

South Africa's approach to school safety: can it succeed?

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Abstract

In 1999, the Department of Education announced the Tirisano-plan for enabling the development of a fully-functioning education and training system in South Africa. As a result of this plan the Safe Schools Project was launched in 2000 to create safe disciplined learning environments that "celebrate innocence and value human dignity". Subsequently, the Regulations for Safety Measures at Public Schools, were published in the Government Gazette No. 22754 of 12 October 2001. The Safe Schools Project focussed on the development of policies on school safety, the management of drug usage in schools and a national sexual harassment policy.

This article examines documents such as acts, government notices, policies, national and international case law to understand concepts such as 'a disciplined school' and 'safety and security of learners'. Furthermore, the article provides an understanding of the legal issues confronting educators and departmental officials in respect of school discipline and safety. Providing information through policies is but one way to address school safety. A proactive approach requires both education authorities and educators to protect all learners' right to freedom and security and to act expeditiously to prevent them from any form of harm.

Introduction

In a safe school, the playgrounds are filled with the healthy noise of happy children. They scuff their knees and scrape their elbows, but they are not afraid of each other or of intruders. The classrooms are clean. The teachers are on time, stand upright, and are firm but friendly. There is glass in the window panes and there are books on the desks. Parents, educators and learners smile. There is an air of work being done and of achievement. These are schools conducive to effective teaching and learning.

This is how the former Minister of Education, Professor Kader Asmal described a safe school in his speech at the launch of the Signposts for Safe Schools Workbook (June, 2001). In his speech the Minister equated school safety to the maintenance of school facilities, educator professionalism and happiness.

In 1999 four core programme areas were identified in the implementation plan for Tirisano, a plan for enabling the development of a fully-functioning education and training

system in South Africa (Department of Education, 2000). The Safe School Project, as part of programme six of the Tirisano¹ Plan, was launched in 2000 to create safe disciplined learning environments that "celebrate innocence and value human dignity". Subsequently, the Regulations for Safety Measures at Public Schools were published in the Government Gazette No.22754 of 12 October 2001. The Safe Schools Project focussed on the development of policies on school safety, the management of drug usage in schools and a national sexual harassment policy.

According to the Signposts for Safe Schools Workbook (2002) a safer school strategy needs to include both environmental change strategies which would involve increasing the skills base and expertise of educators, making sure there are norms for behaviour and procedures at school, and managing classes in a way that contributes to learning and building the self-esteem of learners. Schools are expected to offer a nurturing environment to counteract or deal with violence within the community and the family.

In 2003 the MEC² for Education and the MEC for Safety and Security in Mpumalanga jointly and separately embarked on programmes to address school safety such as 'adopt a cop', 'captain crime stop' and the annual competitions termed 'sports against crime'. As a partner in this project educators were encouraged to enforce the Department's school disciplinary codes in order to "isolate the criminal elements from the rest of the hardworking learners". "Order is found in schools where learners know the school rules, where these rules are enforced fairly and consistently, and where there are clear reward and recognition systems" (Mpumalanga Department of Education, 25 August 2003).

Providing a safe school environment is therefore linked to addressing criminal activities and to enforcing school rules. There is a tendency from government to see a disciplined school as a prerequisite for the safety and security of learners.³ These concepts need to be clarified before analysing the approach of the Department of Education in creating safe schools.

¹ Education Minister's Call to Action plan using the slogan Tirisano which means working together.

² Member of the Executive Committee of a province. Often referred to as the Provincial Minister of Education or in this case also the Minister of Safety and Security.

³ Signposts for Safe Schools (2002, p.6); Alternatives to Corporal Punishment, (2001, p.58); Tirisano Implementation Plan, 2000–2004

The purpose of this paper is to analyse documents such as acts, government notices, policies, national and international case law to

- understand concepts such as 'a disciplined school' and 'safety and security of learners'
- understand the legal issues confronting educators and departmental officials in respect of discipline and school safety
- determine the legal obligation of educators and education authorities in providing a disciplined school as a prerequisite for a safe education environment

A disciplined school

Discipline is about positive behaviour management aimed at promoting appropriate behaviour and developing self-discipline and self-control in learners (Joubert and Squelch, 2005, p.2). They identified the following factors that are essential for a disciplined school: effective leadership, clear communication, good planning by educators and education managers, shared values, and a positive school ethos. The word *discipline* is derived from Latin words that refer to learn and transmitting knowledge to the learners. A well-disciplined school is usually defined as one where rules, policies and procedures are followed, and where everyone realises the implications and consequences of breaking the rules (Brisco, 2001). A school's code of conduct is a lawful way of limiting fundamental rights. A learner's rights and freedoms can never justify any misconduct of such a learner. The interests and welfare of co-learners and the educators at a school must be balanced against the rights of a learner or group of learners, and in some cases may override the rights of an individual learner or a group (Joubert and Prinsloo, 2001).

Self-discipline implies the achievement of these qualities through one's own efforts rather than through external monitoring or coercion (Porteus, Vally and Ruth, 2001). In the context of South African schooling discipline is often understood more narrowly as punishment. Many mistakenly equate discipline with punishment.

Safety and security of learners

In terms of section 24 of the Constitution of the Republic of South Africa, Act 108 of 1996 (hereafter the Constitution) a learner has the right to an environment that is not harmful to their well-being. Moreover, it is the constitutional right of every learner to enjoy education in a harmonious and carefree environment. The objective of the school safety project from the Department of Education is to create a safe and tolerant learning environment that celebrates innocence and values human dignity (Department of Education, 2000). This school safety project strives for all schools to be free from crime, violence and sexual harassment.

In this regard The Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (RSA, 1998) refer to the school environment as follows:

Learners have the right to a clean and safe environment that is conducive to education. Security of property, well cared school facilities, school furniture and equipment, clean toilets, water and a green environment, absence of harassment in attending classes and writing tests and examinations, all create an atmosphere that is conducive to education and training.

The only reference to the role of the code of conduct in providing a safe environment comes under the list of offences that are considered as serious misconduct, punishable by suspension from the school.

On a day-to-day basis educators are confronted with learners' use of illicit drugs, bullying, sexual harassment and other anti-social behaviour. National policies developed by the Ministry of Education, circulars and statements issued by the National Department of Education and provincial departments of education all accent the importance of discipline in maintaining a safe school environment. Education authorities dealing with school safety all envisage that governing bodies of schools, acting within their functions under the South African Schools Act 84 of 1996 (hereafter Schools Act) and the Further Education and Training Act (1998), will give operational effect to their policies and projects by developing and adopting management and implementation plans that reflects the needs, ethos and values of the schools or institutions and its communities. It is assumed that codes of conduct, rules, regulations and disciplinary procedures will automatically

provide a safe and secure environment for learners in schools. Consequently, all learning institutions are expected to develop their own safety policies and procedures that they clearly communicate and disseminate to their school community in a culturally appropriate and inclusive way (Joubert and Squelch, 2005).

Not only are there obvious legal implications in respect of injury to learners and staff within the school grounds and buildings, but other areas of potential criminal prosecution which have a significant effect on the risk management of schools and the policies and procedures being developed by the Department of Education and school governing bodies urgently need to be investigated.

Legal aspects confronting education authorities in respect of school discipline and school safety

South Africa does not have the robust history of rights litigation as, for example, the United States. However, the Constitution in sections 12 and 24 provides that everyone has the right to be protected from all forms of violence and to an environment that is not harmful to their health or well-being. Every educator and learner in a school therefore has the right to physical, emotional and cultural safety (Varnham, 2004).

The Bill of Rights enshrines certain fundamental rights which the state has a duty to respect, promote and fulfill. The individual enjoys a number of freedoms, powers and privileges under the constitution, common law and customary law. Under the former doctrine of parliamentary sovereignty the exercise of common law and customary rights was always under threat of statutory curtailment. Many common law freedoms have now been included in the bill of rights. For example, the common law right to freedom and security are now protected by the Constitution in section 12. The bill of rights applies to all law and binds the executive and all organs of state (section 8(1)). State departments and their officials are organs of state, therefore, the Department of Education and all employees paid by the department are bound by the Bill of Rights.

Legal duty to provide a safe and secure school environment

The Constitution grants each individual personal rights such as freedom of personal injury, security of life and property. The law imposes corresponding duties and responsibilities on each individual to respect the rights of others. If by speech, act, or other conduct, a person fails to respect these rights, thereby damaging another, a delict has been committed, and the offending party may be held liable (Alexander and Alexander, 2005). The law prescribes a standard of conduct that has its foundations in acceptable tradition and custom, which ensure personal rights against invasion by others, whether as individuals or groups (Alexander and Alexander, 2005).

Section 8 of the Schools Act provides that a governing body of a public school, after consultation, must adopt a code of conduct for the learners. The code of conduct must be aimed at establishing a disciplined and purposeful environment and learners are obliged to comply with the code of conduct. Furthermore, the Schools Act in section 9 says that the governing body may suspend learners, after a fair hearing, as a correctional measure for up to one week, or pending a decision as to whether the learner is to be expelled from the school by the Head of Department.

Although the Schools Act places an obligation on governing bodies to promote the best interests of the school and to administer and control the school's property, buildings and ground (section 20), there is no specific reference to providing a safe school environment.

In the case of *Phillips v Manser and another [1999]* (hereafter *Phillips*) the applicant Phillips was a 17-year-old learner at a public school. The first respondent, Manser was the principal and the second respondent was the governing body of the school. Phillips was suspended by the governing body from attending the school, pending a decision by the Provincial Head of Department (PDE) whether or not he should be expelled from the school. The disciplinary committee found the boy guilty of assaulting and battering a fellow learner. His suspension followed after repeated serious misconduct such as forging letters, writing graffiti on school property, refusing to comply with the school's dress code and inhaling a dangerous substance in a class.

In a similar case *Maritzburg College v Dlamini, Mafu and Kondza [2004]* (hereafter

Maritzburg) three learners were involved in an incident in which a window of a hired bus was smashed. Two learners were found to be smelling of alcohol and a bottle of brandy was discovered in one learner's kitbag. The three learners were found guilty of serious misconduct and a recommendation for expulsion was made to the PDE. In *Maritzburg* the departmental official had to be forced by the litigants to attend to the matter because the official did not see the importance of dealing with the matter expeditiously.

Because the PDEs in both *Phillips* and *Maritzburg* failed to respond back to the schools for an extensive number of months, the schools had to reinstate the suspended learners pending the decision on their expulsion. In both cases the school governing bodies fulfilled their obligation of acting in the best interest of the school (section 20) and establishing a disciplined school environment. Although the final decision regarding the expulsion was not revealed in *Phillips* and *Maritzburg*, if the PDEs decided not to expel the suspended learners they were to be reinstated at the schools and no further actions would be taken against them. In both cases the learners were found guilty of serious misconduct and had a history of offences that posed threats to the safety of other learners.

The proposed Education Laws Amendment Bill, 2004 envisage that if the Head of Department decides not to expel a learner as contemplated in subsection 9(2) he or she may impose a suitable sanction on the learner; or the Head of Department may refer the matter back to the governing body for an alternative sanction other than expulsion. The governing body of a public school must then implement the sanction contemplated.

The presence of large groups of children from different age groups in school premises provides a reasonable risk of delicts being committed (Visser, 2004). Learners are potentially exposed to intentional acts and negligence from educators, but also from such conduct by other learners. In addition, educators may fall victim to delicts that learners may commit against them.

Providing an appropriate standard of care

An appropriate standard of care will ensure personal rights such a safety and security against invasion by others (Mawdsley, 2000). Any act or omission which unlawfully infringes a person's right to safety is called a delict. A delict or wrongful action is different from a crime. A civil action for a delict is actioned and maintained by the injured party for

the purpose of obtaining compensation for the damage or injury suffered, whereas in a criminal proceeding the action is brought by the state to protect the public from the actions of the wrongdoer.

Ground for actions in the case of a delict can be divided into three categories:

- Intentional acts which can result from enmity, antagonism or maliciousness. Assault and battery are classified as intentional acts. Assault, as distinguished from battery, essentially constitutes a mental rather than a physical violation (Alexander and Alexander, 2005). Battery is an intentional delict that comes through physical contact for example hitting, pushing or stabbing someone else.
- Strict liability which means liability without fault. In this case a person has been injured through no actual, identifiable fault of anyone. For example if a person is injured by using potentially dangerous apparatus, sports equipment or participating in ultra-dangerous activities.
- Negligence deals with standards of care related to actions of the school's personnel, maintenance of equipment and adequate supervision (Mawdsley, 2000). Negligence differs from intentional acts in that negligent acts, although foreseeable by a reasonable person do not involve intent to injure. With negligence a reasonable educator/person could have anticipated the harmful results. An accident that could have been prevented by reasonable care constitutes negligence.

In addition to the possible infringement of the physical-mental integrity of persons present on school premises, there are risks to their personality rights involving privacy, good name, dignity and religious feelings that may be relevant for the purposes of delictual remedies (Visser, 2004). Moreover, Visser says there could possibly be delictual claims on the basis of poor and inappropriate education presented to a learner that falls below the standard to be expected in terms of the Constitution and other applicable law (2004).

In the *Minister of Education and another v Wynkward [2004]* (hereafter *Wynkward*) the trial Court addressing whether the school and Minister of Education were liable for the injuries sustained by *Wynkward* after he fell from an unused, locked school gate while

attempting to climb over it, found in favour of the respondent *Wynkward*. The plaintiff instituted action on behalf of his son who had been seriously injured as a result of a fall on the premises of the school at which *Wynkward* was a learner.

The school and Minister of Education appealed against the judgment. The question for consideration was whether the defendants were liable for the injuries sustained by *Wynkward* when he fell on his head, sustaining serious injuries which left him permanently disabled. At the time *Wynkward* was nine years old, and in Grade 3. The school was surrounded by a wire mesh fence with six gates. Gate six was permanently locked because it led to a very busy road. Learners were regularly warned of the dangers of climbing over school fences and instructed not to do so, but to use gate 5 which was situated near to traffic lights.

The issue before the appeal court was what constituted reasonable steps that the appellants could take in this circumstance and whether they, if taken, would have averted the harm. The Court held that where learners were not kept under constant supervision, that was not in itself a breach of the duty of care owed to such learners. Furthermore, gate 6 was permanently locked to protect the learners accessing a very busy road. *Wynkward* found himself in normal and familiar surroundings and the learners were regularly warned of the danger of climbing over the fence. Therefore the previous decision by the Court was reversed.

The *Wynkward* case proves that although a code of conduct existed, that the learners were aware of the rules, that the school enforced the rules contained in the code of conduct, an injury still occurred. Providing security, well cared school facilities and an appropriate standard of care do not guarantee that learners will be safe.

Negligent actions

De Kock v Minister of Public Works [2004] (hereafter *De Kock*) involving an employee who slipped and sustained serious injury in the slippery court in Bisho followed the test for liability enunciated by Holmes in *Kruger v Coetzee* in 1966.

It reads as follows:

For the purposes of liability *culpa* arises if-

- (a) a diligent *paterfamilias* in the position of the defendant
 - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and (ii) would take reasonable steps to guard against such occurrence; and
- (b) the defendant failed to take such steps.

In the *De Kock* case the Court found that the floor in the court in Bisho was slippery, that the defendant was made aware of this fact. The defendant should therefore have realized that the slippery floor presented a danger and should have taken the necessary precautions, which the defendant failed to do. The Minister of Public Works was found negligent and that De Kock, was entitled to the costs of the law suit, including the costs incurred by her injuries.

Analysing the *Wynkward* and *De Kock* cases show that a negligent act in one situation may not be negligent under a different set of circumstances. The standard of the conduct of the person is the key. In order to strike a balance between the threatened harm and the person's conduct, the court must establish a standard by which such activity can be measured.

To have a valid cause of action for negligence there are four prerequisites (Alexander and Alexander, 2005). They are:

- A duty to protect others
- A failure to exercise an appropriate standard of care either through commission or omission of an act (wrongful act)
- A logical connection between the act or omission and the injury or damage
- An injury, damage or loss.

Courts have expressly held that there is no difference between the position of the state and its servants and that of master and servant in private law as regards delictual liability (Burns, 1999). Wiechers in Burns (1999) holds that in addition to the basic requirement that the servant of the state (educators) must have acted wrongfully and culpably, a broader liability based on the risk principle should be adopted. This means that having undertaken

to render wide-ranging services such as the provision of basic and further education⁴ for everyone and to perform different functions such providing safe schools,⁵ the state must take responsibility for the risk for which compensation should be paid.

The governing body of a school has to establish a disciplined school environment by adopting a code of conduct and to conducting fair disciplinary hearings in cases of serious misconduct. Legally there are no provisions stating that a school governing body can be held liable for damages incurred through the negligence of educators or persons representing the Department of Education. The assumption that school governing bodies have to develop and implement safety policies at schools cannot be substantiated by law.

The South African Council for Educators Act, 2000 provides for the establishment of a statutory body, the South African Council for Educators (SACE) who in addition to its registration of educators function, is given the functions of promoting the professional development of educators and establishing a code of professional ethics for educators. In order to protect ethical and professional standards for educators SACE commissioned the development of a Handbook for the Code of Professional Ethics (SACE, 2002). This handbook describes how educators ought to relate to learners, parents, colleagues, the community, their employers and SACE. It addresses aspects such as ethics, morals, values, tolerance and human rights in education. Special attention is paid to learner safety and the duty of care responsibilities of educators.

Legal obligations of education authorities in providing a disciplined and safe education environment

The state and its employees' liability are essentially determined by their legal obligations and not by their rights (Oosthuizen, 1998). Providing a safe physical and emotional environment for learners at school is one of the basic responsibilities of the Department of

⁴Schools Act, section 29

⁵Tirisano, programme: School effectiveness and educator professionalism, Project 6: School Safety

Education and its employees. However, it is one of the requirements that is the most difficult for education authorities to address because there are so many factors that impact on school safety and because safety issues do not always have clear solutions. At times departmental officials, education managers and educators may not know how to respond to potentially problematic situations and as a result may act unlawfully.

The educational and social development of learners at school is closely linked to their physical and emotional safety (Varnham, 2004). Learners cannot learn effectively if they are physically or verbally abused, victims of violence or bullying, or if their school surroundings are unsafe. A legal duty is one which the law requires to be done or to refrain from doing. Determining a breach of legal duty is measured by the reasonable person and foresee-ability tests. Providing a disciplined and physically and emotionally safe environment for learners at school is one of the basic duties of education authorities, and educators.

The following actions may lead to a proactive approach to safety and help to develop high safety standards in education.

Providing information

With the increasing emphasis on the protection of basic human rights and the need to protect children against harsh and cruel treatment, attitudes towards discipline and punishment have changed considerably in the last ten years. Inevitably increasing attention is given to issues such as child abuse and corporal punishment in schools. Various detailed official policies, documents and publications applicable to many facets of the management of public schools show the government's commitment to establishing safe and effective teaching and learning environments.

Publications such as: *Alternatives to Corporal Punishment* (Department of Education, 2000a), *Signposts for Safe Schools* (South African Police Service and Department of Education, 2002) and *Code for Professional Ethics* (South African Council for Educators, 2002) attempts to address the issue of providing a safe and disciplined school environment. Programmes to address school safety such as 'adopt a cop', 'captain crime stop' and the annual competitions termed 'sports against crime' in Mpumalanga aim to free school communities from fear, risk of victimisation and to promote the realisation of the potential

of all youth. The Tirisano plan (Department of Education, 2000b) which Minister Kader Asmal has put forward to give effect to his 'Call for Action' specifically addresses sexual harassment, violence, crime and drugs and the scourge of HIV/AIDS. One of the major factors of school safety is the failure of education authorities to understand their legal duties regarding school safety. The Tirisano project on School Safety activities and outputs do not include providing legal and practical information to educators, education managers and departmental officials in dealing with problematic situations.

However, it is assumed that developing and publishing policies and regulations on school safety will create a safe learning environment. At times departmental officials and education managers do not foresee potentially problematic situations do not demonstrate knowledge and skills in applying basic legal principles, and as a result may act negligently.

In *Phillips* and *Maritzburg* the governing bodies, after a fair hearing, requested the Heads of Department to consider the expulsion of learners who were found guilty of serious misconduct. The PDEs failed to assist these schools in providing safe and disciplined environments by responding back to the schools within a reasonable time limit.

Imposing liability for psychological and physical damages sustained by learners

The SACE code of conduct clearly stipulates that educators are required to take reasonable steps to ensure the safety of learners, not to abuse their positions and not to enter into a sexual relationship with a learner or sexually harass a learner. In the case of the sexual harassment of learners one could ask the question: under what circumstances are employers liable for the sexual misconduct of their employees?

The school principal represents the employer in the school. Should a principal turn a deaf ear to a victim's complaint or decide not to report an incident of sexual misconduct, abuse or bullying it could be held as being 'deliberate indifferent' to the learner's rights to freedom and security⁶ dignity and the right to be protected from maltreatment, neglect and abuse.

⁶See Constitution, sections 10, 12 and 28

The interpretation and implementation of legislation and official policies by education managers and departmental officials remains a contentious issue. Under certain circumstances, an educator or departmental official may be found individually liable. According to Alexander and Alexander (2005, p.657) individuals can be held liable if they exhibit "a callous indifference" to a person's constitutional rights pursuant to government policy or custom and have demonstrated "a lack of objective good faith". What comes to mind here is government officials who fail to carry out their duties and in doing so may infringe on the basic rights of learners.

In *Maritzburg* evidence was presented that schools had to wait between eleven and 21 months for the PDE to respond back to the school regarding the recommended expulsion of learners. In *Maritzburg* the Court found that the departmental official ignored the obligations of the school governing body to maintain discipline and good standards, but more importantly disregarded the rights of the learners who 'stand in the shadow of expulsion'. These learners have the right to expeditiously whether they are going to be expelled so that they may be taken up by another school.

In *Phillips* the parents did not accept the fact that their child was not allowed to attend the school pending the response from the Head of Department regarding his expulsion. *Phillips* seriously injured a fellow learner by hitting him with a spanner. This followed after a history of assaulting and battering other learners. Although *Phillips* was found guilty of serious misconduct and was suspended by the governing body, he presented himself at the school posing a threat to other learners' safety and subverting the authority of the school to maintain a safe and disciplined environment.

Disciplinary sanctions for employees

Another question that comes to mind is what can employers do to employees who refuse to divulge information that could lead to the detection of colleagues' misdemeanors? If the Department of Education receives a complaint about serious misconduct of an educator at a school, and the actual culprit cannot be identified but there is reason to suspect that the school principal is aware of the identity of the culprit, the possibility of 'derivative misconduct' arises. Derivative misconduct originated in *FAWU and others v Amalgamated*

Beverage Industries [1994]. The Court said in its judgment that employees who fail to assist in an investigation may in itself justify disciplinary action.

Derivative misconduct is the term given to an employee's refusal to divulge information that might help to identify the perpetrator of some or other misconduct. The following legislation exists in relation to reporting crimes against children:

Any person, who examines, treats, attends to, advises, instructs or cares for any child, shall immediately report such ill treatment to a police official, commissioner of child welfare or social worker.

(Section 4 of the Prevention of Family Violence Act No. 133 of 1993)

The employee, in this case the school principal, can be taken to task not for involvement in the primary misconduct, but for refusing to assist the employer in its quest to apprehend and discipline the perpetrator of the original offence.

Vicarious liability

It is a trite principle of South African law that an employer bears responsibility for the unlawful acts of its employees if those acts are committed within the scope of the employee's duty. If an employee intentionally or through negligence harms a learner, the injured party may sue the employer for damages. But what are the limits of the employer's liability in cases like these? For example, many schools expect their educators to transport learners to and from extra-curricular activities in their private vehicles. From the case *Bezuidenhout v Eskom [2003]* it emerges that the employer will only be immune from liability if the employee was expressly instructed not to carry passengers. If the school principal instructed the educators to transport learners in their private cars, the employer will be liable for any damages incurred by the educators and learners.

Conclusion

The South African Constitution grants each individual personal rights such as freedom of personal injury, security of life and property. In addition to the possible infringement of the physical-mental integrity of persons present on school premises, there are risks to their personality rights involving privacy, good name, dignity and religious feelings that may be

relevant for the purposes of delictual remedies. The law imposes corresponding duties and responsibilities on each individual to respect the rights of others. If a person fails to respect these rights, thereby damaging another, a delict has been committed, and the offending party may be held liable.

The flaw in all the departmental documents is that they ignore the fact that schools need the support and assistance of the district offices and PDEs in implementing these very ambitious safe school programmes and projects. Developing policies and publications on school safety without providing adequate legal training for all role players do not guarantee safe and disciplined schools. To continue to hold that school governing bodies alone should develop and implement their own codes of conduct and school safety policies is to ignore reality and maintain a legal fiction that leaves victims to their own devices and schools with little incentive to change their ineffective practices.

Potential criminal prosecution which have a significant effect on the risk management of schools and the policies and procedures being developed by governing bodies and education authorities urgently need to be investigated. One of the major factors of school safety is the failure of educators, education managers and departmental officials to understand their legal responsibilities regarding the safety of learners. At times education managers and officials may not know how to respond to potentially problematic situations and as a result may act unlawfully.

Individuals can be held liable if they exhibit a deliberate indifference to a person's constitutional rights pursuant to government policy or custom and have demonstrated 'a lack of objective good faith'. Therefore, employees who fail to assist in an investigation may in itself justify disciplinary action.

The Department of Education's failure to implement reasonable misconduct prevention strategies should be viewed as the proximate cause of lack of discipline resulting in unsafe schools. If it is known that the PDEs support governing bodies, and take immediate action in cases where it is recommended that learners be expelled after a fair hearing, the general culture of the schools will not permit uncontrolled violence, bullying and crime to take place. Learners will be aware that serious misconduct will not be tolerated, educators will consistently recognize and report serious misconduct, and school principals will have the resolve and departmental support to address the misconduct firmly and fairly.

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