in Section B (*cf*. 6.4.1.1 & 6.4.1.2) indicated lower expectations held by learners and parents/caregivers of educators in general, while educators seemed to recognise the conduct expected of them. The responses received from the respective participant groups to Section E illustrated marked differences between perceptions of learners and their parents/caregivers, and educators.

Educators perceived their own demeanour and the demeanour of their colleagues more positive than learners and parents/caregivers did. Responses from educators predominantly displayed a positive view concerning their demeanour, with an average of 93.2% of *strongly agree* and *agree* responses for the 12 items, as opposed to 76.7% for the participating learners and 82.1% for the parents/caregivers. The responses to the items in Section B (*cf*. 6.4.1), Section C (*cf.* 6.4.2) and Section D that corresponded with those in Section E will be discussed below.

The responses to Item B1(*cf*. Addenda E1-3) showed awareness among educators that the opinions of learners should be valued (SACE; SA, 2000d:item 3.14), and not only those of adults, as the majority of the educator participants either *strongly disagreed* or dis*agreed* with the statement that only the opinion of adults is important (*cf*. 6.4.1.2). Learner and parent/caregiver participants did not place a high value on the opinions of learners to be heard. However, in Item C7 (SACE; SA, 2000d:item 3.14; *cf*. Addenda E1-3) the responses of the participating learners and their parents/caregivers indicated that 34.4% of the learners and 25.4% of the parents/caregivers did not experience that educators paid attention to the opinions of learners, with 7.4% of educators responding similarly (*cf*. 6.4.2.1). The above-mentioned was mirrored in the responses received to Item E1. Item E1 stated *I think that the educators at my school do not only consider and respect the opinion of adults* (SACE; SA, 2000d:item 3.14; *cf*. Addenda E1-3). In response to this item, 38.2% of the learners and 33.6% of the parents/caregivers *disagreed* or *strongly disagreed* with the statement, while only 22.5% of educators responded similarly (*cf*. Addenda F & G). Only 7.4% of the participating educators disagreed that the educators at their school characteristically considered the opinions of learners, in response to Item C7 (*cf*. 6.4.2). This number increased with 15.1% to 22.5 % in response to Item E1. The increase corroborated the point made by the researcher concerning Item C7 (*cf*. 6.4.2.1) that the problem may not only lie with learners abusing their right to freedom of expression (1996:sec.16; *cf*. 2.2.1.7) as seen in the consulted literature, but that some educators could perhaps disregard the learners as partners in education (SACE, SA, 2000d:item 3.14) and their right to freedom of expression (1996:sec.16; *cf*. 2.2.1.7).

Item E2 referred to the ability of educators to communicate well with all learners (*cf*. 2.3.4.4; Addenda E1-3). The responses of all three participant groups placed a high value on this ability within educators and the responses of the educator participants (77.5%) indicated that participating educators perceived themselves and their

colleagues as able to *communicate well with all kinds of learners* as learning mediator (*cf*. 2.3.4.4; 6.4.1). The majority of the learners (64.3%) and parents/caregivers (76.2%) agreed with the educator participants, but there were still a large percentage of participants who did not agree (*cf*. Addenda F & G). It is important for all education role players to realise that learners are dependent on education in order to grow into responsible adults (Rossouw, 2003:418) and that is why educators must be devoted to educating and teaching; learners must be dedicated to learning (SA, 1998:art.4.7.4). The predominantly positive response to Item E2 was indicative of successful teaching and learning in the majority of the participating schools.

Item B4 referred to the need for educators to *respect learners' human rights* (SACE; SA, 2000d:item 3.1; *cf*. 2.2) and the majority of all three participant groups valued respect for human rights. Although the majority of the participants in the three groups also experienced a *respect for learners' human rights* by the educators at their respective schools, it was disconcerting that 19.1% of the learners and 18.6% of the parents/caregivers either *disagreed* or *strongly disagreed* with the statement. Only 3.9% of the educators *disagreed* with the statement (*cf*. 6.4.2.1; Addenda F & G). The consulted literature provided ample evidence of disrespect for the human rights of educators (Rossouw, 2003:413; Education International, 2004; Burton, 2008; *cf*. 1.1.1; 1.1.2; 2.2), but limited evidence of educators disrespecting the human rights of learners (SACE, 2008-2012; *cf*. 1.1.2; Graph 1.1). The responses of some of the participants, especially learners and their parents/caregivers support the limited evidence in the consulted literature of disrespect for learner rights by some educators. The discrepancy between the negative perceptions of learners and parents/caregivers and educators makes one consider if educators are unaware of disrespect for human rights of some learners or if some learners and their parents/caregivers have a misconception of what certain human rights entail (*cf*. 2.2).

In section B, Item B7 referred to educators' use of *different plans* while teaching (*cf*. 2.3.4.4; Addenda E1-3). The responses in Section B indicated that all participants considered it important, although a small percentage of learners and parents/caregivers did not agree with the statement (*cf*. 6.4.1.1). The responses to Item E7 (*cf*. 2.3.4.4; Addenda E1-3) showed more difference among the three groups. Educators (94.3%) either *strongly agreed* or *agreed* that different plans were used while teaching at their respective schools. Only 79.8% of learners and 88.9% of parents/caregivers responded similarly to the statement (Addenda F & G). There was a 14.5% difference between the

positive responses received from participating educators and those of participating learners, which caused concern. One of the seven roles of an educator as found in the Norms and Standards is to act as a learning mediator (*cf*. 2.3.4.4). This would imply that the educator needs to teach by using a variety of methods, among others. When learners either fail to identify different methods or different methods were not used, it could point to incompetence of some participating educators in this regard. The responses received from the learner participants do not support the literature; while the responses received from the educators and parents do support the literature.

The responses of the participating learners, educators and parents/caregivers to Item B9 (SACE; SA, 2000d:item 3.14; *cf*. Addenda E1-3) indicated that they were of the opinion that learners should be allowed to correct educators (*cf*. 6.4.1.2). However, the responses to Item E9 indicated that the experiences of learners and their parents may not correlate with the expectations held in this regard. Only 66.4% of the learners and 69.9% of the parents/caregivers, as opposed to 88.7% of the educators, *strongly agreed* or *agreed* with the statement that *educators accept it when learners correct them* at their schools. These responses, as in the case of Item E1, pointed to a reluctance by some of the participating educators to recognise learners as partners in education (SA, 2000d:item. 3.14; *cf*. 6.4.1.2).

Item B11 referred to the need for educators to *know the different customs/beliefs of the learners* (SACE; SA, 2000d:item 3.1, 3.2 & 3.3; *cf*. Addenda E1-3). The participants of all three groups tended to agree greatly, although approximately 10% of learners and 8% of parents/caregivers disagreed. Item E11 required of participants to indicate if they perceived the educators at their respective schools to display the required knowledge. The majority of educators (92.6%) either *strongly agreed* or *agreed* with the statement 6.9% *disagreed* and 0.4% *strongly disagreed* with the statement. The responses of learners and parents/caregivers differed from the perceptions of educators, since 23.8% of learners and 21% of parents/caregivers either *disagreed* or *strongly disagreed* with the statement (*cf*. 6.4.1.1; Addenda F & G). The consulted literature emphasises the need for a respect of human rights by all role players, and provides evidence of infringement of human rights by not only learners, but also by educators (Venter, 2005:1; Rademeyer, 2005b:20; Viljoen, 2006; SACE, 2008-2012; *cf*. 1.1.2; 2.2). The negative responses of the participating learners and their parents/caregivers add further support to the literature. Furthermore, the negative responses seen in conjunction with the small difference between the two groups (2.8%) indicated that some educators were

not as knowledgeable about the customs/beliefs of their learners as they thought. A lack of knowledge of the different customs/beliefs of learners may lead to an infringement of the learner's right to freedom of religion, belief and opinion (1996:sec.15; *cf*. 2.2.1.11)**.** Therefore educators should ensure that they have at least a basic knowledge of the customs/beliefs of learners in their classroom. The participants' responses therefore do not support the literature.

Although Item B6 was not discussed previously, the differences in the responses to Item E6 (SACE; SA, 2000d:item 3.10) by the respective participant groups necessitate mention to be made of the item. Educators (88.7%) perceived that the educators at their schools *use correct language in class*, while the perception was shared by only 66.4% of learners and 69.9% of parents/caregivers (*cf*. Addenda F & G). The responses were similar to the response to Item D6 (*cf*. 6.4.3), which linked closely to the statement in Item E6. In both instances, some of the participating learners and their parents/caregivers, perceived improper language being used by educators in classrooms (Item E6) and when learners were scolded (Item D6). The responses support the reports in the consulted literature of verbal abuse of learners by educators (SACE, 2008-2012; Graph 1.1; *cf*. 1.1.2). Despite understanding that educators sometimes work under considerable strain, the use of bad language can never be condoned or excused.

The responses to the items in Section C indicated that some learners and their parents/caregivers did not necessarily see their educators as displaying the characteristics required by law. The afore-mentioned, in conjunction with **the** experiences of learners and their parents/caregivers as reflected in the responses to items in Factor E1, may have influenced the expectations learners and their parents/caregivers had concerning how educators should act, explaining the responses received in terms of Factor B1 and B2 (*cf*. 6.4.1.2 & 6.4.1.2).

6.4.5 Section F – Educator conduct vs legal requirements

Four significant factors emerged from the factor analyses done on the items in section F of the participant responses (*cf*. 6.46).

Table 6.44: Explained variance by four-factor model

	Original Eigen values		
Factor	**Total**	**% variance**	**Cumulative %**
1	5.089	24.23	24.23
2	2.825	13.45	37.69
3	2.799	13.33	52.01
4	1.086	5.17	56.18

The table above clearly indicates that the four factors declare 56.18% of the variance.

Table 6.45: Component matrix

	Component			
	1	2	3	4
F1	.74			
F2	.66			
F3	.67			
F4	.73			
F5	.68			
F6	.68			
F7	.66			
F8	.66			
F9	.56			
F10	.48			
F11		.65		
F12		.63		
F13		.76		
F14		.75		
F15			.50	

	Component			
	1	2	3	4
F16			.50	
F17			.57	
F18			.74	
F19			.71	
F20	.56			
F21				.86

The factor will be explained in Table 6.46, after which a detailed discussion regarding the factors will follow.

Table 6.46: Factors identified from the responses of the participants

Factor	Items	Learners	Educators	Parents/Caregivers
	My teachers/The teachers at our school know the Constitution because ...			
FACTOR F1 Respect for human rights	F1	...they do what is best for us.	...we do what is best for learners.	...they are doing what is best for their learners.
	F2	...they teach us as well as they can.	...we educate learners as well as we can.	...they teach the learners as well as they can.
	F3	...they treat us the same.	...we treat learners equally.	...they treat learners equally.
	F4	...they have an atmosphere in which we must respect one another.	...we create an atmosphere in which learners are required to respect one another.	...they create an atmosphere in which the learners must respect one another.
	F5	...they listen to the different sides of a story before deciding.	...we listen to the different types of a story before making a decision.	...they listen to the different sides of a story before making a decision.
	F6	...they help make our school safe.	...we help to make our school a safe place.	...they help to make the school a safe place.
	F7	...they teach us to respect different religions/beliefs.	...we teach my child/children to respect different religions/beliefs.	...they teach my child/children to respect different religions/beliefs.
	F8	...make sure we know that our rights go with tasks.	...we make sure learners understand that rights bring responsibilities.	...make sure my child/children understand that rights bring responsibilities.
	F9	...make sure that we know our rights may be limited.	...we make learners know that rights may be limited.	...make sure that learners know their rights may be limited.
	F10	...they make us part of making school rules.	...learners are part of designing school rules.	...they make learners part of drawing up school rules.
	F20	...they protect us from bullies.	...we protect learners from bullies.	...they protect learners from bullies.

Factor	Items	Learners	Educators	Parents/Caregivers
	My teachers/ Teachers at our school know the relevant education documents because ...			
FACTOR F2 Disciplinary procedures	F11	...they make sure that my parents/caregivers know the rules.	...we ensure that parents/caregivers know the relevant rules.	...they make sure that we know the relevant rules.
	F12	...they make sure that we know the relevant rules.	...we ensure that learners know the relevant rules.	...they make sure that the learners know the relevant rules.
	F13	...they tell us about the possible punishment for bad behaviour.	...we make learners aware of the possible punishment for transgressions.	...they tell our learners about the possible punishment for negative behaviour.
	F14	... they tell our parents/caregivers about possible punishment for bad behaviour.	...we make parent/caregivers aware of the possible punishment for transgressions.	...they tell us about possible punishment for negative behaviour.
	My teachers/The teachers at our school know the Constitution because ...			
FACTOR F3 Learners' safety	F15	...they do playground duty.	...we do playground duty.	...they do playground duty.
	F16	...they listen when we tell them of learners who have dangerous/illegal things.	...we pay attention when learners tell them about others who have dangerous /illegal items.	...they pay attention when learners tell them about others who have dangerous /illegal items.
	F17	...on school trips they have our information.	...on school trips we are informed about learners.	...on school trips the teachers are informed about my child/children.
	F18	...they make sure our school buses are safe.	...we make sure the school vehicles are safe.	...they make sure school vehicles are safe.
	F19	...they make sure we behave on buses.	...we make sure learners are well-behaved on a bus.	...they make sure learners behave on buses.

Factor	Items	Learners	Educators	Parents/Caregivers
	My teachers/ Teachers at our school know the relevant education documents because ...			
FACTOR F4 Authority	F21	...they allow other learners to disturb classes.	...we allow learners to disrupt the class.	...they let other learners disrupt the classes.

Section F required of the participants to measure the conduct of the educators at their schools against the requirement stipulated in the SA Constitution (*cf*. 2.2), the SA Schools Act (*cf*. 2.3.1.1) and the Safety Regulations (*cf*. 2.3.1.1). The Cronbach Alpha coefficients and the inter-item correlations of Factors F1, F2 and F3 are shown in Table 6.47. No calculations could be done for Factor F4 as it consisted of only one item.

Table 6.47: Cronbach Alpha and inter-item correlations – Factors F1 – F3

SECTION C FACTORS	CRONBACH ALPHA	INTER-ITEM CORRELATION
Factor F1	0.90	0.44
Factor F2	0.78	0.46
Factor F3	0.75	0.38
Factor F4	-	-

The Cronbach Alpha coefficients and the inter-item correlations of the factors of section F fell within the acceptable ranges as postulated by Clark and Watson (1995:316) and Simon (2008; *cf*. 4.2.3.2).

6.4.5.1 Factor F1: Respect for human rights

Factor F1 portrayed the extent to which the human rights of learners were respected by educators at the participants' schools (*cf*. 2.2). Tables 6.48 to 6.50 display significant differences among the respective subsets as indicated by the ANOVA, while the Tukey HSD indicated significant differences among the means of the three subsets and the practical effect was large in each instance.

The effect size of the differences is portrayed in Tables 6.47-6.49 below.

Table 6.48: ANOVA and Tukey HSD – Respect for learner's human rights – learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.95	0.02	0.000	15.33	Large
	Educators	231	1.49	0.03			

Table 6.49: NOVA and Tukey HSD – Respect for learner's human rights – educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	1.49	0.03	0.000	11.00	Large
	Parents	425	1.82	0.03			

Table 6.50: ANOVA and Tukey HSD – Respect for learner's human rights – learners and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.95	0.02	0.001	4.33	Large
	Parents	425	1.82	0.03			

The respective Cohen's D values indicated that the practical effect of the difference between the learner-educator groups, the educator-parent groups and the learner-parent/caregiver groups is large, which implied a consistent difference between the viewpoints of participating learners and those of the educators and parents/caregivers.

The pattern emerging in the majority of other factors was once again evident. Learners reacted less positively, while their parents/caregivers were slightly more positive in their viewpoint, and the majority of educators, on the other hand, indicated that educators at their school knew the Constitution (*cf*. Table 6.51). Although the majority of the participants perceived that educators at their school in general acted according to constitutional human rights, the researcher found apparent non-occurrence of such educator behaviour disconcerting. This concern is embedded in the marked differences between the perceptions of learners and their parents/caregivers, and those of educators. These differences were evident in each of the individual items within Factor F1, as displayed in Table 6.50 below (*cf*. Addenda F & G).

Table 6.51: Perceptions of constitutional values visible at schools

		Learners		Educators		Parents/ Caregivers	
Item	**Knowledge of the Constitution and other relevant documents** ***Our teachers...***	**Sometimes**	**Almost never**	**Sometimes**	**Almost never**	**Sometimes**	**Almost never**
F1	...do what is best for their learners.	19.3%	3.3%	2.6%	-	12.2%	0.7%
F2	...teach learners as well as they can.	13.8%	2.3%	-	-	10.6%	1.2%
F3	...treat learners equally.	35.7%	15.2%	4.8%	0.4%	24.2%	12%.2
F4	...create an atmosphere where learners must respect others	20.5%	5.5%	2.6%	0.4%	19.1%	2.4%
F5	...listen to different sides of a story.	27.3%	10.9%	4.8%	-	26.1%	7.1%
F6	...help make the school a safe place.	16.1%	4.8%	2.2%	-	11.3%	1.4%
F7	..teach respect for other religions/beliefs.	14.9%	6.5%	3.5%	0.9%	13.6%	2.4%
F8	...teach responsibilities as accompanying rights.	14.2%	3.7%	3.5%	-	13.6%	2.4%
F9	...ensure that learners understand the possibility of limiting their rights.	18.9%	3.6%	8.7%	1.3%	18.1%	3.3%
F10	...make learners part of designing school rules.	16.8%	15.5%	27.7%	13.4%	21.9%	12.9%
F20	...protect learners from bullies.	25.1%	17.8%	4.3%	1.3%	23.3%	8.7%

Table 6.51 painted a disturbing picture. While it became clear that educators did not doubt that they respected constitutional principles at their schools, a disconcerting number of learners and their parents did not agree. This researcher was particularly disturbed by the responses to Item F3 which was directed at the constitutional value of

equality (1996:sec.9; *cf*. 2.2.1.3; Addenda E1-3). Clearly more than 50% of the participating learners and approximately 36% of the parents/caregivers had experienced some negative incidences at their schools in this regard. These negative learner and parent/caregiver responses support the consulted literature (SACE, 2008-2012; Graph 1.1 *cf*. 1.1.2) which indicates negative aspects of educator actions.

Item F4 (1996:sec.10; *cf*. 2.2.1.4; Addenda E1-3) dealt with educators encouraging respect among learners. Too high a percentage of learners and parents/caregivers did not perceive this to be happening. The response to Item F5 (1996:sec.33; *cf*. 2.2.1.9; 2.4.3; Addenda E1-3) corresponded with the responses received in terms of Item D3 (*cf*. 6.4.3), as learners and parents/caregivers did not perceive educators to *listen to both sides of a story* or perhaps even to discriminate unfairly against certain learners.

Items F10 and F20 were directed at education-relevant documents. The responses to Item F10 (1996:sec.33; 84 of 1996:sec.8(1); *cf*. 2.2.1.3; 2.3.1.1; Addenda E1-3) indicated a disregard of schools for the stipulation in the SA Schools Act (1996) which requires of all role players to be consulted in the formulation of school rules. This item was one of the few items where educators (41.1%) had a bleaker view of the matter than learners (32.3%) and parents/caregivers (34.8%). Item F20 (1996:sec.24; *cf*. 2.2.1.10; 2.3.1.1; Addenda E1-3) referred to educators' provision of *protection against bullies*. Disturbingly, 42.9% of learners and 32% of parents/caregivers did not perceive that educators were able to provide such protection, while educators were mostly convinced that they did indeed protect learners (*cf*. Table 6.51; Addenda F & G). The legal requirement regarding the consultation of learners in the adoption of a Code of Conduct (SA, 1998:art.8.5) as well as the legal duty on educators to protect learners (1996:sec.24; 38 of 2005:sec.1; sec.18; SA, 2006; Joubert, 2009d:140 *cf*. 2.2.1.10; 2.3.1.1; 2.3.2.2) became evident from the consulted literature. The responses received provide proof that the importance of the afore-mentioned is negated by some educators at participating schools, thus not supporting the literature.

Learner responses to each of the items discussed above pointed at the infringement of learners' human rights to some degree and in some cases corroborated responses in other sections. Respect for other people relates to a respect for the human dignity of everyone (1996:sec.10; 84 of 1996:Preamble; *cf*. 2.2.1.4; 2.3.1.1). Items C18, D6 and F4 were related to human dignity as these items referred to showing respect. Negative responses to Item C18 can be broken down to 20.5% of the participating learners, 3.9% of the participating educators and 13.9% of the participating parents/caregivers (*cf*.

6.4.2.1; Addenda E1-3). In the case of Item D6, the negative responses break down into 33.9% of the participating learners, 22% of the participating educators and 48.3% of the participating parents/caregivers (*cf*. 6.4.3; Addenda E1-3). When the above is taken into consideration with the responses of Item F4, where 26% of the participating learners, 5.2% of the participating educators and 21.5% of the participating parents/caregivers responded negatively, the disregard for the human dignity of learners cannot only be attributed to a lack of knowledge regarding rights among learners and their parents/caregivers, but could also perhaps point to a certain disdain for the human rights of learners among some educators. The matter becomes more worrying when one considers responses to items referring to respect for learners and their human rights in general (*cf*. 6.4.2.1 Items C6 & 10; 6.4.3 Item E4).

6.4.5.2 Factor F2: Disciplinary procedures

Factor F2 related to the communication of school/class rules and the resulting punishment to both learners and their parents/caregivers by educators (*cf*. 2.3.1.1). The ANOVA for Factor F2 indicated significant differences among the subsets, and the Tukey HSD showed that the means of the three subsets differ significantly, while the respective practical effect sizes were large (*cf*. Tables 6.52 – 6.54).

Table 6.52: ANOVA and Tukey HSD – Disciplinary procedures – learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.82	0.03	0.000	8.00	Large
	Educators	231	1.50	0.04			

Table 6.53: ANOVA and Tukey HSD – Disciplinary procedures – educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	1.50	0.04	0.004	4.50	Large
	Parents	425	1.68	0.03			

Table 6.54: ANOVA and Tukey HSD – Disciplinary procedures – learners and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.82	0.03	0.001	4.67	Large
	Parents	425	1.68	0.03			

The respective Cohen's D values indicated that the practical effect of the difference between the learner-educator groups, educator-parent/caregiver groups and the learner-parent/caregiver groups are large which implied a consistent difference between the viewpoints of participating learners and those of the educators and parents/caregivers.

The items referred to ensuring that learners and parents/caregivers *know the relevant rules* (Items F11 & F12; *cf*. Addenda E1-3), as well as *the possible punishment for negative behaviour* (*cf*. Items F13 & F14; *cf*. Addenda E1-3). The majority of the three participant groups perceived sufficient communication regarding the afore-mentioned. As in other instances, the percentage of learners and their parents/caregivers who did not agree with the afore-mentioned surpassed the percentage of educators with the same view. While only 15.2% of the participating learners indicated *sometimes* or *almost never* concerning educators ensuring that they knew the rules (*cf*. Item F12 Addenda E1-3), 26.2% of them either indicated *sometimes* or *almost never* when it came to their parents/caregivers being informed about school rules (*cf*. Item F11; Addenda E1-3, H & I). While 12.9% of the parents/caregivers indicated either *sometime* or *almost never* concerning Item F12 (*cf*. Addenda E1-3), 14.9% of them were not convinced that they were sufficiently informed about relevant rules (*cf*. Item F11; Addenda E1-3). Very few educators (3.9%) indicated that they did not think learners were sufficiently informed, while 7% of them indicated they believed parents were not sufficiently informed of the relevant rules (*cf*. Addenda E1-3, H & I).

When it came to being informed about the possible punishment for negative behaviour, all three participant groups were less positive. Item F13 required of participants to indicate if *learners are made aware of the possible punishment for negative behaviour*, while Item F14 referred to parents/caregivers being informed of the *possible punishment for negative behaviour* (*cf*. Addenda E1-3). In response to Item F13, 21.7% of the

learners, 10% of the educators and 22.1% of the parents/caregivers either chose *sometimes* or *almost never*, while 29.8% of learners, 13.9% of educators and 19.3% of parents/caregivers either chose *sometimes* or *almost never* concerning Item F14 (*cf*. Addenda F & G).

Both the SA Schools Act (84 of 1996:sec.8) and the Code of Conduct Guidelines (SA, 1998:art.1.5 & 5.1(b)) stipulate that learners, educators and parents/caregivers must be involved in the formulation and adoption of a code of conduct (Dlamini, 1996:71; *cf*. 2.3.1.1). Responses to Item F10 (*cf*. Table 6.50; Addenda E1-3, H & I) indicated that an unacceptable high percentage of the participating learners did not form part of the formulation of the Code of Conduct at their particular school. The responses to the items in Factor F3 could be a result of the lack of involvement of participating learners, and most probably their parents/caregivers, in the formulation of some of the participating schools' Codes of Conduct.

As in the case of Items F10 and F13, the consulted literature provides clear stipulations regarding informing learners and parents/caregivers about rules and possible punishment (*cf*. 2.3.1.1). The responses, once again, point to a disregard of the requirements by some educators at some of the participating schools and do not support the literature.

6.4.5.3 Factor F3: Learners' safety

Factor F3 required of participants to indicate the extent to which educators at the respective schools ensured the safety of the learners in their care (*cf*. 2.3.1.1). A significant difference among the responses of the three subsets was evident according to the ANOVA. The Tukey HSD showed a significant difference among the means of the three subsets, with a large practical effect size respectively (*cf*. Tables 6.55-6.57).

Table 6.55: ANOVA and Tukey HSD – Learners' safety – learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.78	0.03	0.000	14.00	Large
	Educators	231	1.36	0.03			

Table 6.56: ANOVA and Tukey HSD – Learners' safety – educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	1.36	0.03	0.000	9.00	Large
	Parents	425	1.63	0.03			

Table 6.57: ANOVA and Tukey HSD – Learners' safety – learners and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	1.78	0.03	0.000	5.00	Large
	Parents	425	1.63	0.03			

The respective Cohen's D values indicated that the practical effect of the difference between the learner-educator groups, educator-parents groups and the learner-parents groups are large, which implied a consistent difference between the viewpoints of participating learners and those of the educators and parents/caregivers.

Most participants indicated that they believed educators ensured the safety of the learners in their care (*cf*. Addenda F & G). Disturbingly, 19.9% of learners indicated *sometimes* to the statement that *educators do playground duty*, while 18.8% chose *almost never* (*cf*. Item F15 Addenda E1-3). Similarly, 18.4% of the parents/caregivers indicated *sometimes* and 7.8% indicated *almost never*, while 8.2% of the educators indicated *sometimes* and 3.5% *almost never*. Playground duty is an imperative duty of all educators in order to ensure the safety of learners (*cf*. 2.3.1.1). Closely related to the above-mentioned is the need for educators to pay attention to learners who report the presence of dangerous and/or illegal items (*cf*. 2.3.1.1). In this regard, 14.1% of the learners indicated *sometimes* in response to Item F16 and 4.8% *almost never*, while 10.6% of the parents/caregivers indicated *sometimes* and 3.5% *almost never*, whereas only 3% of educators indicated *sometimes* (*cf*. Addenda E1-3, H & I).

The above-mentioned negative responses cause concern, especially seen in conjunction with the responses to Items E12 (*cf*. 6.4.4; Addenda E1-3) and F20 (*cf*. 6.4.5; Addenda E1-3). Although the percentage of participating learners (14.8%) and

parents/caregivers (*cf*. 10.6%) who either *disagreed* or *strongly disagreed* with the statement made in Item E12 were not particularly high, it is disconcerting when considering that there is a 13.1% and 8.9% difference respectively between the responses of the participating learners and parents/caregivers, and the responses of the participating educators. When one considers the afore-mentioned in conjunction with the responses to Items F15, 16 and 20 (*cf*. Addenda E1-3), educators at some of the participating schools were not mindful of the safety of all learners. The Safety Regulations calls for public schools to ensure that learners are under constant supervision of an educator as far as practically possible (SA, 2006:reg.8A(2)(c); *cf*. 2.3.1.1). To the same extent, the critical need for a safe, disciplined environment is highlighted by sections 12 and 24 of the Constitution (1996; *cf*. 2.2.1.5; 2.2.1.10), the Code of Conduct Guidelines (SA, 1998:art.4.6; *cf*. 2.2.1.10) and article 2 of the National Policy on Drug Abuse (*cf*. 2.2.1.5). The consulted literature leaves no doubt of what the legal requirements are, while the responses provide proof of some participating schools disregarding the legal requirements and thus the consulted literature is not supported by the responses.

6.4.5.4 Factor F4: Authority

Factor F4 consisted of one item that was directed at the authority maintained by educators in the classroom (*cf*. 2.3.1.1). The ANOVA indicated a significant difference in the responses of the three subsets, while the Tukey HSD indicated that a significant difference existed between the means of the learner- and the parent/caregiver subsets and those of the educator subset. The effect size was large in both instances (*cf*. Tables 6.58 & 6.59).

Table 6.58: ANOVA and Tukey HSD – Authority – learners and educators

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Learners	704	3.19	0.04	0.000	5.50	Large
	Educators	231	3.52	0.06			

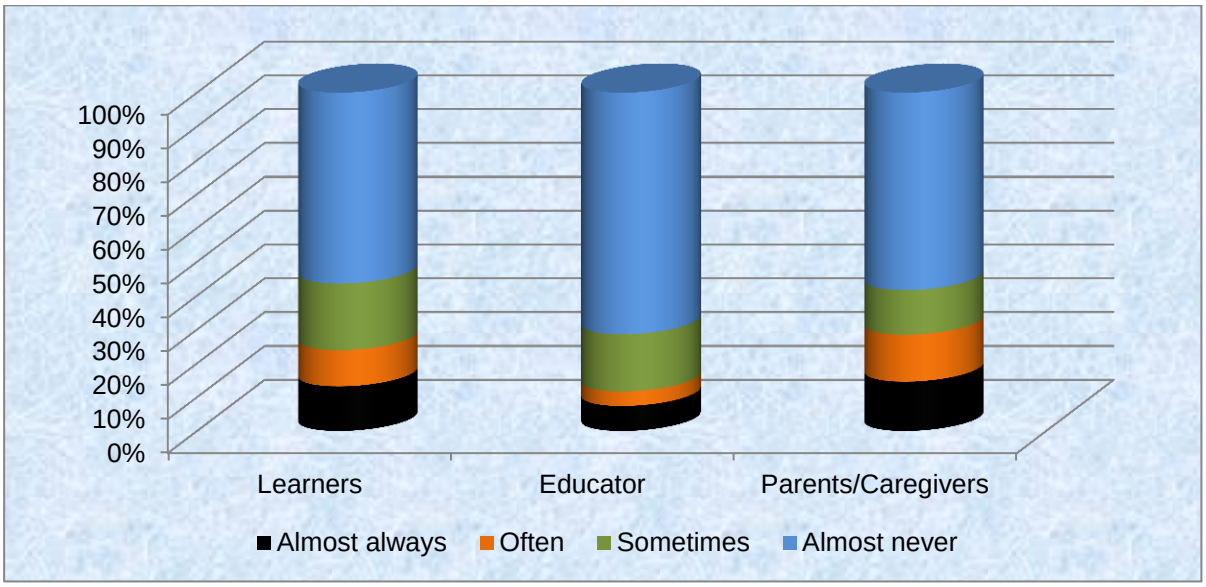
Table 6.59: ANOVA and Tukey HSD – Authority – educators and parents/caregivers

ANOVA p	Group	N	Mean $\bar{x}$	Std. dev. s	Tukey p	Cohen's D *d*	Effect size
0.000	Educators	231	3.52	0.06	0.000	6.17	Large
	Parents	425	3.15	0.06			

The respective Cohen's D values indicated that the practical effect of the difference between the learner-educator groups and educator-parent/caregiver groups is large, which implied a consistent difference between the viewpoints of participating learners and those of the educators and parents/caregivers.

Figure 6.5 below clearly illustrates that the majority of participants did not experience that educators willingly allowed learners to disturb classes, but that more learners and parents indicated the *sometimes* option than educators who indicated the *almost never* option more regularly.

Figure 6.5: Factor F4 – Authority



One of the duties of educators is to maintain discipline (Prinsloo, 2009c:174), a legal duty placed on educators by the Code of Conduct Guidelines (SA, 1998:art.3.7). When it came to maintaining authority in the classroom and *educators allowing learners to disrupt classrooms*, parents/caregivers were the group of participants who had the most negative view. In response to Item F21, 14.6% of the parents/caregivers indicated *almost always*, whereas only 13.2% of the learners and 7.4% of the educators made the

same choice, while 13.9% of parents/caregivers indicated *often*. 10.7% of the learners indicated the *often* choice and 4.3% of the educators did the same.

Parents/caregivers, other than learners and educators, do not generally have first-hand knowledge of what exactly happens in classrooms. They have to rely on what learners tell them, what they hear from others and what they hear and see in the media. Therefore the more negative perspective that became evident from the participating parent/caregiver responses (28.5%) could be based on the second-hand information they had received. Some participating learners (23.9%) were also of the opinion that educators *willingly allow learners to disrupt classrooms*. Evidence in the literature (Van der Bank, 2000:302; Olivier & Venter, 2003:186; Rossouw, 2003:413; Education International, 2004; Venter, 2005:1-7; Burton, 2008; Rademeyer, 2008; *cf*. 1.1.1; 1.1.2; 2.2.1.2; 2.2.1.3; 2.2.1.4; 2.2.1.6; 2.2.1.7; 2.2.1.10) paints a different picture – one where some learners make it very difficult for educators to maintain order and harmony in the classroom. Thus the responses do not support the consulted literature.

From the afore-mentioned, it was clear that the perceptions regarding educator conduct differed between the three subsets. Participating educators indicated a more positive perspective view of their conduct and the conduct displayed by their colleagues. Participating learners, on the other hand, differed most from their educators in their perceptions.

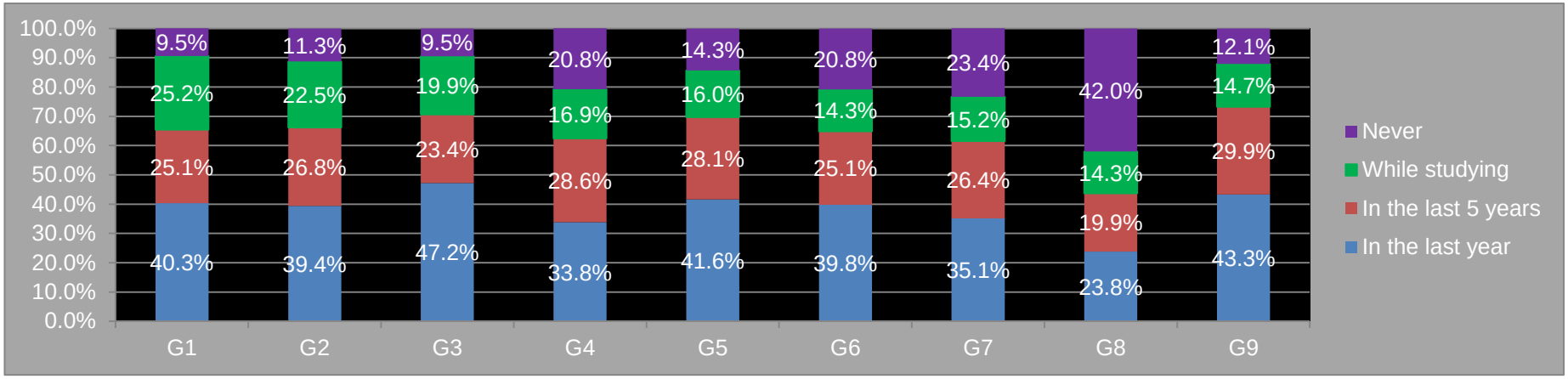
In the following section, the educator responses to Section G of the educator questionnaire will be discussed in detail. Section G was not included in the learner and parent/caregiver questionnaires as it was directed particularly at the awareness and knowledge of educators regarding legislation and other education-related legal documents governing their employment.

6.4.6 Section G – Educators familiarity with relevant legal documents

Section G was included in the educator questionnaire. The items in Section G referred to the legal documents directly related to the legal status of educators. Table 6.60 below provides an overview of the participant responses.

Table 6.60: Educator responses to Section G

I have worked with the...	G1 Schools Act		G2 Educator Act		G3 Bill of Right		G4 Code of Conduct Guidelines		G5 HIV/AIDS Policy		G6 Policy Drug Abuse		G7 Safety Regulations		G8 Regulations Initiation Practices		G9 SACE Code of Ethics	
	f	%	*f*	%	*f*	%	*f*	%	*f*	%	*f*	%	*f*	%	*f*	%	*f*	%
In the last year	93	40.3	91	39.4	109	47.2	78	33.8	96	41.6	92	39.8	81	35.1	55	23.8	100	43.3
In the last 5 years	58	25.1	62	26.8	54	23.4	66	28.6	65	28.1	58	25.1	61	26.4	46	19.9	69	29.9
While studying	58	25.1	52	22.5	46	19.9	39	16.9	37	16	33	14.3	35	15.2	33	14.3	34	14.7
Never	22	9.5	26	11.3	22	9.5	48	20.8	33	14.4	48	20.8	54	23.4	97	42	28	12.1
	231	**100**	**231**	**100**	**231**	**100**	**231**	**100**	**231**	**100**	**231**	**100**	**231**	**100**	**231**	**100**	**231**	**100**



Each of the legal documents included in the items of Section G had a direct bearing on the legal status of educators, whether in respect of their employment or their dealings with learners in their care. Educator participants were required to indicate how long ago, if ever, they had worked with the nine documents by choosing one of the follow options – *In the last year*; *In the last 5 years*; *While studying*; and *Never*.

The consulted literature focuses strongly on the nine documents and not on the familiarity of educators with each document. Therefore the responses in this section are seen to be a new contribution to the study. From the responses (*cf*. Table 6.60) it became clear that the majority of the participating educators had worked with the selected documents. Table 6.61 below provides an overview of the educator responses received according to the four options.

Table 6.61: Educator awareness of legal documents

Legal document	In the last year	In the last 5 years	While studying	Total
G1: SA Schools Act	40.3%	25.1%	25.1%	90.5%
G2: Educators Act	39.4%	26.8%	22.5%	88.7%
G3: Bill of Rights	47.2%	23.4%	19.9%	90.7%
G4: Code of Conduct Guidelines	33.8%	28.6%	16.9%	79.3%
G5: HIV/AIDS Policy	41.6%	28.1%	16%	75.7%
G6: National Policy on Management of Drug Abuse by Learners	39.8%	25.1%	14.3%	79.2%
G7: Safety Regulations	35.1%	26.4%	15.2%	76.7%
G8: Regulations to Prohibit Initiation Practices in Schools	23.8%	19.9%	14.3%	58%
G9: SACE Code of Professional Ethics	43.3%	29.9%	14.7%	87.9%

The saying *knowledge is power* is very true and therefore the researcher found it disconcerting that such a high percentage of educators had not consulted the documents in the last five years, or since they had completed their studies. Although all the documents were not necessarily relevant to the everyday working life of an

educator, such as the Regulations to Prohibit Initiation Practices in Schools, sound knowledge of the majority of the documents is crucial to the positive regard of educators' legal status by the education community.

Even more disconcerting is the percentage of educators who had never worked with each of the documents. The responses received indicated that:

- 9.5% of participants had never worked with the SA Schools Act;
- 11.3% had never worked with the Educators Act;
- 9.5% had never worked with the Bill of Rights;
- 20.8% had never worked with the Code of Conduct Guidelines;
- 14.4% had never worked with the HIV/AIDS Policy;
- 20.8% had never worked with the National Policy on Management of Drug Abuse by Learners;
- 23.4% had never worked with the Safety Regulations;
- 42% had never worked with the Regulations to Prohibit Initiation Practices in Schools; and
- 12.1% had never worked with the SACE Code of Ethics (*cf*. Table 6.60).

Once again the high percentage of educators who had not worked with the National Policy on Management of Drug Abuse by Learners and the Regulations to Prohibit Initiation Practices in Schools could be explained to a certain extent: among others, one could expect Foundation Phase educators not to deal with drug abuse among their learners regularly, while initiation could be something that does not happen regularly at primary school level. However, the researcher is of the opinion that the number of educators, who had not consulted the other legal documents, was unacceptably high (*cf*. 6.60).

The SACE Code of Ethics (*cf*. 2.5.1) propagates the rendering of effective professional services and offers safe-guarding professional ethics, among others, to both educators and learners. When one considers that 12.1% of the participating educators had not consulted the SACE Code of Ethics in their careers, in conjunction with the evidence of unethical behaviour evident in the high number of complaints received by SACE (*cf*. 1.1.2), the decline in the professional status of South African

educators seems inevitable. Furthermore, the emphasis on the respect of fundamental human rights (Malherbe, 2004:1) and the general feeling among educators that the learning climate in classrooms has been sabotaged by an over-emphasis on rights (Venter, 2005:1; *cf*. 2.1.1), should encourage educators to be knowledgeable at least about the content of the Bill of Rights. When one considers that 9.5% of the educator participants in the study had never worked with the Bill of Rights, it came as no surprise that some educators may feel as if they have fewer rights than learners (*cf*. 1.1). Similarly, there is no doubt that educators are experiencing increased levels of stress due to changing circumstances (*cf*. 1.1.2). Lack of knowledge concerning legislation which has a direct bearing on educators, not only in relation to the responsibility towards learners (*cf*. 2.3.1.1; Table 6.29), but also legislation that regulates their employment (*cf*. 2.3.4; Table 6.60) may further contribute to the situation as uninformed educators have no guidelines according which to act.

6.5 SUMMATIVE REMARKS

This chapter contains the analyses and interpretation of the empirical data of the research study attempting to provide an answer to the second objective of the study. The biographic information of each of the three subsets of participants were summarised through the use of tables and graphs in order to provide an overview of the demographics of the participants to the study (*cf*. 6.3).

Factor analyses were used to identify factors emerging from the three subsets of participants in order to establish relationships between variables. The researcher reported on the different factors that emerged, as well as the reliability of the factors where possible (*cf*. 6.4). Only one factor in section C was found to be unreliable and therefore excluded from further discussion. Statistical tests were used to establish significant differences between the respective subsets. In the majority of the factors learners and their parents/caregivers agreed in their responses, while disagreeing slightly from the educator participants. The researcher also found it interesting that educator participants tended to have a more positive view on their actions than the other two participant groups.

Section G (*cf*. 6.4.6) was only included in the educator' questionnaire, as it pertained to their knowledge and familiarity with legal documents relevant to their legal status. Although the majority of educator participants indicated that they have worked with

the document, the researcher found the high percentage of respondents who have only worked with these documents in the last five years, or during their studies, disconcerting. Even more disturbing is the number of educators admitting to never having consulted these legal documents.

The next chapter will contain summaries of the respective chapter in the thesis, as well as the findings and recommendations emerging from this study.

CHAPTER SEVEN
FINDINGS AND RECOMMENDATIONS

7.1 INTRODUCTION

This chapter firstly provides a summary of the key elements as found in the six preceding chapters of the thesis. In the next instance, findings emerging from the literature study (*cf*. Chapter Two & Three; *cf.* 7.3), and the qualitative (*cf*. Chapters Two, Three & Five) and the quantitative (*cf*. Chapter Six) components of the mixed strategy study are expounded as they relate to the original objectives of the study (*cf*. 1.1.2; *cf*. 7.4, 7.5, 7.5, 7.6 & 7.7).

Thirdly, the researcher makes recommendations based on the findings (*cf*. 7.8). Reference is also made to specific limitations of the study, recommendations regarding further study, as well as the contribution the study delivers to the field of education law.

7.2 SUMMARIES

7.2.1 Chapter One

In the first chapter, the researcher provided an orientation of the planned study. Firstly, an overview of the relevant literature was given in order to validate the research problem (*cf.* 1.1). This was done by discussing the relationships educators find themselves in, the status of educators in general (*cf.* 1.1.1) and specifically South African educators (*cf.* 1.1.2). The purpose statement of the study was worded (*cf.* 1.*2*) by identifying the research method as being that of multi-strategy (*cf.* 1.5.1), while also specifying the countries that were used in the comparative education law document analysis study (*cf.* 1.2).

The primary research question was indicated (*cf.* 1.3.1) and from this question, as well as from the background provided (*cf.* 1.1), secondary research questions were formulated (*cf.* 1.3.2). The conceptual framework (*cf.* 1.4) on which the study was grounded was indicated, while central concepts were clarified (*cf.* 1.4.1).

Furthermore, the research methodology was described by indicating the research paradigm (*cf.* 1.5.1) and the research design (*cf.* 1.5.2). The strategies of inquiry (*cf.*

1.5.2.1), the research participants (*cf.* 1.5.2.2) and the data collection methods (*cf.* 1.5.2.3) were also indicated. A visual representation of the research design (*cf.* 1.5.2.4) summed up all its aspects. Attention was also paid to the data-collection process (*cf.* 1.5.2.5), the data analysis and interpretation (*cf.* 1.5.2.6), and the steps that were followed when collecting the quantitative data (*cf.* 1.5.2.7).

Ethical aspects were considered (*cf.* 1.5.3) and the scientific contributions of the study *(cf.* 1.6) as well as contributions to the research focus area of the university (*cf.* 1.6.2) were indicated. Possible challenges posed by the quantitative (*cf*. 1.7.1) as well as the qualitative (*cf*. 1.7.2) parts of the research study were listed. The division of the chapters of this study was provided (*cf.* 1.8).

7.2.2 Chapter Two

In this chapter, the researcher developed a framework for the legal status of the South African educator. This was done by first clarifying the concept legal status (*cf*. 2.1), as well as differentiating between public law and private law (*cf*. 2.1). A brief overview of the different sources of Education Law was also provided (*cf*. 2.1).

The legal status of the educator in the South African education system was introduced by mentioning the changes in the education system over the last two decades, establishing the legal position of the educator in terms of legislation and by differentiating between general and education legislation (*cf*. 2.1.1). Hereafter a detailed discussion followed of the constitutional framework within which the South African educator operates (*cf.* 2.2).

As part of the constitutional framework, the relevancy of constitutional rights to educators was expounded (*cf*. 2.2.1) by referring to section 28 as it reflects on the legal status of the educator (*cf*. 2.2.1.1) and by considering whether section 29 is relevant to the legal status of educators (*cf.* 2.2.1.2). The right to equality with regard to the status of the South African educator was deliberated upon, by clarifying the difference between differentiation and unfair discrimination, considering what this means within the employer-employee relationship, as well as its relevancy to HIV/aids positive educators (*cf*. 2.2.1.3). In deliberating on the relevancy of this constitutional principle concerning the legal status of the educator, relevant case law was pointed out: appointing educators, the gender inequality within education and possible infringements of the equality principle (*cf*. 2.2.1.3). Another aspect regarding

equality, namely the legal obligations placed on educators with regard to equality, was expounded (*cf*. 2.2.1.3).

Section 10 of the SA Constitution (1996) was considered (*cf*. 2.2.1.4) by deliberating the meaning of this principle, discussing the obligation it places upon educators and learners alike, judging the implications of relevant case law for South African educators, as well as reflecting on the disregard of the right by learners and parents in certain situations. The right to freedom and security of person was also considered as it would be relevant to the legal status of educators. In this regard, the researcher referred to (1) the need for educators to consider the way in which learners are punished, (2) case law regarding corporal punishment, and (3) the legal prohibition of corporal punishment and other vindictive and cruel punishments (*cf*. 2.2.1.5). Another aspect that was considered was the right to safe schools, to which both learner and educator are entitled, linked to the legal obligation of the educator to ensure safe schools (*cf*. 2.2.1.5).

Section 14 of the SA Constitution (1996) was expounded upon (*cf*. 2.2.1.6) in terms of searches, while the right to freedom of expression was deliberated upon. Firstly, the meaning of freedom of expression was clarified (*cf*. 2.2.1.7). Secondly, an educational viewpoint of the right was given before the responsibility of the school and the educator was discussed in detail. Lastly, the educator's right to academic freedom and the implications thereof are discussed (*cf*. 2.2.1.7).

When it comes to the educator's labour rights, sections 17, 18, 22, 23 (*cf*. 2.2.1.8) and 33 (*cf*.2.2.1.9) were mentioned. With regard to section 23, the right to fair labour practices and the implication of the right to strike were considered (*cf*. 2.2.1.8). Just administrative actions (1996:sec.33) were discussed from a general viewpoint (*cf*. 2.2.1.9) as well as an educational viewpoint (*cf*. 2.2.1.9). Section 24 of the SA Constitution (1996) guarantees the right to an environment that is not harmful to health or well-being. The importance of this right to the education situation was deliberated upon, by considering the obligations placed on the educator to ensure such an environment at school (*cf*. 2.2.1.10).

Just like learners, educators not only have the right to freedom of religion, but also certain obligations towards the people around them when they lay claim to this right (*cf*. 2.2.1.11). With regard to the right to freedom of religion the researcher considered relevant case law, as well as relevant statutes (*cf*. 2.2.1.11). Since

fundamental rights are not absolute, it was deemed necessary to consider the duty of the educator to limit the rights of learners when necessary, while also expanding on the requirements for the limitation of rights and considering case law in this regard (*cf*. 2.2.1.12). Before moving on to other aspects of the legal status of educators, the researcher discussed, briefly, other relevant constitutional provisions, such as sections 195 (*cf*. 2.2.1.13).

In section 2.3, the researcher gave a description of the legislation that affects the legal status of educators: firstly, education legislation relevant to the educators' legal status (*cf*. 2.3.1), by referring to the Schools Act (84/1996; *cf*. 2.3.1.1), including school rules and the Code of Conduct and the Safety Regulations.

Following the discussion on the Schools Act (84/1996), the researcher expounded upon the relevant general legislation (*cf*. 2.3.2) by referring to the Promotion of Administrative Justice Act (*cf*. 2.3.2.1), the Children's Act (*cf*. 2.3.2.2), the National Road Traffic Act (*cf*. 2.3.2.3), the Copyright Act (*cf.* 2.3.2.5) and the Health and Safety Act (85/1993; *cf.* 2.3.2.6).

All the afore-mentioned are relevant to the legal status of the educator in general. The researcher deemed it prudent to discuss labour legislation relevant to the status of the South African educator under its own heading, as labour law is a specific field (*cf*.2.3.3). Firstly, the employment relationship of the South African educator was considered (*cf.* 2.3.3.1) before the relevant statutes were discussed (*cf*. 2.3.3.1; 2.3.3.2). The employment relationship of educators in government body positions were discussed separately, as the employment of these educators is governed by the Schools Act (*cf.* 2.3.3.3) and not the Educators' Act.

As the sources of Education Law are legislation, common law and case law, it was deemed prudent to consider the common law principle relevant to the legal status of the South African educator (*cf*. 2.4). Common law principles considered relevant are the *in loco parentis*-position of the educator (*cf*. 2.4.1), the educator's duty of care (*cf*. 2.4.2) and the rules of natural justice (*cf*. 2.4.3).

As South African education is considered a profession, the researcher considered the concept profession (*cf*. 2.5), as well as the role of the SACE Act (31/2000; *cf*. 2.5.1), in establishing education as profession in South Africa.

7.2.3 Chapter Three

Chapter Three provided insight into the legal status of educators in the Flemish Community of Belgium and the United Kingdom. In each instance, the researchers first provided an overview of the education system of the respective countries (*cf*. 3.2.1; 3.3.1), thereafter an introduction of the legal system of the respective country was provided (*cf*. 3.2.3; 3.3.3).

The constitutional principles relevant to the legal status of educators in Belgium (*cf*. 3.2.4) were expounded upon. In the case of the United Kingdom, no codified constitution exists and therefore human rights relevant to the legal status of educators (*cf*. 3.3.4) as found in the HRA and the ECHR were discussed (*cf*. 3.3.3). As in the case of South Africa (*cf*. 2.2), the fundamental rights of educators are protected, while placing certain responsibilities on educators in their daily dealings with learners (*cf*. 3.2.4; 3.3.4).

Legislation regulating the legal status of educators in Belgium (*cf*. 3.2.5) and England/Wales (*cf*. 3.3.5) were discussed with reference to, among others, appointments (*cf*. 3.2.5.1; 3.3.5.2); requirements for appointment (*cf*. 3.2.5.2; 3.3.5.3), conditions of service (*cf*. 3.2.5.3; 3.3.5.4), resignation, dismissal and sanctions (*cf*. 3.2.5.4; 3.2.5.6) and CPD (*cf*. 3.2.5.5; 3.3.5.7). Furthermore, the view each of the respective countries take on the educators' duty of care (cf. 3.2.5.6; 3.3.5.8) was expounded upon, as well as the regulation of the profession (*cf*. 3.3.5.8; 3.3.5.10). Lastly, the researcher considered other aspects relevant to the legal status of educators in both Belgium (*cf*. 3.2.6) and England/Wales (*cf*. 3.3.6).

7.2.4 Chapter Four

Turning away from the literature review, this chapter provided a detailed methodological exposition of the process that was followed in order to complete this multi-strategy study. In the introduction to the chapter (*cf.* 4.1), the researcher revisited the choice made regarding the paradigmatic view taken in the study.

Hereafter, a detailed explanation of the research design was given (*cf.* 4.2) dealing with the strategies followed in collection of data, as well as analysis of data. A discussion of the motivation for using a parallel multi-strategy design (*cf.* 4.2.1), as well as the decision regarding typifying the study as a parallel complementarity

QUAN + QUAL was given. As strategies of inquiry (*cf*. 4.2.1.1), the quantitative component and qualitative component were expounded upon.

In the quantitative component a survey was conducted as strategy of inquiry. An explanation of the survey method, and the reasoning behind the choice of the method were provided (*cf.* 4.2.1.1). The choice of a comparative education law design as qualitative component of the study was explained (*cf.* 4.2.1.1). Both the survey (*cf.* 4.2.1.1) and the comparative education law design were discussed as research methods in detail including steps/phases followed, requirements for successful use of the method and the advantages and disadvantages of the designs. With regard to the comparative education law design, a detailed substantiation for the selection of countries was provided (*cf.* 4.2.1.1).

Hereafter, the researcher discussed the sampling of respondents (*cf.* 4.2.2) by referring to the differences between population and sample, identifying the population and providing the reasoning for the use of purposive sampling in selecting the participating schools, as well as for using stratified sampling as sampling method to select the participants. Both an explanation of how the sampling was done and the motivation for the selection of only Grade 7 and10 learners were provided.

In the next part of the chapter, the researcher discussed the different methods of data collection (*cf.* 4.2.3). First of all attention was paid to the use of questionnaires as quantitative method for data collection, by considering the suitability of the instrument, possible advantages and disadvantages, aspects to consider in the designing of the questionnaires, the importance of validity and reliability, as well as ways in which the researcher planned to ensure validity and reliability, including the reasoning behind the use of a pilot study (*cf.* 4.2.3.1).

Furthermore, the researcher provided a visual representation of the research design (*cf.* 4.2.4) in order to illustrate the process followed in order to illustrate the concept of parallel study where the quantitative and qualitative component at times run concurrently, but at times with time lapses between the components.

In the discussion surrounding the process of data collection (*cf.* 4.2.5), the researcher paid attention to the timing (*cf.* 4.2.5.1), the weighting (*cf.* 4.2.5.2) and the mixing (*cf*. 4.2.5.3) of the different components of the multi-strategy design. With regard to the analysis and interpretation of data (*cf*. 4.2.6), the researcher considered the use of descriptive and inferential (*cf.* 4.2.6.1) statistics as well as the

specific tests that were used for the data obtained from both the questionnaires and the document analysis (*cf*. 4.2.6.2).

The researcher pointed out which steps she followed during the collection of the quantitative data (*cf.* 4.2.7) before moving on to the discussion of the ethical considerations taken in the study (*cf.* 4.3). Lastly, feedback was provided on the foreseen challenges (*cf.* 4.4) regarding both the quantitative (*cf.* 4.4.1) and qualitative (*cf*. 4.4 .2) components.

7.2.5 Chapter Five

Chapter Five contains the crux of the qualitative component of the research study – the international comparative perspective. The researcher started out by providing a comparative view on the education milieu of South Africa (*cf*. 5.2.1), Belgium (*cf*. 5.2.2) and the United Kingdom (*cf*. 5.2.3), providing a comparative view of the education systems of the respective countries, while returning to issues relating to the legal status of the respective countries which emerged in Chapters Two and Three.

The researcher then compared and contrasted the human rights of educators in the three countries, focusing on the rights, but also the accompanying obligations, of the respective role players in education (*cf*. 5.3). The discussion on human rights focused on the rights which have a direct bearing on the relationships between educators, learners and parents/caregivers within the education milieu (*cf*. 5.3), thus, having direct bearing on the legal status of educators.

The researcher considered children's rights as well as rights concerning education, as both these rights pose very particular obligations on educators in all three countries. Other fundamental rights discussed included the right to:

- equality (*cf*. 5.3.3);
- human dignity (*cf*. 5.3.4);
- freedom and security of person (*cf*. 5.3.5);
- privacy (*cf*. 5.3.6);
- freedom of expression (*cf*. 5.3.7);
- a safe environment (*cf*. 5.3.9);

- freedom of religion, belief and opinion (*cf*. 5.3.10); and
- fundamental rights relevant to labour issues (*cf*. 5.3.8).

The researcher then compared and contrasted labour legislation regulating the legal status of educators in the respective countries. Within the South African context, the researcher discussed different Acts containing stipulations educators need to be aware of in order to ensure that they act within the confines of the law (*cf*. 5.4). The employment status of educators in the three countries is explained (*cf*. 5.4). The same structure used in Chapter Two and Three was used to consider the different aspects of employment of educators in order to compare and contrast the requirements and conditions of service within each of the education systems (*cf*. 5.4).

7.2.6 Chapter Six

The chapter contains the discussion on the empirical phase of the research study. The researcher situated the quantitative phase in terms of the objectives of the study (*cf*. 6.1) before providing a key to the symbols used in the data analyses (*cf*. 6.2). Next the researcher used graphs and tables to provide an overview of the biographical information of the learners (*cf*. 6.3.1), the educators (*cf*. 6.3.2) and the parents/caregivers (*cf*. 6.3.3).

The rest of the chapter focused on a discussion of the relevant factors which emerged from the factor analyses done of each of the sections (*cf*. 6.4). The reliability of the respective factors was shown by providing the Cronbach Alpha coefficient and inter-item correlation of each of the respective factors. By considering the ANOVA and Tukey HSD post hoc test results, the researcher was able to identify significant differences between the responses of the three subsets of data and establish links between the responses of the participant groups by considering the means of each group in terms of each factor (*cf*. 6.4). The Cohen's D (*d*), in the majority of the factors, were bigger than 1.0, which implied a consistent difference between the viewpoints of the three participant groups (*cf*. 6.4).

7.3 FINDINGS FROM THE LITERATURE STUDY

The researcher made the following findings from the consulted literature (*cf*. Chapter Two & Three).

7.3.1 Literature review: Finding one

The legal status of educators could be considered unique as the result of their labour is of critical importance, while certain rights and obligations are also linked closely to it (Bray, 1996:95; Oosthuizen, 2004:31; Joubert & Prinsloo, 2001:74-75; *cf*. 2.1.1).

7.3.2 Literature review: Finding two

In South Africa, a general misconception that people enjoy rights only have led to an abuse of human rights and an attitude that no obligation to respect the rights of others exists (Malherbe, 2004:1; Venter, 2005:1; *cf*. 2.1.1). Although the SA Constitution protects the fundamental rights of everyone, a misconception above led to a belief that learners are the only ones with rights and that these rights protect them from any disciplinary steps, while there seems a lack of awareness regarding the fundamental rights of educators (Van der Bank, 2000:302; Malherbe, 2004:1; Venter, 2005:1; *cf*. 2.1.1) giving educators a feeling that their hands are tied (Joubert, 2000:444). However, learners are required to comply with the legal provisions of discipline (SA, 1998:art.3.6 & 4.6), cannot ignore school rules in the name of exercising the right to basic education (Maithufi, 1997:259; Bray, 2000a:282; Joubert, 2009c:109; Prinsloo, 2009a:42) and should acknowledge their obligation to respect the rights of other learners and educators (*cf*. 2.1.1; 2.2; 2.2.1.2)

7.3.3 Literature review: Finding three

Education is probably the single most prominent area in the life of a child and educators can never forget that they are integral in the moulding and forming of the lives of the learners in their care (*cf*. 2.2.1.1). South African jurisprudence confirms that the best interests of the child principle takes precedence over the interests of educators, parents/caregivers or education authorities, if a law or conduct had a negative impact on the interests of the learners involved (Malherbe, 2004:20; Smit *et al.*, 2008:197; *Laerskool Middelburg*; *Mikro*; *Point High School*; *cf*. 2.2.1.1).

Education is a platform for learners to practise the required conduct needed to become part of a democracy based on a culture of human rights (SA, 1998:art. 1.4), which places important obligations and duties on learners, educators and parents/caregivers (Bray, 2000a:282) to accept a partnership in which all role players are responsible for their actions (84 of 1996:Preamble; *cf*. 2.2.; 2.2.1.2).

7.3.4 Literature review: Finding four

The discrepancy between the age at which compulsory school attendance ends (84 of 1996:sec.3(1)) and the age of majority (1996:sec.28(3); 38 of 2005:sec.1 & 17; 75 of 2008:sec.1), leaves educators in a situation where they may have to deal with overaged learners, who have passed the age of compulsory schooling disrupting classes and infringing on the right to basic education of the other learners in the class (*cf*. 2.2.1.2).

7.3.5 Literature review: Finding five

In the current South African context, there is a need for the respective role players in the education environment to respect the fundamental rights of others. Learners and parents/caregivers misunderstand the context in which human rights operate within a school, considering learners as equal in status to educators (Venter, 2005:1; *cf*. 7.6) which gives rise to the need for educators to show not only an awareness of the difference between substantive equality and unfair discrimination in their treatment of learners and colleagues, but also, where necessary, to educate both learners and parents/caregivers on this matter when it comes to aspects of authority and the possibility of fair discrimination (Venter, 2005:1; Currie & De Waal, 20006:232; *cf*. 2.2.1.3).

Furthermore, human dignity is intrinsic to every human being (Bray, 2004:37) and not only a right of every person but also a responsibility of everyone (Bray, 2004:42), making it an extremely fragile component of the different relationships within the education environment (Malherbe, 2004:11). Human dignity requires the acknowledgment of the value and worth of all individuals as members of society (Currie & De Waal, 2006:273), requiring of both educators and learners to treat one another with respect – something not necessarily evident in the current situation in South Africa (Rademeyer, 2005a:4; Rademeyer, 2005b:20CE, 2008-2012; Marais & Meier, 2010:50; Tame Times, 2013; *cf*. 1.1.2; Graph 1.1; 2.2.1.4).

In their day-to-day dealings with one another, learners, educators and parents/caregivers have to do everything in their power to ensure a safe school environment, free of drugs and other dangerous, illegal objects, in which the right to privacy, and freedom of religion, belief and opinion are respected, but also limited when required (*cf*. 2.2.1.5; 2.2.1.6; 2.2.1.10).

7.3.6 Literature review: Finding six

Freedom of expression (1996:sec.16) is a right both adults and children are entitled to (UN, 1989, 1996:sec.16, 19 &28(3)), as it is a right which contributes to the establishment and maintaining of a democracy, fosters the quest for truth and is a dignity reinforcing value intrinsic to human personality (Currie & De Waal, 2006:360-361). It is also a right which requires strict vigilance by schools and educators to protect learners against possible infringements of other rights (1996:sec.36; SA, 1998:art. 3.8 & 11(e); Wood 1998:291-292; cf. 2.2.1.7; 7.6).

7.3.7 Literature review: Finding seven

South African learners may only be suspended after a fair hearing (84 of 1996:sec.9), an impractical and problematic stipulation especially when the learner is a threat to other learners, educators and/or property, or deals in illegal drugs at the school (Squelch, 1999:369; *cf*. 2.2.1.9).

7.4 FINDINGS FROM THE QUALITATIVE COMPONENT

The researcher made the following findings concerning the qualitative component (*cf*. Chapter Two, Three & Five) of the research study.

7.4.1 Qualitative component: Finding one

Educators in South Africa, Belgium and the UK had to face and adapt to a great number of changes in recent times and experience similar problems (*cf*. 1.1; 3.2.6; 3.3.6).

7.4.2 Qualitative component: Finding two

Clarity surrounding the professional status of educators in all three countries is absent due to many factors leading to a decline in status of educators and to deterioration in the attitudes of learners and parents/caregivers towards educators (BBC, 2005; Smith, 2006; *cf*. 1.1; 5.1).

In South Africa, there is a disregard for the professional status of educators resulting from misconceptions harboured by learners and their parents/caregivers regarding the context in which human rights operate in schools, (*cf*. 1.1; 1.1.2; 2.1.1. 2.2; 2.2.1.2; 7.3), the unprofessional conduct of some educators (*cf*. 1.1.2), and the demotion of educators to government employees instead of professionals (*cf*. 1.1.2;

5.2.1). In Belgium, the status inconsistency lies in the status afforded Belgium educators by society, which hold educators in high esteem and acknowledge that teaching is a demanding career, and the status of education as career choice, which has declined due to the fact that the social prestige attached to teaching and the salaries received do not mirror the important societal role (*cf*. 3.2.6.1; 5.2.2). Status inconsistence in the UK results from a difference in view between society and educators as such. Participants to studies respect educators and awarded them a higher status than participants from other European countries, acknowledge that learners may not always respect educators and consider the salaries educators receive as unfairly low. Educators and educators associated groups feel negative about their status and its decline and consistently rate their status lower than parents do (*cf*. 3.3.6.1; 3.3.6.2; 5.2.3).

7.4.3 Qualitative component: Finding three

The right to education in all three countries is not an absolute right. Learners have the obligation to act responsibly by adhering to school and class rules, respecting the right to education of other learners and enabling educators to teach in an atmosphere of harmony and order. Educators on the other hand have to realise their obligation to maintain order by exercising their right to discipline learners (*cf*. 2.2.1.2; 3.2.4.4; 3.3.4.4).

7.4.4 Qualitative component: Finding four

Gender inequality in the education sectors of all three countries is particularly evident especially within management (*cf*. 2.2.1.3; 3.2.4.1; 3.3.4.1). In South Africa, women are not only underrepresented in managerial positions, especially at secondary schools (DoE, 2005:43; Küng & Kocks-De Waal, 2010:20), but also experience a glass ceiling in terms of salary and potential participation at senior management levels (*cf*. 2.2.1.3; Bosch, 2011:72).

The overall gender imbalance, due to a predominance of female educators, undermines attempts to attract male candidates to the education profession, which consequently impacts on supply, particularly to certain specialist subjects known conventionally to attract more male than female learners (DoE, 2005:42-43), leads to a lack in quality and leads to a lack of male role models (DoE, 2005:42; *cf*. 2.2.1.3; 3.2.4.1; 3.3.4.1).

7.4.5 Qualitative component: Finding five

Since all forms of punishment contain some element of vindictiveness or ruthlessness, educators have to ensure that disciplinary measures can be justified under normal circumstances (*cf*. 5.3.5). Corporal punishment has been banned in all three countries (*cf*. 2.2.1.5; 3.2.3; 3.3.4.5). South African educators often feel their hands are tied when it comes to disciplining learners, as learners and their parents harbour a misconception that their fundamental rights protect them from any form of discipline (*cf*. 2.2.1.2). Both Belgium and the UK have instituted measures to assist educators in dealing with problematic learners (*cf*. 3.2.5.7; 3.3.4.6; 5.3.5; 5.3.6).

7.5 FINDINGS FROM THE QUANTITATIVE COMPONENT

The researcher made the following findings concerning the quantitative component (*cf*. Chapter Five) of the research study.

7.5.1 Quantitative component: Finding one

Learners and parents/caregivers had lower expectations of required educator demeanour. The researcher postulates that the responses of learners and parents/caregivers are based on their experiences with educators and how they have seen educators conduct themselves, while indifference towards education and/or their children as well as a lack of education may have influenced the responses of parents/caregivers (*cf*. 6.4.1.1).

7.5.2 Quantitative component: Finding two

Expected demeanour such as good communication with learners, respect for learners' human rights, having knowledge of the different customs/beliefs of learners, to a smaller degree and paying attention to learners' opinions, to a larger degree, were not considered important as expected educators' demeanour by some learners and their parents (*cf*. 6.4.1.1; 6.4.1.2). A greater percentage of all three subsets experienced the aforementioned demeanour not being displayed by some educators (*cf*. 6.4.2.1; 6.4.2.1; 6.4.4).

At the same time a higher percentage of learners and parents/caregivers than above valued learners being allowed to correct educators in terms of expected educator demeanour, but it was not the demeanour displayed by all educators at participating schools (*cf*. 6.4.1.2; 6.4.4).

7.5.3 Quantitative component: Finding three

Respect for learners and their human rights were evidently not always present as indicated by participants from all three subsets, while higher percentages of learners and parents/caregivers than educators also acknowledged that learners do not respect educators (*cf*. 6.4.2.1; 7.6). At the same time, some participants indicated that there is a lack of respect among educators for one another (*cf*. 6.4.2.3)

7.5.4 Quantitative component: Finding four

Educator participants predominantly indicated that educators consider teaching as a special job, are dedicated and are happy in their chosen field. However, learners in particular, but parent/caregiver participants as well, did not share this view (*cf*. 6.4.2.2; 7.7.2). These responses above are corroborated by the responses of some learner participants who indicated that they did not think their educators used a variety of methods while teaching (*cf*. 6.4.4).

7.5.5 Quantitative component: Finding five

The educator participants displayed a lack of knowledge of the legal documents governing their legal status leading to a situation where they are ill informed about their responsibilities towards learners, the legislation regulating their employment and are without guidelines on how to act (*cf*. 6.4.5; 6.4.6; 7.6).

7.6 FINDINGS FROM THE TRIANGULATED DATA

The researcher made the following findings by triangulating the data from the literature study, the qualitative component and the quantitative component of this study.

7.6.1 Triangulated data: Finding one

In terms of academic freedom of educators, Malherbe (2004:17) states that people in the education community should not be prohibited from expressing their views and receiving information, unless these views can disrupt or detrimentally affect the education process. The researcher postulates that learners also comprise members of the education community and therefore should be forded the same privilege to have their opinions heard with the same limitations posed. However, some percentage of participants from all three subsets negated the importance of learners

voicing their opinions or having the right to correct educators, while larger percentages of participants from the three subsets indicated that at schools there are educators who do not allow learners to voice their opinion or dislike being corrected by learners (*cf*. 2.2.1.7; 6.4.1.2; 6.4.2.1; 6.4.4).

7.6.2 Triangulated data: Finding two

The literature provided ample proof of disrespect for educators by both learners and in some instances their parents, while evidence of disrespect of learners by educators was also found (*cf*. 1.1.1; 1.1.2; 2.2). The responses from the participants of all three subsets, but particularly the learners and parents/caregivers acknowledged the fact that some learners do not respect educators, but at the same time indicated that some educators do not respect learners, or their human rights (*cf*. 6.4.2.1), or even their colleagues (*cf*. 6.4.2.3).

7.6.3 Triangulated data: Finding three

The *spirit* of due process should prevail in classrooms – reasonableness and informing learners of prohibited behaviour (Venter, 2005:6), while education-relevant documents require of schools and educators to involve learners and parents/caregivers in the formulation of school rules (*cf*. 2.3.1.1). However, the quantitative data did not reflect willingness by schools and educators to consult learners in the formulation of rules (*cf*. 6.4.5.1), while some learners and parents/caregivers indicated that they have not been sufficiently informed on school rules or the possible punishment for negative behaviour (*cf*. 6.4.5.2).

7.7 FINDINGS IN TERMS OF THE RESEARCH QUESTIONS

While the primary research question (*cf*. 1.3.1) that triggered this thesis was centred on *how effectively the status of educators is mirrored by an education-juridical perspective*, five secondary questions were identified (*cf*. 1.3.2) to guide the course of the study. The researcher made the following findings concerning those five secondary research questions.

7.7.1 Secondary research question 1: What is the educator's legal status in South Africa?

Public, private and common law determines the legal status of educators, with the SA Constitution being the most important and influential factor determining the legal

status of educators (1996; Bekink & Brand, 2000:171; Oosthuizen & Van der Westhuizen, 2003:15-16; Rossouw, 2004:52; Joubert, 2009b:8; *cf*. 2.1; 2.1.1; 5.4), while both general and education legislation have bearing on their legal status (*cf*. 2.3.1; 2.3.2; 5.4). Educators' legal status is considered unique in character (*cf*. 5.4; 7.3) due to the nature of their work.

7.7.2 Secondary research question 2: Which perceptions does the South African school community hold regarding the status of their educators?

The researcher made the following findings concerning the research question above.

7.7.2.1 Secondary research question 2: Finding one

The research sample could be described as predominantly positive about the educators. Educators had the most positive view in just about all instances, while learners and parents/caregivers, although predominantly positive, had a higher percentage of negative responses (*cf*. 6.4). It would appear as if some educators consider themselves as doing just about everything according to the book, while learners and parents/caregivers inserted the voice of reason.

7.7.2.2 Secondary research question 2: Finding two

Participating educators did not view their jobs as special, were not dedicated and were unhappy in their chosen jobs (*cf*. 6.4.2.2; 7.5), which became evident in the lack of variety of methods used by some educators (*cf*. 6.4.4).

7.7.2.3 Secondary research question 2: Finding three

Learners and parents/caregivers perceived educators as being unfair (*cf*. 6.4.3).

7.7.2.4 Secondary research question 2: Finding four

Learners and parents/caregivers did not perceive educators as able to protect learners against bullies (*cf*. 6.4.5.1).

7.7.3 Secondary research question 3: To what extent does South Africa's legal framework regarding the status of educators differ from those in Belgium (Flemish community) and England/Wales?

The researcher made the following findings concerning the research questions above.

7.7.3.1 Secondary research question 3: Finding one

While Belgium and England/Wales acknowledge the right to education, the SA Constitution acknowledges the right to basic education (*cf*. 3.2.4.4; 3.3.4.4; 5.3.2). However, neither the SA Constitution, nor other education legislation, provides any definition of exactly what constitutes basic education – does it refer to compulsory education only or to education until the first twelve years of schooling has been completed (*cf*. 2.2.1.2; 5.3.2; 7.7.5)?

7.7.3.2 Secondary research question 3: Finding two

South African and Belgian educators can either be civil servants or employees, depending on their appointment, while educators in the UK are never civil servants, but employees (*cf*. 2.3.3.3; 2.3.4.1; 3.2.2; 3.3.5.2). Whereas South African entry level educators can immediately after completion of their education training be appointed in a permanent capacity with a probation period of one year, which can be extended for another year (*cf*. 2.3.4.1), entry level educators in Belgium and the UK have a more arduous route before their first permanent appointment (*cf*. 5.4.1). Belgian educators are at first appointed in temporary positions and may request a TADD appointment after three years in the position they are applying for, while permanent appointment can be applied for after 720 working days thereafter (*cf*. 3.2.5.1). Educators in England/Wales have to obtain QTS, thus complete educator training, and then complete an induction period of at least one year, or three school terms, after which an assessment must be passed (*cf*. 3.3.5.1; 7.7.5).

7.7.3.3 Secondary research question 3: Finding three

Educators in all three countries must have the required qualifications. While South African educators have to be registered with SACE (*cf*. 2.3.4.4; 2.5.1; 5.4.7) and Welsh educators with GTCW (*cf*. 3.3.5.10), educators in Belgium have to adhere to the professional profile provided in two documents (*cf*. 3.2.5.8; 5.4.7), while English

educators do not have to register with the TTA, but the agency does have a regulatory function (*cf*. 3.3.5.10). Belgian educators are required, among others, to provide a certificate of conduct confirming an irreproachable character, while applicants for TADD and permanent positions must have received a positive outcome in their last evaluation (*cf*. 3.2.5.2). The LA, or employment agency, has to ensure, among others, that the applicant has not been barred from working with children and young people (*cf*. 3.3.5.3; 7.7.5).

7.7.3.4 Secondary research question 3: Finding four

Each of the three countries have evaluation procedures for educators' evaluation in place, but the consequences of the outcomes of evaluations are much more stringent in Belgium and England/Wales than in South Africa (*cf*. 2.3.4.4; 3.2.5.3; 3.3.5.4). Educators in Belgium may be sanctioned for inefficiency and may even be dismissed. In the UK, the outcome of evaluations are used to make decisions on salary progression, as the UK has implemented performance-related pay structure (*cf*. 7.7.5)

7.7.3.5 Secondary research question 3: Finding five

South Africa is in the process of implementing a CPD programme with most educators required to start their programme in 2016 (*cf*. 2.3.4.4; 5.4.5). In Belgium, CPD is compulsory and comprises 1½ days per year for primary school educators and 1 day per year for secondary school educators. Educators who do not take part in CPD may be penalised or their unwillingness may have a negative effect on their evaluation (*cf*. 3.2.5.5; 5.4.5). CPD is a priority in the UK, where schools are required to have a CPD plan and a minimum of 35 hours is prescribed for CPD of educators. Educators are required to be available for 5 days during which learners are absent (*cf*. 3.3.5.4; 3.3.5.7; 5.4.3; 5.4.5).

7.7.4 Secondary research question 4: Which factors contribute towards the South African school community's perspectives concerning the status of educators?

The researcher is of the opinion that the following are factors contributing to the perspectives concerning the status of educators.

7.7.4.1 Secondary research question 4: Finding one

An over-emphasis of rights, not accompanied by any emphasis on the obligations and duties that arise from having rights, have led to a situation where a disrespect for rights seem to be at the order of the day in schools (*cf*. 2.4.2.1; 6.4.2.1; 6.4.2.3; 6.4.4; 6.4.5; 7.3; 7.5).

7.7.4.2 Secondary research question 4: Finding two

The responses received pointed towards a small number of educators who are negative and who do not act professionally. It would appear that the actions of this small percentage of educators are reported on in the media, leading to a negative image of educators in general.

7.7.4.3 Secondary research question 4: Finding three

The negativity about their jobs perceived by some learners and parents/caregivers (*cf*. 6.4.2.2; 7.5) further encourages a negative perception of education in South Africa mentioned above.

7.7.5 Secondary research question 5: What contribution can an international perspective on the legal status of educators offer to the South African situation?

The researcher is of the opinion that South African education authorities could benefit from taking cognisance of the following findings.

7.7.5.1 Secondary research question 5: Finding one

While Belgium and England/Wales acknowledge the right to education, the SA Constitution acknowledges the right to basic education (*cf*. 3.2.4.4; 3.3.4.4; 5.3.2; 7.7.3). By defining basic education clearly, the South African education authorities can eliminate any uncertainty about what basic education entails. In this manner schools and educators will have a clear idea what their responsibilities are towards ill-disciplined learners who may have completed basic education and are overaged.

7.7.5.2 Secondary research question 5: Finding two

South African educators often experience a feeling that their hands are tied when it comes to disciplining learners (*cf*. 2.2.1.2) - lessons can be learnt from the Belgian and UK environment regarding support to educators. For instance, Belgian educators can make use of a programme where suspended learners or learners who

need guidance due to problematic absenteeism are given opportunities to take part in the caring farmer's project where such learners can complete worthwhile tasks under the guidance of a farmer or horticulturalist (*cf*. 3.2.5.7; 5.3.5). In the UK, amendments to UK education legislation provide educators with increased authority, in particular in terms of searches and seizures and restraining learners, to encourage good behaviour (*cf*. 2.2.1.6; 5.3.6; 7.7.3).

7.7.5.3 Secondary research question 5: Finding three

The periods during which entry level educators in Belgium and the UK have to complete provide time for newly trained educators to receive support from more experienced colleagues. The Belgium system has an excessively long period before educators experience job security and are therefore not without fault. However, the induction period in the UK provides a period of support newly trained educators are in dire need of. Furthermore, in the UK there are clear stipulations requiring UK educators to provide support to future educators, as well as to newly trained educators (*cf*. 3.3.5.1; 3.3.5.4; 7.7.3), which forms part of their legal duties.

7.7.5.4 Secondary research question 5: Finding four

Given the actions of some educators in South Africa (*cf*. 1.1.2), it may be prudent to consider implementing requirements where educators have to provide evidence of an irreproachable character, as in the case of Belgium (*cf*. 3.2.5.2), as well as a requirement for the School Governing Bodies of schools and/or the Head of Department to ensure that the applicant's name does not appear on the part B of the National Child Register (38 of 2005:sec.111; *cf*. 2.3.2.2), similar to the UK VBS check (*cf*. 3.3.5.3). SACE requires of educators to disclose any information regarding disciplinary actions, taken or pending against them, previous convictions or pending criminal charges and any disciplinary actions taken or hearings conducted by SACE, when educators register, but no evidence was found showing how SACE insures that educators comply (*cf*. 2.5.1; 7.7.3).

7.7.5.5 Secondary research question 5: Finding five

Unlike South Africa, the Belgian evaluation system does not afford formal reward for efficient educators, but allows sanctioning of inefficiency. An educator appointed in a temporary position is dismissed after an insufficient evaluation, while educators in a permanent position are dismissed after two consecutive final insufficient evaluations

or three insufficient scores (*cf*. 3.2.5.4). Yearly evaluations of UK educators are used to decide on salary progression according to the new performance-related pay structure according to which schools are given more freedom when it comes to attracting and recruiting the best educators, or to pay excellent educators more to keep them in the classroom (*cf*. 3.3.5.4; 5.4.3; 7.7.3).

7.8 RECOMMENDATIONS

The researcher recommends the following aspects at three levels, as indicated below.

7.8.1 Recommendations at government level

- **Recommendation one**

Finding 2 of the literature review (*cf*. 7.3.2) points out that South Africans generally are informed about their rights without noting the responding obligations/responsibilities which call on them to respect others' rights. Moreover, finding 5 of the qualitative data (*cf*. 7.4.2), as well as findings 2 and 3 of the quantitative data (*cf*. 7.5.3) support this literature review finding: not only is a disrespect for rights of learners by educators and vice versa indicated, but also among educators as colleagues. At the same time education is most probably the single most prominent area in the life of children and should be the platform for learners to practise the conduct that would be expected of them as responsible citizens living in a democracy based on a culture of human rights (*cf*. 7.3.3).

Public schools in conjunction with the Department of Basic Education (DBE) should therefore act in the best interests of learners and assist educators in taking back their classrooms and schools: firstly by formulating a clear definition of what respected basic education comprises; and secondly by providing support structures to deal with ill-disciplined learners at schools, allowing schools to refuse over-aged learners and notoriously ill-disciplined learners, who have completed compulsory education. In this manner progress will be made towards noting corresponding obligations/responsibilities and not being overly aware of personal rights.

- **Recommendation two**

A safe school environment is a constitutional right of both learners and educators and therefore all role players should do everything in their power to ensure such an

environment free from drugs and other illegal objects, free from violence, in which rights are respected, but also limited when necessary (*cf*. 7.3.5). US jurisprudence has shown a willingness by the courts to limit the right to due process in order to ensure the safety of others (*cf*. 2.2.1.9). It is important that the *spirit* of due process – reasonableness, fairness and informing learners of prohibited behaviour - prevail in both classrooms and the school as a whole (*cf*. 7.6.3). In both the cases of Belgium and the UK educators have been supported by their respective governments in dealing with ill-disciplined learners in order to ensure safe schools (*cf*. 7.7.5.2).

Given the current situation at some South African schools, the DBE needs to acknowledge that the current stipulations requiring suspension of a learner only after a fair hearing, is not always practical, while taking cognisance of the U.S. jurisprudence and amendments to legislation is the UK. Amendments to current legislation regarding suspension of learners in order to allow suspension before formal hearings in cases where the learner poses a threat to other learners, educators or property or are dealing in illegal drugs, should become a priority.

- **Recommendation three**

The number of sexual misconduct incidents, including rape (*cf*. Graph 1.1) and the disregard for the professional status of educators resulting from such conduct indicate that screening of educators should be instituted by the DBE. Currently SACE requires of educators to provide certain information regarding disciplinary actions and hearings (*cf*. 7.7.5.4), but no evidence could be found insuring that educators comply with the stipulation. It is recommended that a checking system mirroring the VBS checks required in the UK should become part of the requirements for appointment of educators, while SACE should be required to keep a register of persons barred from working with children and young people, correlating with Part B of the National Child Register.

- **Recommendation four**

From the literature it became clear that whereas South African educators are appointed immediately after they have completed their training, with a probation period of 1-2 years, both Belgian and UK educators have to fulfil more stringent requirements. The Belgian method appears impractical and very lengthy, but the researcher considers the UK's use of an induction period and accompanying assessment as a excellent opportunity to both newly trained educator and schools to

ascertain the suitability of the young educator (*cf*. 7.7.3.2). The findings reflected in the data received from learners, and parents/caregivers illustrating lower expectations regarding educator demeanour (*cf*. 7.5.1), while the responses showed the demeanour not being displayed by their educators is evident of certain educators being unable to conduct themselves in a professional manner (*cf*. 7.5.2).

By instituting an induction period of one year for newly trained educators, after which an assessment must be passed, in the requirements for educator training, young inexperienced educators can be given the chance to learn how to conduct themselves within the education environment, while being supported by more experienced senior staff. Senior educators at schools should be identified to act as mentors as part of their duties. Additional remuneration can be used as an incentive. This may assist in educators viewing their jobs as special, being more dedicated and happy (*cf*. 7.7.2.2), instead of feeling as if they have been thrown into the deep end and have to sink or swim.

- **Recommendation five**

The current evaluation programme in South Africa has not been entirely successful. Mestry *et al*. (2009:476) and Bischoff and Mathye (2009:397) report problems implementing the programme, as well as negativity towards the programme among educators. Educators perceive the programme as paper drive, impractical and with very little benefit. Therefore the current evaluation programme, IQMS, should be revisited and improved.

Investigation into the programmes used by other countries, including Belgium and the UK, could be beneficial. Evaluation might be taken more seriously if the impact of the results is more meaningful. A more comprehensive programme, over a number of years involving more intense planning and goals could benefit the South African education system, particularly if the outcome may impact the careers of educators.

- **Recommendation six**

The data received from the quantitative component of the research study, particularly relating to a disrespect for learners' and parents/caregivers' rights (*cf*. 7.5.2), the legislation regulating the legal status of educators (*cf*. 7.5.5) and the unwillingness of some educators to recognise learners and parents/caregivers as partners in

education (*cf*. 7.6.1) point to a lack of the precise knowledge educators need to assist them in maintaining authority in their classrooms.

The time has come for the South African education authorities to attach a high priority to CPD, as the UK education authorities have done. Modules or short courses dealing with Education Law and the specific education legislation documents educators need to be aware of, should be included into the SACE CPD programme. One Education Law module or short course should be made compulsory per cycle in order to ensure that educators stay informed in this regard.

- **Recommendation seven**

The findings from this research study showed a research sample predominantly positive about educators in the Sedibeng-East District (*cf*. 7.7.2.1). However, the literature paints a completely different picture. The researcher postulates that the image of South African educators is tarnished by a small group of educators who act unprofessionally (*cf*. 7.7.4.2). The DBE, in conjunction with SACE, school management and educators must attempt to change the negative image by acting harshly against educators acting unprofessionally, without hiding such actions. If society knows fair actions are taken against transgressing educators, they may start believing in the system again. .

7.8.2 Recommendations at school management level

- **Recommendation eight**

The responsibility to ensure a safe school environment, free from any forms of harassment and abuse of learners not only lie with the DBE and SACE. Closely linked to Recommendation three, the school should not hesitate to protect learners from abusive educators. The SACE Code of Ethics places a particular responsibility on educators to keep learners safe, to protect them from abuse and harassment (*cf*. 2.5.1). School Management Teams must be obliged to report any person proven to be a danger to children and young people to SACE for inclusion on Part B of the National Child register, as well as the proposed SACE register, as well as inform the DBE of the matter. Action must be taken by the relevant authorities.

- **Recommendation nine**

The data received from the three participant groups pointed to a situation where neither learners nor their parents/caregivers have been involved in the formulation of the schools' Code of Conduct, or are informed of rules and possible punishment in certain schools in the sample (*cf*. 6.4.5.2). Closely linked to the aforementioned are the responses of all three subsets of participants negating the importance of learners voicing their opinions (*cf*. 7.6.1). The SA Schools Act (84 of 1996) have clear stipulation regarding the involvement of all role players in the formulation of a school's code of conduct (*cf*. 2.3.1). It is imperative for schools be reviewed their Codes of Conduct at a regular basis and to accept a policy requiring the review of the Code of Conduct at least once every three years. School management must comply with the legal requirements insuring the participation of all role-players. In this manner learners and parents/caregivers can take ownership of the Code of Conduct, which may lead to better compliance.

- **Recommendation ten**

The data received displayed a scenario where some learners and their parents/caregivers seemed unable to recognise expected educator demeanour, where all role players acknowledge an absence of the required demeanour by educators and a general awareness of a lack of respect for human rights by all parties (*cf*. 7.5.1; 7.5.2; 7.5.3). Furthermore, it appears as if communication between learners, educators and parents/caregivers is not always what it should be (*cf*. 6.4.5.2; 7.6.1).

It is recommended that school Management Teams could consider introducing a programme of regular *indabas* during which small groups of selected learners, educators and parents/caregivers discuss relevant issues regarding the legal relationships within schools, respect of rights and other matters of importance to the respective role-players to gain a better understanding of the views each group harbours.

- **Recommendation eleven**

There is no doubt that discipline at some South African schools constitutes a problem. Findings from the literature pointed to numerous problems faced by educators all relating to a lack of discipline and a feeling that their hands are tied. At the same time evidence is also present of educators acting outside the boundaries of the law, in the literature and the data received in the study (*cf*. 7.3.2; 7.3.5; 7.5.3;

7.6.1). Recommendations have been made by the researcher encouraging the DBE to strengthen the hands of educators by supporting them in disciplinary matters.

However, in order to improve the image of education within South Africa, school management teams should encourage educators to institute disciplinary measures by providing support and guidance through the process instead of shying away from it. At the same time, there should be no hesitation from the management team to report unprofessional conduct of educators to SACE, as well as institute disciplinary action for educator misconduct or serious misconduct.

7.8.3 Recommendations at educator level

- **Recommendation twelve**

The saying ”knowledge is power” is absolutely true when it comes to maintaining order in a classroom. The data received from the educator participants indicated a disturbing lack of knowledge of the legal documents governing the legal status of educators (*cf*. 7.5.5). Educators should ensure that they have a working knowledge of the legal documents regulating their legal status in order to take control of their classroom. By including modules or short courses dealing with required legal documents in their CPD programmes or regular reading on changes to the legal education framework, or even requesting their management team to organise regular workshops, can empower educators to take control of their classroom, acting in a legal manner.

- **Recommendation thirteen**

The data portrayed an image of educators negating the value of the opinion of learners (*cf*. 7.5.2) and thus, disregarding their right to academic freedom (*cf*. 7.6.1) and not acknowledging learners as partners in education. Educators should not fear acknowledging learners as partners in education and allow learners to voice their opinions. However, it is recommended that the educator must insure that the learners understand the difference in status between educators and them. Educators should also always be well prepared and ensure that they are well aware of the latest developments in their speciality.

7.9 SHORTCOMINGS OF THE STUDY

During the course of the study the researcher noticed the following shortcomings:

- The inclusion of another developing country in the legal comparison, particularly an African country, may have provided greater depth to the study.
- A better response rate of all subsets, but particularly the parent/caregiver subset, could enhance the responses received.
- Translation of the questionnaire into the vernaculars spoken predominantly in the area, could also have enhanced the responses received.
- Comparisons within the respective participant groups concerning their responses in the quantitative section of the study, could provide further insight into the perceptions of the respective groups regarding the status of educators.
- Interviews, or focus group interviews with sampled participants within the respective subsets, could also enhance the study as understanding for some of the responses, particularly the unexpected response could be obtained.

7.10 RECOMMENDATIONS FOR FURTHER STUDY

From the study, the following topics seem possibly researchable:

- The status of educators: a qualitative look at perceptions of learners and educators
- An Afrocentric education-juridical perspective on the legal status of educators.
- A comparison of the legal status of educators in developing and developed countries.
- Contemporary issues at public schools: investigating the effectiveness of support structures for educators.
- The disrespect for human rights in a democracy based on a culture of human rights.

7.11 CONTRIBUTION OF THE STUDY

The legal status of educators is a contentious issue worldwide, as educators have had to face many changes over the last few decades. The growing flight from the profession and the loss of appeal of education as career choice has raised concerns across the world, including South Africa. Therefore the study can offer a contribution on two levels, as indicated below (*cf*. 1.6):

7.11.1 Contribution to the scientific terrain

- Contribution 1: The study contributes to a better understanding of the precise nature of the legal status of educators in South Africa, Belgium and England/Wales.
- Contribution 2: The understanding of the above leads to sound recommendations in order to advocate for positive changes in the perspectives that learners, educators and parents/caregivers have concerning the status of educators.
- Contribution 3: Differences in the perceptions held by learners, educators and parents/caregivers regarding the legal position of educators at school lead to sound recommendations to establish better relationships between the different role-players.

7.11.2 Contribution to the Research Focus Area Optentia

- The study contributes to the understanding of the importance of a regard for the legal status of educators in order to enhance the confidence of educators and to create greater job satisfaction leading to improved, more effective functioning of teaching-learning organizations.
- Understanding the perceptions learners, educators and parents/caregivers have regarding the status of educators provides insight into the way educators experience their own fundamental rights and security.
- The study forms part of Prof. Elda de Waal's research project, *Creating successful public schooling within a legal milieu*.

7.12 CONCLUSION

The aim of this multi-strategy research study was to obtain an education-juridical perspective on the status of educators in South Africa. From the literature reviewed, it emerged that educators in South Africa experience learners and their parents/caregivers as harbouring misconceptions regarding the functioning of human rights within the context of public schools. Such a state of affairs leads to a situation where it could appear as if educators have lost control of their schools. Similar evidence was found in the comparative legal study, where educators in Belgium and England/Wales have had similar experiences.

The responses received from the survey conducted as the quantitative component of the research study, however, delivered interesting responses. As in the case of Belgium and England/Wales, the sampled school community has a predominantly positive view of educators, leaving little doubt that the focus on the negative behaviour of learners and some educators creating a very negative image of education in South Africa by the media, is not necessarily shared by the South African school community.

Education brings about change and educators are integral to that change. They must never forget they shape the future of new South Africans and therefore the future of South Africa. Educators should thus hold their heads high, acknowledge contributions of learners and parents/caregivers, as together this strong triangle can make all South Africans believe and trust in education again.

If so many centuries ago Socrates was concerned about the general conduct of children, perhaps we as proud educators should remind each other of the following:

> ***The children now love luxury; they show disrespect for elders and love chatter in the place of exercise. Children are tyrants, not the servants of their households. They no longer rise when their elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, cross their legs and tyrannise their teachers.***
>
> Socrates (469-399BC)

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