

**THE EDUCATOR-LEARNER RELATIONSHIP WITHIN THE SOUTH
AFRICAN PUBLIC SCHOOL SYSTEM: AN EDUCATIONAL-
JURIDICAL PERSPECTIVE**

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PREFACE

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- The late Bessie Ferreira: may the memory of our fond relationship live on for years to come...

***What greater or better gift can we offer the republic than to teach
and instruct our youth?***

CICERO

Dedicated to Jacobus Frans and Denise Kocks: *CARPE DIEM*

ABSTRACT

THE EDUCATOR-LEARNER RELATIONSHIP WITHIN THE SOUTH AFRICAN PUBLIC SCHOOL SYSTEM: AN EDUCATIONAL-JURIDICAL PERSPECTIVE

Key words: rights of learners, private law, public law, formal law, administrative law, legal subjectivity, vertical and horizontal application of fundamental rights, first-generation and second-generation fundamental rights, legality, in loco parentis, bona fides, quasi-judicial competence, the rules of natural justice, the best interests of the child, duties of educators, negligence, ultra vires, diligens paterfamilias, delictual liability and contributory fault.

Harming the dignity of the learner; refusing to hear his side of the story; neglecting to help him retrieve his stolen property : such are the unfortunate occurrences at many South African schools, and such are the experiences that have led to this research.

Dedicated educators sometimes default, leaving their wronged learners out in the cold. The questions are therefore:

- What causes this conduct of educators and why does it recur?
- Is it ignorance of their legal position?
- Is it insensitivity to common law principles and statutory provisions?
- Is it sheer carelessness?

Mindful of the introduction of the South African Constitution Act 108 of 1996, which contains the long-awaited Bill of Fundamental Rights, this study has been undertaken to give an educational-juridical perspective of the educator-learner relationship in South African public schools by means of a literature study and an elementary legal comparative study.

Various legal terms which influence the educator-learner relationship significantly are defined.

In conjunction with the private law status of the learner, the position of the learner within the school system, and the fundamental rights of the learner in the context of the administration of justice are identified and dealt with in so far as they have any bearing on the educator-learner relationship.

Moreover, the legal determinants of the educator-learner relationship and the educator's duty of care are pinpointed to determine their significance in an accountable, responsive and open educator-learner relationship.

A comparative school law perspective of the sources of school law, the duties and responsibilities of educators, the fundamental rights and legal obligations of the learner, the educator's duty of care, discipline and legal liability in England and Wales, Canada, Japan, and South Africa is presented in terms of similarities and differences.

Attention is paid to the necessity of informing educators and learners concerning their respective rights and duties, in order to develop accountable, responsive and open educator-learner relationships in South African schools.

UITTREKSEL

DIE OPVOEDER-LEERDER VERHOUDING IN DIE SUID-AFRIKAANSE OPENBARE SKOOLSTELSEL: 'N OPVOEDKUNDIG-JURIDIESE PERSPEKTIEF

Sleutelwoorde: regte van leerlinge, privaatreë, publiekreg, formele reg, regssubjektiwiteit, vertikale en horisontale werking van fundamentele regte, eerste generasie- en tweede generasie-fundamentele regte, wetlikheid, in loco parentis, bona fides, quasi-wetlike kompetensies, die reëls van natuurlike geregtigheid, die beste belange van die kind, pligte van opvoeders, nalatigheid, ultra vires, diligens paterfamilias, aanspreeklikheid vir onregmatige dade, en medewerkende skuld.

Die benadeling van die leerder se menswaardigheid; die weiering om sy kant van die storie aan te hoor; die versuim van hulp om sy gesteelde besittings terug te vind : van so 'n aard is die ongelukkige voorvalle aan menige Suid-Afrikaanse skole, en van so 'n aard is die ervaringe wat tot hierdie navorsing gelei het.

Toegewyde opvoeders fouteer soms, en laat so hul benadeelde leerders aan hulleself oor. Die vrae is dus:

- Wat veroorsaak hierdie gedrag by opvoeders en hoekom gebeur dit by herhaling?
- Is dit onkunde ten opsigte van hul regsposisie?
- Is dit ongevoeligheid vir gemeenregtelike beginsels en statutêre voorskrifte?
- Is dit blote nalatigheid?

Gedagtig aan die inwerkingtreëding van die Suid-Afrikaanse Grondwet 108 van 1996, met sy langverwagte Menseregte-akte, is hierdie studie onderneem om 'n opvoedkundig-juridiese oorsig te gee van die opvoeder-leerder verhouding in Suid-Afrikaanse openbare skole deur middel van 'n literatuurstudie en 'n elementêre regsvergelijkende studie.

Verskeie regsterme wat die opvoeder-leerder verhouding noemenswaardig beïnvloed,

word omskryf.

Die privaatreg-status van die leerder, die posisie van die leerder in die skoolstelsel en die fundamentele regte van die leerder teen die agtergrond van die toepassing van geregtigheid word geïdentifiseer en behandel vir sover dit verband hou met die opvoeder-leerder verhouding.

Verder word die regsvoorskrifte van die opvoeder-leerder verhouding en die opvoeder se sorgsaamheidsplig bespreek om te bepaal watter betekenis dit het vir 'n verantwoordbare, simpatieke en oop opvoeder-leerder verhouding.

'n Vergelykende oorsig van die bronne van die skolewet, die pligte en verantwoordelikhede van opvoeders, die fundamentele regte en regsverpligtinge van die leerder, die opvoeder se sorgsaamheidsplig, dissipline en regs aanspreeklikheid in Engeland en Wallis, Kanada, Japan en Suid-Afrika word aangebied ten opsigte van ooreenkomste en verskille.

Aandag word geskenk aan die noodsaaklikheid om opvoeders en leerders in te lig ten opsigte van hul onderskeie regte en pligte, om sodoende verantwoordbare, simpatieke en oop opvoeder-leerder verhoudings in Suid-Afrikaanse skole te bewerkstellig.

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