

JL Beckmann

Professor, Department of  
Education Management  
and Policy Studies,  
Faculty of Education,  
University of Pretoria.

DOI: <https://dx.doi.org/10.18820/24150517/JJS43.i2.1>

ISSN 0258-252X (Print)  
ISSN 2415-0517 (Online)

*Journal for Juridical  
Science*  
2018:43(2):1-31

© Creative Commons  
With Attribution (CC-BY)



# Competent educators in every class: The law and the provision of educators

## Abstract

The literature suggests that the quality of the education learners receive in South Africa is well below par, due to, *inter alia*, the fact that a substantial number of educators in South African schools cannot be characterised as competent, average, good or excellent. A large percentage of educators may be regarded as poor performers and approximately 20 per cent of them do not have the required minimum qualifications for the tasks they have to perform. To explore the challenge facing South Africa, I examine the literature on the relationship between educators and the quality of education, and address the question as to whether legal mechanisms could, at crucial points in a teacher's career, help ensure that competent educators are attracted to, and employed in the profession. It is common knowledge that the law governs all activities and processes that obtain in education, including those that determine the quality of educators entering the profession. In this article, I examine some of the aspects of the relationship between the law and the quality of educators. I begin with an analysis of key concepts such as 'education' and 'educator/teacher' and, drawing on the work of renowned meta-analysts who argue convincingly that there is a clear link between educational quality and educator quality, I foreground the need to regulate all aspects of educator deployment optimally, in order to ensure the presence of suitable educators in all classes. I trace the road typically travelled by every educator from pre-recruitment and training, and explore the role the law can play, at a number of crucial waypoints, to help address the less than satisfactory *status quo*. I consider, *inter alia*, how education students are recruited, selected, trained, and certified as professional educators. I also scrutinise the role of professional registration, appointments and appointment processes, induction, professional development, and conditions of service of educators. I explore how the law can, at important waypoints in educators' career, enhance the quality of educators, and argue that the law may be key to ensuring that there are competent educators in every classroom.

Teachers should be in school, in class, on time, teaching, with no neglect of duty and no abuse of pupils!<sup>1</sup>

---

1 State of the Nation Address by President Zuma, 3 June 2009, in Reddy *et al.* 2010:1.

Interventions at the structural, home, policy, or school level is like searching for your wallet which you lost in the bushes, under the lamppost because that is where there is light. The answer lies elsewhere ...<sup>2</sup>

## 1. Introduction

It is generally accepted that the quality of educators determines, to a large extent, the quality of education. The fact that the law governs all activities and processes in education also impacts on the quality of education. If one wants to scrutinise the role of the law in ensuring that competent educators are placed in every classroom, one has to consider how teachers are recruited into teacher education, how initial teacher education and professional development programmes are conducted and quality assured, the employment regimen of educators, and the influence of stakeholders such as school governing bodies, trade unions and the South African Council for Educators (SACE).

The law assigns status, rights, roles, duties and responsibilities to every role player, structure and functionary in education and regulates the relevant processes and programmes. It is a logical inference that the quality of the legal framework and the quality of its implementation determine, to a large extent, the quality of educators employed in the school education sector. This article identifies elements of the legal framework, underpinnings and foundations applicable to the quality of educators. It examines the quality of the implementation of the legal framework and suggests possible strategies that could move the education system closer to the ideal of having a competent educator in every classroom.

The article begins with a brief discussion of the current state of South African education, the general profile of South African educators, and key concepts such as 'educator/teacher', 'education', and 'quality'.

## 2. The current state of South African education

There is hardly any doubt about the poor quality of South Africa's education. On 3 June 2015, BusinessTech<sup>3</sup> published an article entitled "This graph shows just how bad South Africa is at education". The graph, developed by the Boston Consulting Group (BCG), compares South Africa with its sub-Saharan challengers, global peers and advanced peers. It shows that "South Africa spends more money than most of its peers on education – with worse outcomes".<sup>4</sup> In terms of the World Economic Forum score on the quality of education, South Africa achieved worst of all (2 as against

---

2 Hattie 2003:2.

3 BusinessTech "This graph shows just how bad South Africa is at education", <https://businesstech.co.za/news/government/89446/this-graph-shows-just-how-bad-south-africa-is-at-education> (accessed on 3 August 2017).

4 BusinessTech "This graph shows just how bad South Africa is at education", <https://businesstech.co.za/news/government/89446/this-graph-shows-just-how-bad-south-africa-is-at-education> (accessed on 3 August 2017).

the 3.5 of the peer group average and the 3.0 of the global average), while it spent more *per capita* on education than 15 of its 22 peers.<sup>5</sup>

It needs to be mentioned, however, that the BCG graph does not reflect the latest report of the Southern and Eastern African Consortium for Monitoring Educational Quality (SACMEQ) (2016). The report indicates that South Africa has moved to number 6 (in the Southern Africa and Eastern Africa region) and that the difference between the performances of rural and urban schools is decreasing.<sup>6</sup> Mrs Motshekga, Minister of Basic Education, pointed out that

[t]he results of recent regional and international studies ... show that the performance of South African learners is improving – symptomatic of a system in an upward trajectory.<sup>7</sup>

Furthermore, the results of investigations such as reports should be viewed as South Africa's performance in relation to that of the other participants in the specific study or evaluation, and not as universal assessments of the education system. The latest Progress in International Reading Literacy (*PIRLS*),<sup>8</sup> *SACMEQ*,<sup>9</sup> and Trends in International Mathematics and Science Study (*TIMSS*)<sup>10</sup> reports are cases in point.

Even considering the slight improvement, South Africa's performance in the above three studies does not make for good reading. The 2016 *PIRLS* study<sup>11</sup> found that, in terms of the mean score achieved in the study, South Africa was the lowest performing of the 50 participating countries. There was no statistically significant improvement from 2011, and 78 per cent of South African Grade 4 learners do not have basic reading skills by the end of Grade 4, whereas for learners internationally it is only 4 per cent.

In terms of the 2015 *TIMSS* study,<sup>12</sup> South Africa was the second-lowest performing of the 39 participating countries in mathematics and was the lowest performing in science. South Africa's achievement was highly unequal and the national average achievement scores have only improved from a "very low" in 1995, 1999 and 2003 to a "low" in 2011 and 2015.<sup>13</sup>

The 2017 *SACMEQ* report<sup>14</sup> appears to be the most positive of the three reports and it points out some areas of "key gains", namely that South Africa showed the highest improvement margins among participating

---

5 BusinessTech "This graph shows just how bad South Africa is at education", <https://businesstech.co.za/news/government/89446/this-graph-shows-just-how-bad-south-africa-is-at-education> (accessed on 3 August 2017).

6 Mveli 2017.

7 Department of Basic Education (DBE) 2017.

8 Howie *et al.* 2017.

9 Department of Basic Education (DBE) 2017.

10 Reddy *et al.* 2016.

11 Howie *et al.* 2017.

12 Reddy *et al.* 2016.

13 Reddy *et al.* 2016.

14 Department of Basic Education (DBE) 2017.

countries, a narrowing of the gap between urban and rural provinces, and a significant reduction in the number of non-numerate and non-literate learners at Grade 6 level. The report ascribes the improvements to a “determination within the [basic education] sector to transform the lives of our people”.<sup>15</sup> The report does, however, concede that, despite the “granular strides made in improving efficiency and equity in the sector”, the “overarching ‘bugbear’ of improving quality in the sector to desired levels still remains”.<sup>16</sup>

Fiske and Ladd<sup>17</sup> refer to “the legacy from the past” and describe one of the root causes of teacher quality problems concisely and lucidly:

The importance of this legacy of inequity for the reform of the education system cannot be overstated. Policy makers did not have the option of simply installing a new breed of managers and teachers imbued with the values of the new era. Rather they had to work with existing educators who in many cases were underqualified and who had worked with in the system at a time of great stress and turmoil.

Unfortunately, Fiske and Ladd’s comments<sup>18</sup> have not been relegated to the past. In 2017, the Centre for Development and Enterprise (CDE)<sup>19</sup> produced a report on teacher professional standards (TPS) for South Africa. It indicates that the standard of education is still poor and that the problems identified by Fiske and Ladd are unfortunately still present:

... the education system is failing the majority of the country’s learners. Despite efforts to target government education spending towards poor children, the ‘more resilient legacy from the past has been the low quality of education within the historically disadvantaged parts of the school system’ that serve the majority of [B]lack and [C]oloured children in the country.<sup>20</sup>

Some authors have identified other problems in the South African education system such as the shortage “particularly of adequately qualified and competent teachers”,<sup>21</sup> undue union influence,<sup>22</sup> and wasted learning time and insufficient opportunity to learn.<sup>23</sup> Although I cannot address all the problems in detail in this article, I have devoted considerable time to the matter of inadequately qualified teachers and wasted learning time.

---

15 Department of Basic Education (DBE) 2017.

16 Department of Basic Education (DBE) 2017.

17 Fiske & Ladd 2004:14-15.

18 Fiske & Ladd 2004:14-15.

19 Centre for Development and Enterprise (CDE) 2017:5.

20 Van Den Berg *et al.* 2011, in Centre for Development and Enterprise (CDE) 2017:5.

21 Van Broekhuizen 2015:1.

22 Van der Berg s.a.

23 Masondo “Education in South Africa: A system in crisis”. *City Press* <http://city-press.news24.com/News/-education-in-south-africa-a-system-in-crisis-20160531> (accessed on 4 August 2017).

Although educators are entitled to belong to unions, the role of unions in education is being questioned; there is evidence of their exercising undue influence on decision-making processes and of their disrupting school programmes,<sup>24</sup> challenging the authority of principals, and even selling posts.<sup>25</sup>

Education is formally recognised as a profession. However, the unions did not want education classified as an essential service and are still opposing any effort to change the status of education in this regard.<sup>26</sup> This may result in diminished learners' esteem of the importance of the profession and a lack of motivation to join the profession.

The last word in this regard belongs to Spaul, <sup>27</sup> one of South Africa's pre-eminent education system scholars on education system matters:

... the picture that emerges time and again is both dire and consistent: however one chooses to measure learner performance ... the vast majority of South African pupils are significantly below where they should be in terms of the curriculum, and more generally, have not reached a host of normal numeracy and literacy milestones. As it stands, the South African education system is grossly inefficient, severely underperforming and egregiously unfair.

My basic point of departure in this article is that the law should enable the provision of competent educators for every classroom and easier to achieve, by addressing the origins of the problems identified earlier. The law should assign rights, duties, and obligations to the relevant role players, agencies or structures; determine standards for processes; system-wide assessment and accountability for performance, and enforce adherence in order to improve implementation.

However bleak the above picture might seem to be, in education there is always hope of improvement, and this hope is closely connected to the essence of education and to the crucial role of educators. I will now briefly define what I mean by 'education' and 'educator' and then refer to what has been written about the relationship between the work and the quality of educators, and the outcome of education. The law assigns meanings to these concepts and can be used to modify or enforce them and to assess related task performance, where applicable.

---

24 Maodi 2018.

25 Department of Basic Education (DBE) 2016(a).

26 *Labour Relations Act*:sec. 34.

27 Spaul 2013:13.

### 3. Education and educators and the relationship between them

#### 3.1. Education

In the *National Education Policy Act 27 of 1996*, education is defined as any education and training provided by an education institution, other than training as defined in sec. 1 of the *Manpower Training Act 56 of 1981*.<sup>28</sup> This definition is (perhaps deliberately) vague: it only refers to activities at education institutions and excludes training under a specific *Act*. It does not clarify the activities of education, does not mention who educates, who is educated and what the aim of such activities is. The *South African Schools Act 84 of 1996 (SASA)* does not help us understand the nature and purpose of education better, and defines a school as a “public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve”.<sup>29</sup>

The *Constitution of the Republic of South Africa* of 1996 provides everyone with the right to a basic education, including adult basic education and to further education that must be made available progressively, but it is silent on the meaning of the word ‘education’.<sup>30</sup> Sec. 29(2) does touch on the nature of education, intimating that it is linked to the language in which it is offered, and provides that everyone has the right to receive education in the official language or languages of their choice in public educational institutions, where that education is reasonably practicable.<sup>31</sup> The *White Paper on Education and Training* (1995) views education as a human resource development activity. It affirms parents as primary educators who have an inalienable right to choose the form of education that is best for their children, particularly in the early years of schooling.<sup>32</sup> The *White Paper* states that parents’ right to choose their children’s form of education includes choice of language, cultural or religious basis of the child’s education.<sup>33</sup> It suggests, therefore, that education, as a human resource development activity, is closely linked to culture and religion. In the *Children’s Act*,<sup>34</sup> the definition of ‘care’ includes education as a component of care. Like the *White Paper*, it emphasises that education encompasses more than intellectual learning and the acquisition of skills. It refers to “guiding, directing and securing the child’s education and upbringing, including religious and cultural education and upbringing, in a manner appropriate to the child’s age, maturity and stage of development”.

---

28 *National Education Policy Act*:sec. 1.

29 *South African Schools Act*:sec. 1.

30 *Constitution of the Republic of South Africa* 1996:sec. 29(1).

31 *Constitution of the Republic of South Africa* 1996.

32 Department of Education (DoE) 1995:ch. 4, par. 3.

33 Department of Education (DoE) 1995:ch. 4, par. 3.

34 *Children’s Act*:sec. 1.

Education has traditionally been understood to mean the formative transfer of culture from one generation to the next. This process has been constructed as referring to the knowledge, skills, values and attitudes children need to acquire in order to become the next generation of adults, realise their personal potential optimally, become part of society, and accept co-responsibility for it.

It is a real possibility that the lack of focus in legislation on the aim of education as adulthood,<sup>35</sup> as described in general educational literature, and the shaping of the human person<sup>36</sup> can contribute to a loss of focus on what should be the main concern of educators, schools and the education system, namely the best interests of the child.<sup>37</sup> This *lacuna* in the law could lead to a deficient definition of the work requirements of educators and to the appointment of people who cannot achieve the essential aims of education.

### 3.2 Educator

In education statutes,<sup>38</sup> the definitions of ‘educator’ locate an educator in a specific place such as a public school, refer to an educator’s appointment in a post, and indicate that an educator teaches, educates or trains other people, or provides educational services. The formative dimension of an educator’s work, his relationship with an educand (learner or child) and the best interests of the child are at best implied.

UNESCO<sup>39</sup> provides a definition that is not a legal definition, but it covers the essence of education better than the legal ones quoted earlier: “[T]he word ‘teacher’ covers all those persons in schools who are responsible for the education of pupils”. To my mind, the above legal definitions lack, and cannot easily capture something that has been well articulated by Hattie,<sup>40</sup> who describes an educator as a “person who gently closes the classroom door and performs the teaching act – the person who puts into place the end effects of so many policies, who interprets these policies, and who is alone with students during their 15,000 hours of schooling”.

Having examined the concepts ‘education’ and ‘educator’, I will now address the link between the two concepts, as an adequate understanding of the *nexis* between them can underpin efforts to use or amend the law so as to increase the prospects of successful quality education.

---

35 Van Rensburg & Landman 1988:330.

36 Roman Catholic Church 1965:par. 1.

37 *Constitution of the Republic of South Africa* 1996:sec. 28(2).

38 *South African Schools Act; National Education Policy Act; Employment of Educators Act; South African Council for Educators Act.*

39 UNESCO 2008:21.

40 Hattie 2003:3.

### 3.3 Education and the quality of educators

It is often averred that the quality of education depends on the quality of educators and, to a lesser degree, on the quality of school leadership. Sayings such as “Teachers make all other professions possible”; “Teaching is the mother of all professions”; “The influence of a good teacher can never be erased”; “Teachers unlock the future for children”, and “The artist disappears but his work remains for ever” are commonly used (mostly) to make teachers feel good.

Hanushek, a renowned meta-analyst, comments that many people have, at some point in their lives, had “a wonderful teacher, one whose value, in retrospect, seems inestimable”.<sup>41</sup> Various other authors and reports, including the McKinsey Report<sup>42</sup> (2007), emphasise the value of good educators. The McKinsey Report quotes a South Korean policymaker as stating: “The quality of the education system cannot exceed the quality of its teachers.”

Hanushek<sup>43</sup> intimates that he can understand that people can view the value of a good teacher’s work as inestimable. He also mentions that he cannot “pretend to know how to calculate the life-transforming effects that such teachers can have with particular students”. However, his research has led him to believe that we can draw on

research literature that provides surprisingly precise estimates of the impact of student achievement levels on their lifetime earnings and by combining this with estimated impacts of more-effective teachers on student achievement.<sup>44</sup>

Hanushek and his colleagues concluded that a very low-performing teacher “at the 16<sup>th</sup> percentile of effectiveness” will have a negative impact of “\$400 000 [on the lifetime earnings of a class of 20 learners] compared to an average teacher”,<sup>45</sup> whereas a teacher at the 84<sup>th</sup> percentile will shift the [lifetime] earnings of a class of 20 up by more than \$400 000.<sup>46</sup> If one can indeed assess or estimate the impact on students’ achievement and society of poor, average or competent and excellent teachers, it could strengthen the argument that every classroom and every child should have a competent, if not good or excellent teacher and that the law should provide processes and mechanisms that would make such an ideal a reality.

Hanushek<sup>47</sup> further postulates that the quality of teachers is paramount. To him, “no other measured aspect of schools is nearly as important in determining student achievement”. Initiatives such as “class-size reduction, curriculum revamping, the reorganization of school schedules, investment

---

41 Hanushek 2011:42.

42 McKinsey and Co 2007:16.

43 Hanushek 2011:42.

44 Hanushek 2011:42.

45 Hanushek 2011:42.

46 Hanushek 2011:42.

47 Hanushek 2011:41.

in technology – all fall far short of the impact that good teachers can have in the classroom”. Hattie believes that, in order to make a difference in the quality of education, one should ask where the “major source” of variance in students’ achievement lies and “concentrate on enhancing these sources of variance”.<sup>48</sup> His meta-analyses have led him to believe that there are six major sources of learner (student) performance variance, namely students, the home, schools, principals, peers, and teachers<sup>49</sup>

Hattie presented his findings in a pie chart such as the one in figure 1 below:

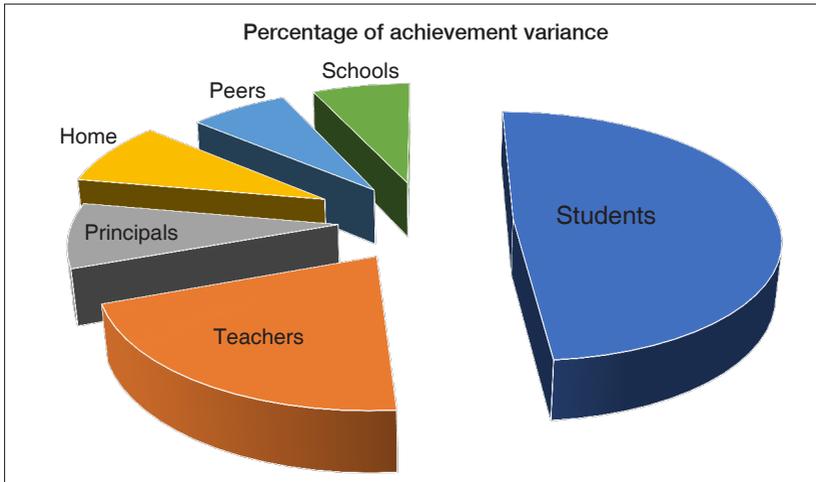


Figure 1: Percentage of achievement variance factors in student achievement<sup>50</sup>

Like Hanushek,<sup>51</sup> Hattie believes that pouring more money into school buildings and school structures, reducing class sizes, introducing new curricula and examinations, and increasing parent involvement cannot affect the quality of education as much as improving the quality of educators could.<sup>52</sup> He uses the powerful simile that, seeking the solution to problems in education intervention “at the structural, home, policy, or school level is like searching for your wallet which you lost in the bushes, under the lamppost because that is where there is light. The answer lies elsewhere ...”.<sup>53</sup> “It is what teachers know, do and care<sup>54</sup> about which is very powerful in this learning equation”.<sup>55</sup>

48 Hattie 2003:1.

49 Hattie 2003:2-3.

50 Hattie 2003:3.

51 Hanushek 2011:41.

52 Hattie 2003:3.

53 Hattie 2003:2.

54 Hattie 2003:3.

55 Hattie 2003:2.

After synthesising over 500 000 studies<sup>56</sup> on “the effects of influences on student achievement”, Hattie firmly believes that one should focus on the influences that have a “marked and meaningful effect on student learning”, the most important of these influences being that of the teacher.<sup>57</sup> In other words, having quality educators in the classroom seems to be the best one can do in order to improve the quality of education. This implies that the regulatory aspects of teacher quality require special consideration.

The profiles of South African teachers are likely to differ from those of teachers in other countries. I will, therefore, attempt to create a broad profile of South African teachers from available material in order to assess the quality of educators. I will also attempt to identify the legal mechanisms that could influence the availability of competent educators.

## 4. Profiling South African educators

### 4.1 Introduction

Information that can be used to create profiles of South African educators is not readily available. It would also seem that the information is also not always reliable, trustworthy and recent. In this regard, the CDE<sup>58</sup> states that this is not uncommon in educational research reports in South Africa: “In the course of CDE’s research it was found that the various data sources were inaccurate, incomplete or inconsistent in what they include.” The CDE believes that even its own model on teacher supply and demand (2013-2025) should be viewed as a projection rather than a prediction, and is not infallible.<sup>59</sup>

The uncertainty about the veracity of information adds to the problems regarding an assessment of the quality of educators and the need for educators. In this article, I have tried to use the best and most recent sources available and, to a large extent, to base my argument not on numbers, but on quality issues and legal provisions. It is nevertheless disturbing that the Department of Basic Education (DBE) admits that “it does not know if teachers in school classrooms qualify to teach the subjects they have been allocated to teach”.<sup>60</sup> In a written response to an opposition question in Parliament, the DBE acknowledged that it is still “in the process of capturing the full profiles of all educators in South Africa”.<sup>61</sup>

---

56 The figure of 500 000 seems hard to believe, but it does appear on p. 3 of Hattie’s work. He presumably did the work with a team of researchers.

57 Hattie 2003:2.

58 Centre for Development and Enterprise (CDE) 2013:8.

59 Centre for Development and Enterprise (CDE) 2013:8.

60 BusinessTech. “ Education Department admits to teacher qualification mess”, <https://businesstech.co.za/news/general/96359/education-department-admits-to-teacher-qualification-mess/> (accessed on 16 August 2017).

61 BusinessTech. “ Education Department admits to teacher qualification mess”, <https://businesstech.co.za/news/general/96359/education->

Teacher supply and demand models and teacher profiles are built on a legal and policy framework that includes the following: a National Framework for Teacher Education in South Africa;<sup>62</sup> Integrated Strategic Planning Framework for Teacher Education and Development in South Africa 2011-2025;<sup>63</sup> and Teachers in South Africa supply and demand 2013-2025.<sup>64</sup>

In future, the DBE may include a document such as Teacher Professional Standards for South Africa. The Road to Better Performance, Development and Accountability?<sup>65</sup>

## 4.2 Relevant data on teacher supply and demand

In 2016, there were 12 342 213 learners and 381 394 educators in the ordinary school sector in South Africa.<sup>66</sup> The latter figure probably does not include educators employed by schools through their governing bodies.<sup>67</sup> In 2016, there were 37 219 educators in independent schools<sup>68</sup> in South Africa.<sup>69</sup>

The teacher supply and demand model developed by the CDE suggests that, over the next 10 years, the demand for teachers “will closely match the supply”.<sup>70</sup> Van Broekhuizen uses the 2004-2013 Higher Education Management Information System (HEMIS) database to investigate what he calls a “critical teacher shortage”.<sup>71</sup> He disagrees with the CDE’s conclusion and believes that, “even if all the new teacher graduates produced between 2004 and 2013, about 92,500, had gained employment as teachers immediately after graduating, this would still not have been sufficient to fill all the posts over the period”.<sup>72</sup> Although the new enrolments in teacher training programmes “in public universities has increased markedly over the past decade, effectively doubling between 2004 and 2013”, they would only cover the annual demands for new teachers, if they all complete their programmes successfully.<sup>73</sup> Van Broekhuizen also points out that it “is common knowledge ... that a substantial proportion of new teacher graduates do not become first-time teachers after graduating”. According to him, the number of graduates who “could be added to the stock of qualified teachers” is whittled down by the fact that “a substantial

---

department-admits-to-teacher-qualification-mess/ (accessed on 16 August 2017).

62 Department of Education 2005.

63 Departments of Basic Education and Higher Education and Training 2011.

64 Centre for Development and Enterprise (CDE) 2015.

65 Centre for Development and Enterprise (CDE) 2017.

66 Department of Basic Education (DBE) 2016.

67 Department of Basic Education (DBE) 2016.

68 This article focusses on the ordinary school sector (the public schools).

69 Department of Basic Education (DBE) 2016.

70 Centre for Development and Enterprise (CDE) 2015:21.

71 Van Broekhuizen 2015:1-2.

72 Van Broekhuizen 2015:1-2.

73 Van Broekhuizen 2015:3.

proportion of teacher training students do not plan on becoming teachers in South African schools”.<sup>74</sup>

It appears that one can assume that South Africa will have significant problems with the supply of qualified teachers at least in the medium term. This could probably be attributed in part to the deficient functioning of legal mechanisms. The DBE has an Education Management Information Systems (EMIS) unit that should be able, 24 years into a new dispensation, to predict the need for educators accurately. The executive officers of education departments should by now have accepted full responsibility for the functioning or non-functioning of this unit. Not only can officials appointed to senior positions in education not escape the sanction of the law by claiming incapacity to perform intricate tasks such as calculating the supply and demand of teachers, but, in South African law, a person who applies for a post declares implicitly or explicitly that s/he has the necessary skills, knowledge, attitudes, values and experience needed to comply satisfactorily with the requirements of the position.<sup>75</sup> Grogan<sup>76</sup> comments that “employment contracts ... bear a heavy load of implied terms”. If such units do not perform satisfactorily and a shortage of teachers persists, parents and the general public have every right to expect those responsible for the system to intervene and take steps to address the problem.

### 4.3 The quality of educators

#### 4.3.1 What is quality?

In order to examine the quality of educators, one needs to indicate what one understands by the concept ‘quality’. In this instance, a good starting-point is Spaul’s list of four attributes that define quality and that an educator must possess:<sup>77</sup> some requisite level of professionalism (values) (in established professions, professionalism suggests the ability to profess to be able to do something for someone who is dependent on you such as a doctor for a patient or an educator who can unlock the future for a learner); the inclination to teach (attitudes and desires); the ability to teach (knowledge, skills and pedagogy), and therefore, the competence to teach (imparting and instilling the knowledge, skills and values pupils should be acquiring at school).

Spaul points out that teacher content knowledge is “a necessary but not sufficient condition for pupil learning”.<sup>78</sup> According to him, put simply, “teachers cannot teach what they do not know”.<sup>79</sup> Spaul points out that

---

74 Van Broekhuizen 2015:3-4.

75 Beckmann & Prinsloo 2013:29.

76 Grogan 2003:31.

77 Spaul 2013:24.

78 Spaul 2013:24.

79 Spaul 2013:24.

the “extant literature on the content knowledge of South African teachers reveals that many have not mastered the curricula they are expected to teach”.<sup>80</sup> He quotes the conclusions of a study by Taylor and Vinjevold that “teachers’ poor conceptual knowledge of the subjects they are teaching is a fundamental constraint on the quality of teaching and learning activities, and consequently on the quality of learning outcomes”.<sup>81</sup>

Spaull (2013:35) draws attention to some facts that are often forgotten in debates on educator quality.<sup>82</sup> He mentions the high levels of inequality that plague the country and permeate every element of the schooling system; educational outcomes that range from a very few schools that perform at internationally comparable levels of achievement, all the way down to a majority of schools that cannot impart even the most basic numeracy and literacy skills to their pupils; a minority of pupils (roughly 25 per cent) perform significantly better than the majority of pupils (roughly 75 per cent);<sup>83</sup> that the better performing group of wealthier schools is still underperforming by international standards, and the better performing part of the South African system may not be achieving at a comparable level with developed countries.<sup>84</sup>

It seems that one should be fair and realistic in one’s judgement of the below-par performance of the vast majority of teachers, due to, *inter alia*, the history of education in South Africa and the uneven quality of teacher training, to which teachers had access in the past. Spaull also warns against the belief that quintiles 1-3 schools are bad, that quintile 4 schools are acceptable, and that quintile 5 schools are generally on a par with the best in international terms.<sup>85</sup> Although many South African educators appear to be performing poorly, there are signs of improvement; some of the teachers are performing on a level that carries the promise of international competitiveness.

### 4.3.2 Quality and the supply and demand of educators

In its study on the supply and demand of teachers 2013 to 2025, the CDE<sup>86</sup> created a profile of the South African teaching force in 2013, from which I quote below:

#### 4.3.2.1 Qualifications levels

Some 81 per cent of the teachers were fully qualified to teach. In this regard, the CDE observes the following:<sup>87</sup>

---

80 Spaull 2013:25.

81 Taylor & Vinjevold 1999:230.

82 Spaull 2013:35.

83 Van der Berg 2007; Fleisch 2008; Spaull 2013.

84 Taylor 2012b.

85 Spaull 2013.

86 Centre for Development and Enterprise (CDE) 2015:16-17.

87 Centre for Development and Enterprise (CDE) 2015:11.

A qualified teacher is not the same as a good teacher. While a qualified teacher in South Africa is one who has at least three years of post-school ITE, not all qualified teachers are competent professionals able to provide quality teaching and learning. In fact, government's own investigation into the quality of ITE programmes and recent research make it clear that the quality of most of these programmes leaves a lot to be desired. The result is that most of the current teaching force has been inadequately educated and trained, whether during apartheid or in the recent past.

The apparent inadequacy of initial teacher education (ITE) programmes points to a problem with quality assurance mechanisms regarding admission to teacher education and to the quality of teacher education programmes themselves.

#### 4.3.2.2 Wasted learning time and insufficient opportunity to learn

Reddy *et al.*<sup>88</sup> investigated officially recorded educator leave in South African ordinary public schools. They made a “conservative, optimistic” estimate of the annual recorded leave rate of educators and put the rate at between 10 per cent to 12 per cent.<sup>89</sup> This implies that, on average, “every educator is away from the regular classroom teaching for 20-24 working days a year”;<sup>90</sup> in other words, 8 per cent of working days of a 200-day school year. Masondo, however, comments that teacher absenteeism is not as much of a problem as “a lack of teaching activity, despite teacher presence”.<sup>91</sup> All of the above point to the need for properly functioning legal mechanisms to regulate educator deployment.

## 5. The law and educator career paths

Although there is an impressive suite of laws and policies in place, there is no guarantee that they will automatically produce the intended results, as there is no linear relationship between the intentions of laws and policies and what happens in practice. Unintended consequences are not uncommon.

### 5.1 The ILO/UNESCO Recommendation concerning the Status of Teachers (1966) (the Recommendation)

Although the ILO/UNESCO Recommendation concerning the Status of Teachers (1966) (the Recommendation) is not a document that is binding in terms of sec. 39 of the *Constitution of the Republic of South Africa*,<sup>92</sup> it does provide a comprehensive list of elements of a teacher's career that

---

88 Reddy *et al.* 2010.

89 Reddy *et al.* 2010:83.

90 Reddy *et al.* 2010:83.

91 Masondo 2016.

92 United Nations Educational, Scientific and Cultural Organization (UNESCO) 2008:14.

could be used as a guideline or point of reference for a uniquely South African legal framework that could regulate South African educators' career paths appropriately and contribute to the enhancement of educator quality. The Recommendation "sets international standards for a wide range of issues, which relate to the most important professional, social, ethical, and material concerns of teachers".<sup>93</sup> The issues, which could all have a bearing on the quality of educators deployed, should feature in all legal frameworks regulating the teaching profession, including initial and continuing teacher training, recruitment, security of tenure, disciplinary procedures, supervision and assessment, and participation in educational decision-making and negotiation. I will now discuss these standards where appropriate.

## 5.2 The supply and demand of educators

From sec. 29(1) of the *Constitution of the Republic of South Africa*, read together with sec. 7(2) of the *Constitution of the Republic of South Africa*, which provides that the state "must respect, protect, promote and fulfil the rights in the Bill of Rights",<sup>94</sup> and the *South African Schools Act*, which provides that the "Member of the Executive Council must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature",<sup>95</sup> it is clear that the State has the primary duty to ensure that there are enough educators. The *South African Schools Act* supports this conclusion, stating that, "Every Member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsections (1) and (2)".<sup>96</sup>

The question arises as to whether the State could be held accountable for failing to take steps to ensure that enough suitably qualified educators are available. Education authorities will not be able to advance lack of capacity to do such planning, because the *National Education Policy Act* (NEPA) provides that "the Minister shall determine national policy for the planning, provision, ... and well-being of the education system and, ..., may determine national policy for (a) education management information systems".<sup>97</sup> The *Constitution of the Republic of South Africa* provides that the "national government, by legislative and other measures, must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in subsection (2)".<sup>98</sup>

---

93 United Nations Educational, Scientific and Cultural Organization (UNESCO) 2008:8-9.

94 *Constitution of the Republic of South Africa* 1996:sec. 7(2).

95 *South African Schools Act*:sec. 12.

96 *South African Schools Act*:sec. 3(3).

97 *National Education Policy Act*:sec. 4.

98 *Constitution of the Republic of South Africa* 1996:sec. 125(3).

The employer accepts a declaration of competence by a prospective employee by way of an appointment.<sup>99</sup> It seems that, even if a person has not applied for a position and s/he has been appointed in an unconventional fashion in terms of labour law, his/her acceptance of an appointment constitutes a declaration that s/he meets the requirement of the post in question. Cadre deployment in terms of the African National Congress National Democratic Revolution could be an example of such an unconventional appointment.<sup>100</sup>

What emerges clearly from the above is that to have an impressive legal framework in place and not to sanction people who fall foul of the law should not be tolerated. Twenty-three years into a new system, the State should not only be able to predict the supply and demand of educators, but also, *inter alia*, through norms and standards and other legislation, ensure that enough educators are produced by the initial teacher education system and that conditions of service are such that enough educators are retained in the system.

### 5.3 School conditions for teacher recruitment

An educator's career begins during his/her own school career. A child's school experiences and the school climate need to contribute to the attractiveness of education as a career. Professionalism is among the characteristics that teachers should display to get children interested in teaching as a career.<sup>101</sup> The DoE, quoting from the Norms and Standards for Educators,<sup>102</sup> defines 7 roles in which educators must excel, namely learning areas; teaching and learning; assessment; curriculum development; leadership, administration and management; scholarship and lifelong learning, as well as exemplary fulfilment of community, citizenship and pastoral roles. Teachers must master these roles in their ITE before they are appointed. It follows that teachers who perform these roles in an excellent manner are likely to attract future teachers, although this is not an explicit aim of the roles.

As far as the climate of a school that will encourage learners to choose teaching as a career is concerned, it must be welcoming, rewarding, safe, encouraging and affirming of the learner's central place in the vision and mission of the school. A learner's rights must be respected, protected, promoted and fulfilled by the teachers and the schools as agents of the State. Learners with barriers to learning must be accommodated.

In very practical terms, one can point to matters that must be removed from schools in order to establish the type of climate that will attract future teachers. Bullying of all kinds; sexual harassment and abuse by fellow

---

99 Beckmann & Prinsloo 2013:29.

100 African National Congress (ANC) s.a.:5.

101 United Nations Educational, Scientific and Cultural Organization (UNESCO) 2008.

102 Department of Education (DoE) 2000.

learners and educators; teacher on learner and learner on teacher violence, and educational neglect must be ended by applying the law, and schools must comply with the norms and standards for basic infrastructure and capacity in public schools as set out in the *South African Schools Act*.<sup>103</sup>

## 5.4 Teacher selection

The *SACE Act* provides, *inter alia*, that the SACE must implement a code of professional ethics for educators who are registered or provisionally registered with the Council<sup>104</sup> and must promote, develop and maintain a professional image with regard to the education and training profession.<sup>105</sup> The Act also provides that the objects of the Council are to provide for the registration of educators.<sup>106</sup>

In general, recognised professions are governed by councils such as the SACE that normally have significant powers regarding training to become a member of the profession, allowing access into the profession as well as selection for training for the profession. In the case of education, it is unfortunately so that there is no stringent, comprehensive selection process for education students who, as a rule, gain access to initial teacher education by complying with the minimum requirements for admission to the higher education learning programmes in question. In addition, the SACE seems to exert very little, if any influence on the selection process.

Urgent consideration needs to be given to a mechanism to subject applicants for the teaching profession to a strenuous selection procedure that will also include interviews and even the use of psychometric testing to assess an applicant's overall suitability for the education profession. The CDE points out that, in the selection process, relatively "low entrance requirements in comparison with most other disciplines [apply] and students are accepted without any reference to what motivates them to become teachers" (insertion in square brackets by the author).<sup>107</sup>

## 5.5 Initial Teacher Education (ITE)

Together with the professional council, teacher education institutions should be the main custodians of the professional status and standards of the profession. South Africa still has to finally put to rest the legacy of the past, which included a variety of institutions that provided teacher education of various standards, ranging from comparable with what is acceptable in most developing and developed countries to what is downright unacceptable in any situation.

---

103 *South African Schools Act*:sec. 5A.

104 *South African Council for Educators Act*:sec. 5(c).

105 *South African Council for Educators Act*:sec. 5(b).

106 *South African Council for Educators Act*:sec. 2(a-c).

107 Centre for Development and Enterprise (CDE) 2015:7.

The restructuring of the higher education sector in the early 2000s was aimed at creating a climate where teacher education could be improved significantly. All the colleges of education were closed, or merged with institutions of higher education such as universities. In principle, one cannot fault this shift in direction. Already in the 1960s, the famous American sociologist Wilensky,<sup>108</sup> in an authoritative study of professions, declared that all training for professions tended to gravitate towards universities over time.

However, the above restructuring decision led to a significant reduction in the number of institutions offering ITE. In addition, the right-sizing of education in the latter half of the 1990s and the voluntary severance packages offered to staff of colleges of education in terms of Resolution 3 of 1996 of the Education Labour Relations Council,<sup>109</sup> resulted in many teacher educators being lost to the system.

Education is so important in the lives of learners that it is inconceivable that it should be offered by people other than true professionals, trained professionally in reputable institutions. In 2014, 23 universities offered ITE programmes, including the two new universities in Mpumalanga and the Northern Cape.<sup>110</sup> Apparently there is enough teacher training capacity, but the CDE states emphatically that “the [current] ITE system [based in universities] is inefficient and both money and learning time are wasted”.<sup>111</sup>

The CDE<sup>112</sup> discusses the demand for the provision of quality educators and summarises the flurry of initiatives taken by government since 1995 in the forms of, *inter alia*, legislation, policies and plans to ensure that the demand is met. The list of initiatives seems both impressive and promising. However, the CDE’s conclusion does not bode well for teacher education and for teaching as a profession, namely that the teacher education system was inefficient and wasted both money and learning time.<sup>113</sup>

In 2015, the CDE<sup>114</sup> emphasised the prime importance of initial teacher education and of teachers and attempted to answer the key question: “Will South Africa be able to produce enough qualified competent teachers for all school phases and subjects over the next ten years?” Their response to the question is not altogether positive and is explained, to some degree, by their overview of government initiatives in the period they investigated. They raised serious objections to the National Teacher Education Audit, which was misinterpreted as indicating that there were too many teachers in the country.<sup>115</sup> The CDE also analysed the Integrated Strategic Planning

---

108 Wilensky 1964.

109 Department of Education (DoE) 1996:par. 1.9.

110 Centre for Development and Enterprise (CDE) 2015:6.

111 Centre for Development and Enterprise (CDE) 2015:25.

112 Centre for Development and Enterprise (CDE) 2015:3-7.

113 Centre for Development and Enterprise (CDE) 2015:25.

114 Centre for Development and Enterprise (CDE) 2015.

115 This audit led, *inter alia*, to a resolution by the Education Labour Relations Council (ELRC) that offered voluntary severance packages to educators. It

Framework for Teacher Education and Development in South Africa 2011-2025 (ISPFTED)<sup>116</sup> and identified a number of flaws in this “highly significant” plan,<sup>117</sup> *inter alia*, that it still uses only two pathways to education, namely a four-year initial degree, or a one-year Postgraduate Certificate in Education. Importantly, the CDE also points out that insufficient attention is paid to the quality of teacher educators and that the Funza Lushaka Bursary Programme (FL) scheme for teaching students, introduced in 2007, also has serious shortcomings.<sup>118</sup> These challenges could be overcome by proper regulation, accountability and oversight.

A review undertaken by the Higher Education Quality Committee (HEQC) between 2005 and 2007 found that:

the majority of teacher education programmes were not worthy of full accreditation because they did not meet the minimum standards as set by the review process. Only seven of the 22 Postgraduate Certificate in Education (PGCE) and 6 of the 15 Bachelor of Education (B Ed) programmes were awarded full accreditation.<sup>119</sup>

It is worth noting that these programmes failed to gain accreditation despite all the regulatory mechanisms that were in place to guide their development as at the time of submission to the HEQC, including the National Qualifications Framework (NQF),<sup>120</sup> the *South African Qualifications Authority Act*,<sup>121</sup> the Higher Education Qualifications Framework,<sup>122</sup> the Norms and Standards for Educators,<sup>123</sup> the National Framework for Teacher Education in South Africa,<sup>124</sup> the Personnel Administrative Measures (PAM),<sup>125</sup> and the National Policy for Teacher Development and Education in South Africa.<sup>126</sup> The question inevitably arises as to whether these legal mechanisms were inadequate, or whether their implementation and accountability for adherence to them were lacking. In response to

---

investigated primarily the imbalances in different kinds of schools regarding racial demographics and teacher:learner ratios.

116 Departments of Basic Education and Higher Education and Training (DBEHET) 2011.

117 Centre for Development and Enterprise (CDE) 2015:4.

118 Joint Education Trust (JET) 2016:12-13.

119 Centre for Development and Enterprise (CDE) 2015:6-7.

120 *National Qualifications Framework Act*.

121 *South African Qualifications Authority Act*.

122 Department of Education (DoE) 2007a.

123 Department of Education (DoE) 2000.

124 Department of Education (DoE) 2005.

125 Department of Education (DoE) 1999. The PAM defines the duties of educators. As such, it can be used as a source for developing programmes for initial teacher education. The PAM was amended and updated in 2016.

126 Department of Education (DoE) 2007. In 2017, the Centre for Development and Enterprise (CDE) published a report entitled “Teacher professional standards for South Africa” (CDE 2017), with the subtitle “The road to better performance, development and accountability?” One is tempted to think that the CDE wants to suggest that defining teacher professional standards will not solve the problem of teacher supply.

the low accreditation rate of qualifications, the Department of Higher Education and Training (DHET) published the Minimum Requirements for Teacher Education Qualifications (MRTEQ) in 2011.<sup>127</sup> These requirements were amended and repealed by Government Notice 38487 of 19 February 2015. This fact seems to suggest that the requirements did not seem to have the intended effect.

The CDE indicates that the DHET expected that, in 2016, all “new student registrations will be for MRTEQ-aligned qualifications”.<sup>128</sup> By February 2015, 73 per cent of submitted programmes had been approved. Even if the expectations of the DHET were met in 2016, the first graduates from these programmes will only be eligible for appointment as teachers in 2020.

A study by the Joint Education Trust (JET) Education Services has established that ITE programmes

have lower entrance requirements in comparison with most other disciplines and students are accepted without any reference to what motivates them to become teachers. ... in most universities the B Ed program has lower entrance requirements than other undergraduate degree programs, which means that weaker students are attracted to the Bachelor of Education program.<sup>129</sup>

From the above, it appears that initial teacher education needs to be improved significantly so that there can be enough teachers who are able to provide the kind of education South Africa’s children need. Guidelines and legal or policy provisions need to be implemented and a thorough process of accountability for performance needs to be in place. It also seems that the selection mechanisms for education students and for higher education institution staff members, who are responsible for training prospective educators, need to be revisited. As far as the selection of students is concerned, entrance requirements need to be adjusted where they are patently too low, and the selection process also needs to make provision, *inter alia*, for considering what motivates students to become teachers.<sup>130</sup> With regard to both students and staff of higher education institutions, SACE could and should play a more prominent role in promoting the quality of educators and education by selecting better students and appointing better qualified lecturers with a proven record of success in the teaching profession at school level.

## 5.6 Appointment and conditions of service of educators

Even if one confines oneself to the appointment of educators in public schools and excludes educators appointed by schools from school funds,<sup>131</sup> a comprehensive suite of legislative and other regulatory mechanisms is in place.

---

127 Department of Higher Education and Training (DHET) 2011.

128 Centre for Development and Enterprise (CDE) 2015:7.

129 Centre for Development and Enterprise (CDE) 2015:7.

130 Centre for Development and Enterprise (CDE) 2015:7.

131 *South African Schools Act*:sec. 20(4).

The Personnel Administrative Measures (PAM)<sup>132</sup> sets out the terms and conditions of employment of educators determined by the Minister. The PAM could help enhance the quality of educators by, *inter alia*, helping define the content and format of the training of educators and put in place an employment regimen that will do justice to the professional status of educators; help recruit and retain suitable educators, and make teaching a more attractive profession. Provisions regarding the workload of school-based educators,<sup>133</sup> the core duties and responsibilities of teachers,<sup>134</sup> career path opportunities and requirements for appointment and promotion,<sup>135</sup> and salaries applicable to educator posts<sup>136</sup> already provide suitable points of departure that can be amended and implemented better in order to enhance the possibility of putting competent educators in every classroom.

The *South African Schools Act* compels governing bodies to recommend to the HOD the appointment of educators at the school.<sup>137</sup> At present, such recommendations cover all post levels at a school. The appointments are made by provincial departments of basic education.<sup>138</sup> These specific department consider a list of recommendations by the governing body of the school, but have the power to appoint a suitable educator who has not been recommended by the governing body.<sup>139</sup> This power of provincial education departments has led to a great deal of litigation. The courts have ruled that departments do not always comply with the law on fair administrative action.<sup>140</sup> Concerns have been raised about the ability of governing body members to participate in the appointment of educators to schools<sup>141</sup> and the *Draft Basic Education Laws Amendment Bill* of 2014 proposes that, in future, governing bodies should only make recommendations for appointments to post level 1 positions.<sup>142</sup> This proposal has elicited vehement opposition from people blaming provincial education authorities for neglecting their obligation to provide introductory and continuing training for governing bodies<sup>143</sup> and for not heeding the injunction that, if “a governing body fails to perform any of its functions”, the HOD concerned “must build the necessary capacity

---

132 Department of Education (DoE) 1999.

133 Personnel Administrative Measures (PAM);par. A.4.

134 Personnel Administrative Measures (PA);par. A.5.

135 Personnel Administrative Measures (PAM);par. B.4.

136 Personnel Administrative Measures (PAM);par. B.8.

137 *South African Schools Act*:sec. 20(4).

138 *Employment of Educators Act*:sec. 6.

139 *Employment of Educators Act*:sec. 6(f)

140 For example, *Aberdeen Senior Secondary School v The MEC for the Department of Education, Eastern Cape and others* (372/09) [2010] ZAECBHC 16; (2011) 32 ILJ 871 (ECB); *Eikendal Primary School and another v WCED and others* (394/09) [2009] ZAWCHC, and *Kimberley Girls' High School and another v Head of Department of Education, Northern Cape Province and others* [2005] 1 All SA 360 (NC).

141 *Draft Basic Education Laws Amendment Bill*.

142 *Draft Basic Education Laws Amendment Bill*:par. 10.

143 *South African Schools Act*:sec. 19(1).

within the period of their appointment to ensure that the governing body performs its functions".<sup>144</sup>

The provisions contained in the *Employment of Educators Act 76 of 1998 (EEA)* could help create more career stability for educators and enhance its attractiveness to learners, in the sense that it deals with issues of educator misconduct and incapacity and could, for example, give learners the opportunity to see that justice is done when educators transgress the law or professional codes. It provides for educators' conditions of service and educator establishments,<sup>145</sup> appointments,<sup>146</sup> promotions and transfers, the termination of educators' services,<sup>147</sup> and how incapacity and misconduct are addressed, including dismissal on the grounds of incapacity or misconduct.<sup>148</sup>

The *SACE Act* has a prominent role in determining the quality of educators by controlling access to the profession, because registration with SACE is a prerequisite for appointment to a teaching post.<sup>149</sup> It has the power to deregister educators found guilty of misconduct. This fact could enhance confidence in the integrity of the profession.<sup>150</sup> It administers the CPTD, in terms of which educators have to earn credits (points) for professional development activities that will ensure the retention of their status as educators registered with SACE and, it is hoped, improve their professional competence.<sup>151</sup> It also advises the Minister of Basic Education on matters relating to the education and training of educators<sup>152</sup> and other matters.<sup>153</sup>

The Integrated Quality Management System (IQMS)<sup>154</sup> is closely linked to educators' professional development, which is crucial in any effort to ensure the quality of teachers in the classroom, in the sense that it can be used to upgrade qualifications, update knowledge and skills, and even retrain educators for new responsibilities. Professional development is a logical avenue for empowering, motivating and training educators to enhance their teaching skills and capacities. The assessment of an educator's performance could lead to an individual educator's participation in professional development activities to enhance his/her effectiveness in three ways, namely self-initiated development activities, school-initiated development activities, and externally initiated development activities

---

144 *South African Schools Act*:sec. 25(4).

145 *Employment of Educators Act*:ch. 2.

146 *Employment of Educators Act*:ch. 3.

147 *Employment of Educators Act*:ch. 4.

148 *Employment of Educators Act*:ch. 5.

149 *South African Council for Educators Act*:sec. 5(b)(aa).

150 *South African Council for Educators Act*:sec. 5(c)(cc).

151 *South African Council for Educators Act*:sec. 5(b)(dd)(iv).

152 *South African Council for Educators Act*:sec. 5(b)(ii).

153 *South African Council for Educators Act*:sec. 5(e)(i).

154 Education Labour Relations Council 2003; Weber 2005; Queen-Mary & Mtapuri 2014.

informed by a District Improvement Plan (DIP).<sup>155</sup> However, there is an ever-present danger that IQMS could be used to score educators' performance, instead of forming a platform for development.

It would appear then that the measures intended to ensure that South Africa has an adequate number of competent educators and that they are continuously exposed to further professional development, which is not as successful as intended, may require refinement.

## 6. Problems with the implementation of the legal framework

Although South Africa has a set of legal instruments that should be able to ensure the presence of competent educators in every classroom, there is strong evidence that the instruments are not functioning as they should be, due to, *inter alia*, the ignorance of functionaries and the poor supervision of their implementation. The legal framework and instruments created to ensure the appointment of competent educators are expected to have a linear impact on the system without proper implementation and monitoring strategies.

The involvement of school governing bodies in the recommendations of educators for appointment in schools expresses the rights of parents as the primary educators of children. It is a problem that a number of governing bodies are not performing optimally<sup>156</sup> and may not have the capacity to judge the suitability of candidates for appointment, especially if they have to assess a candidate's competence with regard to the teaching of a specific subject.

Although appointments may only be made on the recommendation of the governing body concerned,<sup>157</sup> the power of governing bodies is, in this instance, significantly curtailed.<sup>158</sup> Governing bodies appear to be at the mercy of departmental officials who have the power to ensure that governing bodies have complied with these requirements.<sup>159</sup> It is not unconscionable that departmental officials may use these requirements to intimidate governing bodies to accept their wishes. A provincial department of basic education's power to disregard all the recommendations by a governing body and appoint "any suitable candidate on the list"<sup>160</sup> could lead to lawsuits and delay the filling of posts.

There is currently no uniform, national provision for an induction process for beginning teachers, which is an essential part of turning novice teachers into competent ones.<sup>161</sup> Financial assistance to needy students

---

155 Du Plessis 2014.

156 Department of Education (DoE) 2004.

157 *Employment of Educators Act*:sec. 6(3).

158 *Employment of Educators Act*:sec. 6(3)(b).

159 *Employment of Educators Act*:sec. 6(3)(d).

160 *Employment of Educators Act*:sec. 6(3)(d).

161 Kearney & Boylan 2016:8.

might not be readily available from the FL Bursary Programme and it might prevent suitable candidates from entering ITE programmes.

SACE is not prevalent in the selection requirements for entrance into ITE programmes, the content and format of ITE programmes, and the appointment of higher education staff responsible for the training of education students. SACE must play a more visible, constructive, authoritative and decisive role in ITE. All educators must comply with its code of ethics, and EEA makes provision for dealing with educator misconduct. However, it seems that many instances of misconduct or unprofessional conduct go unpunished. The failure of the system to remove all educators guilty of, for example, sexual abuse of learners (De Villiers, 2017), or financial mismanagement, casts doubt on the integrity of the profession and tarnishes its image, thus reducing its attractiveness to prospective teachers.

It appears that professional development opportunities for educators are not sufficiently quality-assured and in line with authentic accountability. The assessment of such opportunities could be done in a managerialist (checklist) fashion. Although IQMS is worth pursuing, there is evidence of its abuse to inflate ratings of educators and attract bonuses. A further obstacle, in this instance, is the widespread resistance of unions against the evaluation of their members' work and practices such as class visits by School Management Team (SMT) members.

## 7. Conclusion

Researchers and government agree

that the subject content knowledge and pedagogical knowledge of most South African teachers is poor and that this is a major cause of inadequate learner achievement. That teachers lack essential knowledge and skills points to inadequate preservice teacher training, which is provided through ITE programmes at higher education institutions (HEIs) in South Africa.<sup>162</sup>

This article reaffirms the importance of quality educators in classrooms. The literature suggests that, contrary to general belief, the effects of educators on learners' achievement can be quantified.<sup>163</sup> Suggestions to improve the quality of educators by making it easier to remove poor teachers<sup>164</sup> might be very difficult to do in South Africa, not only because of the strong protection of employment rights, but also in light of the history of the provision of educators in this country which has led to many educators receiving poor ITE, hardly any support in schools and having to cope in generally dysfunctional schools. It would be unfair to "punish" an educator who is not performing particularly well, due to factors beyond

---

162 Centre for Development and Enterprise (CDE) 2015:3.

163 Hanushek 2011; Hattie 2003; Kristof 2012; Lowrey 2012; Martinez 2011.

164 Kristoff 2012.

his/her control.<sup>165</sup> The fact that so many educators are performing poorly rather calls for an intensification and expansion of quality professional development opportunities.<sup>166</sup>

Many reasons for the poor quality of both education and educators could be addressed by means of proper legal regulation of aspects of a teacher's career path accompanied by the efficient implementation of legal provisions, including robust assessment of compliance with the law and purposeful sanctions, should the provisions be contravened. It would seem that the law in South Africa makes significant provision for the regulation of teachers' career paths in such a way that quality educators will be attracted to, and retained in the profession. Aspects of the legal provisions could be improved, *inter alia*, with regard to the recruitment of educators, the selection of education students, calculating the demand for educators, the appointment of teachers and teacher educators, and the assessment of educators' performance.

All systems, structures and processes should be scrutinised anew, even if they appear appropriate and attractive. It must not be assumed that the legal framework will by itself, as if by magic, bring about desired changes and lead to an improvement of the system. Those who have to implement provisions need to be held accountable and brought to book when necessary. A healthy suspicion needs to accompany the introduction of new policy and legal measures.

It also seems that the law needs to shore up the status of educators as professionals and of education as a profession. SACE needs to be more involved in, *inter alia*, the training of educators. SACE also needs to apply its code of ethics consistently so as to suggest to the general public that unprofessional conduct is not tolerated and that educators, as a collective, will not allow people guilty of unprofessional conduct to practise the profession.

Ways need to be found to empower SACE to play a more influential role in these matters instead of merely advising the Minister. At present, they do not have any direct contact with institutions and have to accept qualifications that have been accredited for teacher education by other agencies such as the HEQC, thus reducing their power to control access to an almost symbolic power. SACE is a stakeholder with a justified interest in the qualifications, quality and conduct of teacher educators and this fact should be reflected in their powers.

There is compelling evidence that many educators' work ethic is not acceptable. There will need to be a tightening of the regulation of leave matters, and decisive action needs to be taken in respect of, *inter alia*, educators absent without permission and their resistance to assessment.

---

165 Fiske & Ladd 2004.

166 Van der Berg s.a.

Wasted learning time and insufficient opportunity to learn need to be addressed, as President Zuma suggested.<sup>167</sup>

The ideal of excellent educators everywhere in South African classrooms does not seem to be within the realms of possibility in the foreseeable future. However, researchers have shown that merely ensuring that there are average teachers everywhere can contribute significantly to the quality of education. Charles V (Chuck) Willie, emeritus Charles William Eliot Professor of Education at Harvard University, is known for his belief<sup>168</sup> that it is unrealistic to expect all practitioners of a profession to be excellent. However, one can expect all practitioners to be competent. In South Africa, we could strive to improve the quality of educators to the extent that all educators in classrooms are competent. Given the baggage with which South African educators have to contend, one should set incremental goals that are realistic and achievable.

Perhaps the goal should be to restore and enhance teachers' professional status; put competent educators in classrooms; provide poorly performing educators with opportunities to improve themselves, and encourage them to use such opportunities well. In a manner of speaking, we could use the law to return to the fundamentals of our education system, using competent teachers to ensure that the interests of learners are always foregrounded.

## Bibliography

### AFRICAN NATIONAL CONGRESS (ANC)

s.a. 53<sup>rd</sup> *National Conference Resolutions*. Johannesburg: African National Congress .

### ALAVA J, BECKMANN J & DU PLESSIS A

2017. *Professional course for educational leaders*. Pretoria: Department of Education Management and Policy Studies, Faculty of Education, University of Pretoria.

### BECKMANN J & PRINSLOO J

2006. Imagined power and abuse of administrative power in education in South Africa. *Journal of South African Law* 2006:483-496.

2013. Training teachers to play quasi-judicial roles in learner discipline: the story of an intervention to close the justice gap. In Kanervio *et al.* (eds) 2013:27-47.

### BUSINESSTECH

2015. This graph shows just how bad South Africa is at education. <https://businesstech.co.za/news/government/89446/this-graph-shows-just-how-bad-south-africa-is-at-education/> (accessed on 3 August 2017).

---

167 Reddy *et al.* 2010:1.

168 As related to me by Prof. KE Weber, who completed his PhD under Prof. Wille's supervision.

2015a. South Africa's education crisis enough to make you weep. <https://businesstech.co.za/news/general/100036/south-africas-education-crisis-enough-to-make-you-weep/> (accessed on 4 August 2017).

2015b. Education Department admits to teacher qualification mess. <https://businesstech.co.za/news/general/96359/education-department-admits-to-teacher-qualification-mess/> (accessed on 16 August 2017).

#### **CENTRE FOR DEVELOPMENT & ENTERPRISE (CDE)**

2015. *Teachers in South Africa. Supply and demand 2013 to 2025*. Johannesburg: Centre for Development and Enterprise.

2017. *Teacher professional standards for South Africa. The road to better performance, development and accountability?* Johannesburg: Centre for Development and Enterprise.

#### **DEPARTMENT OF BASIC EDUCATION (DBE)**

2016. *School realities 2016*. Pretoria: Department of Basic Education.

2016a. *Report of the Ministerial Task Team appointed by Minister Angie Motshekga to investigate allegations into the selling of posts of educators by members of teachers unions and departmental officials in provincial education departments*. Pretoria: Department of Basic Education.

2017. 2017/18 Basic Education Budget Vote Speech delivered by the Minister of Basic Education, Mrs Angie Motshekga, MP, at the National Council of Provinces (NCoP), Cape Town, 7 June 2017. <http://www.education.gov.za/newsroom/speeches/tabid/950/ctl/details/mid/6106/itemid/4411/default.aspx> (accessed on 8 August 2017).

2017. *The SACMEQ IV project in South Africa: A study of the condition of schooling and the quality of education*. Pretoria: Department of Basic Education.

#### **DEPARTMENTS OF BASIC EDUCATION AND HIGHER EDUCATION AND TRAINING (DBEHET)**

2011. *Integrated Strategic Planning Framework for Teacher Education and Development in South Africa 2011 to 2025. Technical Report*. Pretoria: Department of Basic Education.

#### **DEPARTMENT OF EDUCATION (DOE)**

1995. *White Paper on Education and Training*. Pretoria: Department of Education.

1996. *Education Labour Relations Council Resolution 3 of 1996. Government Notice R 912 of 31 May 1996*. Pretoria: Department of Education.

1999. *Personnel Administrative Measures. Government Notice 222 of 1999, Government Gazette 19767, 18 February 1999*. Pretoria: Department of Education.

2000. *Norms and Standards for Educators. Government Notice 82 of 2000, Government Gazette No. 20844, 4 February 2000*. Pretoria: Department of Education.

2004. *Review of School Governance, South African Public Schools. Report of the Ministerial Review Committee on School Governance*. Pretoria: Department of Education.

2005. *A National Framework for Teacher Education in South Africa. Report of the Ministerial Committee on Teacher Education, 16 June 2005.* Pretoria: Department of Education.

2007. *The National Policy for Teacher Development and Education in South Africa.* Pretoria: Department of Education.

2007a. *Higher Education Qualifications Framework.* Pretoria: Department of Education.

#### DEPARTMENT OF HIGHER EDUCATION AND TRAINING (DHET)

2011. *Minimum Requirements for Teacher Education Qualifications (MRTEQ).* Government Notice No. 583, Government Gazette No. 34467, 15 July 2011, as repealed and amended by Government Notice 111 of 19 February 2015. Pretoria: Department of Higher Education and Training.

#### DE VILLIERS J

2017. Teacher probed for allegedly impregnating pupils. Education Department. <http://www.news24.com/SouthAfrica/News/teacher-probed-for-allegedly-impregnating-pupils-education-dept-20170830> (accessed on 1 September 2017).

#### DU PLESSIS A

2014. Integrating the Integrated Quality Management System (IQMS) and the Continuing Professional Teacher Development (CPTD) system, as administered by the South African Council of Educators (SACE). In: Alava *et al.* 2017. Professional course for educational leaders. Pretoria: Department of Education Management and Policy Studies, Faculty of Education, University of Pretoria, 25-27.

#### EDUCATION LABOUR RELATIONS COUNCIL (ELRC)

2003. *Integrated Quality Management System (IQMS). Collective agreement number 8 of 2003, 27 August 2003.* Pretoria: Education Labour Relations Council.

#### FISKE EB & LADD HF

2004. *Racial equality in South Africa: How far has South Africa come? Working Papers Series SAN05-03, January 2005.* Durham, NC: Terry Sanford Institute of Public Policy, Duke University.

#### GROGAN J

2003. *Workplace law.* 7<sup>th</sup> edition. Cape Town: Juta.

#### HANUSHEK EA

2011. Valuing teachers. How much is a good teacher worth? *Education Next* Summer:41-45.

#### HATTIE J

2003. *Teachers make a difference: What is the research evidence? Paper read at the Annual Conference of the Australian Council for Educational Research on: Building teacher quality.* Auckland: University of Auckland.

#### HOWIE SJ, COMBRINCK C, ROUX K, TSHELE M, MOKOENA GM & MCCLEOD PALANE N

2017. *PIRLS LITERACY 2016: South African Highlights Report.* Pretoria: Centre for Evaluation and Assessment.

**JOINT EDUCATION TRUST (JET) EDUCATION SERVICES**

2016. *Funza Lushaka Bursary Programme Implementation Evaluation. Report prepared for the Department of Performance Monitoring and Evaluation (DPME) and the Department of Basic Education (DBE)*. Johannesburg: Joint Education Trust.

**KANERVIO P, PULKKINEN S & HALTTUNEN L (EDS)**

2013. Mind the gap. Creating social justice through education policy. *Studies in Educational Leadership 1*. Jyväskylä: University of Jyväskylä.

**KEARNEY S & BOYLAN M**

2016. What happens when induction goes wrong: Case studies from the field. *Cogent Education 3*:1. <https://doi.org/10.1080/2331186X.2016.1160525>

**KRISTOF N**

2012. The value of teachers. Op-Ed column in the Opinion Pages of the *New York Times*. <http://www.nytimes.com/2012/01/12/-opinion-/kristof-the-value-of-teachers.html> (accessed on 14 August 2017).

**LOWREY A**

2012. Big study links good teachers to lasting gain. <http://www.nytimes.com/2012/01/06/education/big-study-links-good-teachers-to-lasting-gain.html> (accessed on 14 August 2014).

**MAODI C**

2018. Management of learners' language transition for Grade 3 to Grade 4. Draft of an MEd. dissertation. Pretoria: University of Pretoria.

**MARTINEZ A**

2015. Teacher statistics: How teachers make a difference. <https://www.creditdonkey.com/teachers.html> (accessed on 14 August 2017).

**MASONDO S**

2016. Education in South Africa: A system in crisis. *City Press News24.com*, 31 May 2016. <http://city-press.news24.com/News/-education-in-south-africa-a-system-in-crisis-20160531> (accessed on 4 August 2017).

**MCKINSEY & CO**

2007. How the world's best performing school systems come out on top. McKinsey and Co.

**MERRIAM-WEBSTER DICTIONARY**

2017. s.v. 'basic'. (accessed on 1 September 2017).

**MVELI HM**

2017. Opening keynote address delivered at the 2017 South African Education Law Association, held at Stone Henge in Africa, Parys, Free State, 3-6 September 2017 by Mr. M. Mveli, Director General of the National Department of Basic Education.

**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)**

2008. *Review of national policies for education South Africa*. Paris: Organisation for Economic Co-Operation and Development .

**QUEEN-MARY TN & MTAPURI O**

2014. Teachers' perceptions of the Integrated Quality Management System: Lessons from Mpumalanga, South Africa. *South African Journal of Education* 34(1):1-14. <https://doi.org/10.15700/201412120945>

**REDDY V, PRINSLOO CH, NETSHITANGANI T, MOLETSANE R, JUAN A & JANSE VAN RENSBURG D**

2010. *An investigation into educator leave in the South African ordinary public schooling system. Research commissioned by UNICEF. Study undertaken for the Department of Education.* Pretoria: UNICEF, HSRC, Department of Education.

**REDDY V, VISSER M, WINNAAR L, ARENDS F, JUAN A, PRINSLOO CH & ISDALE K**

2016. *TIMMS 2015: Highlights of Mathematics and Science achievement of Grade 9 South African learners.* Pretoria: Human Sciences Research Council.

**ROMAN-CATHOLIC CHURCH**

1965. *Gravissimum educationis.* Declaration on Christian Education. Proclaimed by His Holiness Pope Paul VI, 28 October 1965. [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651028\\_gravissimum-educationis\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_gravissimum-educationis_en.html) (accessed on 14 July 2016).

**SPAULL N**

2013. South Africa's education crisis: The quality of education in South Africa 1994-2011. Report commissioned by CDE. Johannesburg: CDE.

**UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)**

2008. The ILO/UNESCO Recommendation concerning the Status of Teachers (1966) and The UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997). Paris: United Nations Educational, Scientific and Cultural Organization.

**VAN RENSBURG CJJ & LANDMAN WA**

1988. *Fundamental-pedagogic concepts.* Pretoria: NG Kerkboekhandel Edms Bpk (Dutch Reformed Church Publishers Pty Ltd).

**VAN BROEKHUIZEN H**

2015. *Increasing the supply of teacher graduates. RESEP Policy Brief, December 2015.* Stellenbosch: University of Stellenbosch, Department of Economics.

**VAN DER BERG S**

*s.a. Identifying binding constraints in education. Overview of the PSPPD 'Binding Constraints' research programme.* PowerPoint presentation. Stellenbosch: University of Stellenbosch, Department of Economics, RESEP.

**VAN DER BERG S, TAYLOR M, GUSTAFSSON N, SPAULL N & ARMSTRONG P**

2011. *Improving education quality in South Africa: Report for the National Planning Commission.* Stellenbosch: University of Stellenbosch, Department of Economics. Cited in CDE, 2017.

**WEBER KE**

2014. New controls and accountability for South African teachers and schools: The Integrated Quality Management System. *Perspectives in Education* 23(2):63-72.

**WILENSKY HL**

1964. The professionalization of everyone. *The American Journal of Sociology* 70(2):137-158. <https://doi.org/10.1086/223790>