



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

**EDUCATORS' UNDERSTANDINGS OF LEARNERS'
RIGHT TO FREEDOM OF EXPRESSION.**

by

Johannes Hendrik Cornelius Kruger

Submitted in partial fulfilment of the requirements for the degree

MAGISTER EDUCATIONIS

in the Faculty of Education

at the

UNIVERSITY OF PRETORIA

Supervisor: Prof. J.L Beckmann

October 2018



Declaration

I declare that the dissertation, which I hereby submit for the degree Magister Educationis at the University of Pretoria, is my own work and has not previously been submitted by me for a degree at this or any other tertiary institution."

J.H.C Kruger

.....

J.H.C Kruger

31 October 2018



Ethical Clearance Certificate



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Education

RESEARCH ETHICS COMMITTEE

DEGREE AND PROJECT	M.Ed
INVESTIGATOR	Mr Johannes Kruger
DEPARTMENT	Education Management and Policy Studies Educators' understanding of learners' right to freedom of expression
APPROVAL TO COMMENCE STUDY	11 April 2018
DATE OF CLEARANCE CERTIFICATE	02 November 2018
CLEARANCE CERTIFICATE CHAIRPERSON OF ETHICS COMMITTEE:	CLEARANCE NUMBER: EM 18/02/06 Prof Liesel Ebersöhn

CC Ms Bronwynne Swarts
Prof Johann Beckmann

This Ethics Clearance Certificate should be read in conjunction with the Integrated Declaration Form (D08) which specifies details regarding:

- Compliance with approved research protocol,
- No significant changes,
- Informed consent/assent,
- Adverse experience or undue risk,
- Registered title, and
- Data storage requirements



Dedication

I dedicate this study to my, dad, who I have the biggest admiration for.



Acknowledgements

First and above all, I praise God, the almighty for giving me the health and ability to undertake a study like this successfully.

I also wish to express my appreciation to the following persons who made this dissertation possible:

- Professor J.L Beckmann, my supervisor for his guidance and support.
Professor thank you for enriching my life.
- My wife, for all her encouragement during my study. You are my rock.
- To my parents for all their support.



Abstract

The dissertation contributed to relevant work in the field of education law. Schools in South Africa must find appropriate ways of dealing with learner rights, which they must protect, promote, limit and fulfil as an institution of state in terms of the Constitution of the Republic of South Africa Act 108 of 1996. Unfortunately, schools and educators have received copious media attention because of learner rights violations. Although many studies have examined issues of learner rights there has to my knowledge not been a strong enough focus on educators' understanding of learners' right to freedom of expression, as these understandings determine to a large extent the way in which educators will respond to the demand to treat learners' right to freedom of expression in an acceptable manner. This study contributed to educators' understanding of learners' right to freedom of expression and the protection, promotion, limitation and the fulfilment of this right in order to reduce the incidents of learner rights violations. I made use of qualitative research methods to explore the understandings educators had regarding learners' right to freedom of expression in independent and public schools. The data was collected through semi-structured interviews, investigating literature and case law regarding learners' rights. Participants were selected using purposive sampling and consisted of educators in management positions as well as junior and senior educators in post level one positions. The theoretical lens of this dissertation was based on the theory of dignity under the umbrella of human rights theory that I used to support the conceptual framework derived from Chapter 2 of the Bill of Rights that state in section 7(2) that the government must protect, promote and fulfil the rights in the Bill of Rights, and section 7(3) that these rights may be limited according to the criteria in section 36.

Key Terms:

Freedom of expression, Bill of Rights, Constitution, Human rights; Dignity



Language editor

**COPYWRITING &
EDITING SERVICE** 

DECLARATION OF EDITING

19 October 2018

This is to certify that I, the undersigned, performed a language edit on the dissertation:

Educators' understanding of learners' right to freedom of expression

by

Johan Kruger

The text was reviewed and edited using the 'track changes' function. As such, the document I submit is fully editable, and the author is entitled to accept, reject, or modify my changes and suggestions. The final version of the document, submitted for assessment or publication by the author, may differ from that suggested by me.



Anton Ferreira

snapshot.za@gmail.com

0846600601



List of abbreviations

Constitution	Chapter 2 of the Constitution of the Republic of South Africa Act 108 of 1996
SASA	South African Schools Act 84 of 1996
NEPA	National Education Policy Act 27 of 1996
EEA	Employment of Educators Act 76 of 1998



Chapter 1: Roadmap

1.1 Introduction..... 1-2

1.2 Problem statement..... 2-3

1.3 Statement and Purpose..... 3-4

1.4 Research questions..... 4

1.4.1 Main question 4

1.4.2 Sub–questions..... 4

1.5 Rationale 4-5

1.6 Preliminary Literature Review..... 5

1.6.1 South African perspective: Educators’ knowledge of the law..... 5-7

1.6.2 International perspective: Educators’ knowledge of education law..... 7-8

1.6.3 South African Constitutional judges’ interpretation of the right.....
to freedom of expression..... 8

1.6.4 Judgement..... 9

1.6.5 Critical opinion about the judgement 9

1.6.6 Summary..... 9-10

1.7 Theoretical framework..... 10-11

1.8 Theoretical framework (Rosen's theory)..... 11-12

1.9 Conceptual framework..... 13

1.10 Paradigmatic perspective..... 13

1.11 Interpretative paradigm..... 13

1.12 Ontology 14

1.13 Epistemology..... 14-15

1.14 Research methodology..... 15

1.14.1 Research approach: A qualitative approach..... 15-16

1.14.2 Research design..... 16

1.14.3 Participants and sampling 16

1.14.4 General sampling criteria..... 16-17

1.14.5 Specific selection criteria for post level 1 educators 17

1.14.6 Specific selection criteria for educators in management positions 17-18

1.15 Data collection..... 18

1.16 Data analysis..... 19



1.17 Trustworthiness and credibility	19
1.17.1 Triangulation.....	19
1.17.2 Literature review	19
1.17.3 Document analysis	19-20
1.17.4 Reflexive Journal or Practice.....	20
1.18 Ethical considerations.....	20
1.19 Significance of research.....	20
1.20 Workplan.....	21
1.21 Final summary.....	21

Chapter 2 Literature review

2. Introduction.....	22
2.1 Chapter 2 - Bill of Rights.....	22-24
2.2 South African perspective: Educators' knowledge of education law.....	24-27
2.3 International perspective: Educators' knowledge of education law.....	27-29
2.4 South African Constitutional judges' interpretation of the right to freedom of expression.....	29
2.4.1 Judgement.....	29
2.4.2 Critical opinion about the judgement.....	29-30
2.5 Summary.....	30
2.6 Promotion, protection and limitation of learners' right to freedom of expression by treating learners with dignity.....	30-32
2.7 Linking dignity to the promotion, protection and limitation of learners' right to freedom of expression.....	32
2.7.1 First strand: Rank or Status.....	32-33
2.7.2 Second strand: Value.....	33
2.7.3 Third strand: Commending conduct.....	33-34
2.8 Summary.....	33
2.9 The "balancing act" of limiting learners' right to freedom of expression without violating the promotion and the protection of their dignity.....	34-35
2.9.1 Two-stage approach.....	35
2.9.2 Nature of the affected right (Section 36(1)(a)).....	35
2.9.3 Importance of the purpose of the limitation (Section 36(1)(b)).....	35
2.9.4 Nature and the extent of the limitation (Section 36(1)(c)).....	35



2.9.5 Relation between the limitation and its purpose (Section 36(1)(d)).....	35-36
2.9.6 Less restrictive means to achieve its purpose (Section36(1)(e)).....	36
2.9.7 Conclusion regarding Section 36 The limitation clause.....	36
<u>Chapter 3 Research methodology</u>	37
3.1 Introduction.....	37
3.2 Problem statement.....	37-38
3.2.1 Main question	38
3.2.2 Sub–questions.....	38
3.3 Research approach.....	38-40
3.4 Research design.....	40
3.4.1 What is a case study?.....	40
3.4.2 Characteristics of a case study.....	40-41
3.5 Participants and sampling	41-42
3.5.1 Inclusion criteria.....	42
3.5.2 Inclusion criteria for post level 1 educators.....	43
3.5.3 Inclusion selection criteria for educators in management positions.....	43
3.5.4 Selection of a school/ research site.....	43
3.6 Sampling procedure.....	43-44
3.7 Data collection.....	44
3.7.1 Semi–structured interviews	44
3.7.2 Literature review.....	44-45
3.7.3 Analyses of court cases.....	45
3.8 Data analysis.....	45
3.9 Trustworthiness and credibility.....	45
3.9.1 Credibility.....	45
3.9.1.1 Strategy - Triangulation.....	45
3.9.1.2 Member checks.....	45
3.9.1.3 Reflexive journal or practice.....	45
3.10 Ethical considerations.....	46-47
3.10.1 Phase 1- Ethical issues prior conducting the study.....	47
3.10.2 Respect for persons.....	47
3.10.3 Phase 2- Ethical issues in the beginning of the study.....	48



3.10.4 Phase 3- Collecting data.....	48
3.10.5 Phase 4- Analysing data.....	48
3.10.6 Phase 5- Reporting data.....	48-49
3.11 Workplan.....	49
3.12 Conclusion.....	49

Chapter 4 Analysis of data

4.1 Introduction.....	50
4.2 Structure of the chapter.....	51-53
4.3 Freedom of expression.....	53
4.3.1 Right/Entitlement.....	54
4.3.2 Free voicing of opinion.....	54-55
4.3.3 Freedom of expression an "umbrella" concept.....	55
4.4 Protection of freedom of expression.....	55
4.4.1 Safe space.....	56-57
4.4.2 Classroom/school management.....	57-58
4.4.3 Laws/code of conduct/policies.....	58-59
4.4.4 Duties/Roles of educators.....	59
4.4.5 Generational gap.....	59-61
4.5 Promotion of freedom of expression.....	61
4.5.1 Classroom management.....	61-62
4.5.2 Platforms/opportunities for learners to express themselves.....	62-63
4.5.3 Barriers educators have to overcome regarding the promotion of freedom of expression.....	63-64
4.6 Limiting learners' right to freedom of expression.....	64
4.6.1 Inappropriate limitation of learners' right to freedom of expression.....	64-65
4.6.2 Appropriate limitation of learners' right to freedom of expression.....	65-66
4.7 The importance of dignity in freedom of expression.....	66
4.7.1 Frame of reference.....	66-67
4.7.2 Dignity-vis-à-vis respect.....	67
4.7.3 Human rights and dignity.....	68



4.7.4 Educators as advocates regarding learners' right to freedom of expression.....68-69

4.10 Conclusion.....69

Chapter 5 Conclusion

5.1 Introduction.....70

5.2 Overview.....70

5.2.1 Chapter 1: Roadmap.....70-72

5.2.2 Chapter 2: Literature review.....72

5.2.3 Chapter 3: Research methodology.....72-73

5.2.4 Chapter 4: Data analysis and findings.....73

5.3 Purpose of the study.....73

5.4 Findings of the study.....74

5.4.1 What do educators' understand by learners' right to freedom of expression.....74

5.4.1.1 Right/entitlement.....74

5.4.1.2 Free voicing of opinion.....74

5.4.1.3 Freedom of expression an 'umbrella' concept.....74

5.4.1.4 Platforms of expression.....75

5.5 What do educators regard as the protection of learners' right to freedom of expression?.....75

5.5.1 Safe space.....75

5.5.2 Classroom/school management.....75

5.5.3 Laws/code of conduct/policies.....75-76

5.5.4 Duties/roles of educators.....76

5.5.5 Generational gap.....76

5.6 What do educators regard as the promotion of learners' right to freedom of expression?.....77

5.6.1 Classroom management.....77

5.6.2 Platforms/opportunities for learners to express themselves.....77

5.6.3 Barriers educators have to overcome regarding the promotion of freedom of expression.....77-78

5.7 How do educators' limit learners' right to freedom of expression?.....78



5.7.1 Inappropriate limitation of learners' right to freedom of expression.....	78
5.7.2 Appropriate limitation of learners' right to freedom of expression.....	78
5.8 The importance of dignity in freedom of expression.....	78-79
5.8.1 Frame of reference.....	79
5.8.2 Dignity vis-a vis respect.....	79
5.8.3 Human right.....	79
5.8.4 Educators as advocates regarding learners' right to freedom of expression.....	79
5.9 Conclusions.....	80
5.10 Limitations of the research.....	80-81
5.11 Significance of my study.....	81-83
5.12 Recommendations.....	83-84
5.13 Concluding remarks.....	84-85
5.14 References.....	86-93



List of Figures

Figures

Figure 4 Emerging themes and sub-themes.....	51-53
Figure 4.1 Educators understanding of freedom of expression.....	53
Figure 4.2 Managing the protection of learners' right to freedom of expression.....	56
Figure 4.3 Managing the promotion of learners' right to freedom of expression.....	61
Figure 4.4 Managing the limitation of learners' right to freedom of expression.....	64
Figure 4.5 Educators' understanding of the term dignity.....	66

Annexures

Annexure A: GDE research approval letter.....	93
Annexure B: Permission letter to the public school principal.....	94-95
Annexure C: Permission letter to participant.....	96-97
Annexure D: Permission letter to owners/directors of independent school group.....	98-99
Annexure E: Permission letter to principal of independent school.....	100-101
Annexure F: Sampling criteria.....	102-103
Annexure G: Interview Schedule.....	104-106



CHAPTER 1

EDUCATORS' UNDERSTANDING OF LEARNERS' RIGHT TO FREEDOM OF EXPRESSION.

1.1 INTRODUCTION

In Chapter 2 of the Constitution of the Republic of South Africa (1996), hereinafter the Constitution, the rights and values of the people of the Republic are acknowledged. In section 7(2) of the Constitution it is stated that the government must respect, protect, promote and fulfil the rights mentioned in the Bill of Rights. In this study, I want to explore the understanding educators have of the protection and promotion of learners' right to freedom of expression in schools. Section 7(3) of the Constitution emphasises that the rights in the Bill of Rights are subject to the limitations contained or referred to in section 36. Through this study, I also aim to explore educators' understanding of the limitation of learners' right to freedom of expression in the school context. South African schools have an obligation to educate learners to recognise the rights of people in all communities, as indicated in the foreword to the Constitution. Schools must educate learners on the morals, values and the responsibilities that reinforces social conscience in order to correctly implement and to limit freedom of expression correctly (van Vollenhoven & Glenn, 2004). Section 16 of the Bill of Rights states that freedom of expression entails freedom of the press and the media, the freedom to receive and share information or ideas, the freedom of creativity or art and, lastly, academic freedom in doing scientific research. According to van Vollenhoven and Glenn (2004) it is important to examine the word 'expression' to understand its meaning when reading about it in the legislation. In attempting to define 'expression', one can come to the conclusion that the word has a much broader meaning than speech. It incorporates art activities, dances and photos. Expression can also be associated with symbolic behaviour like the burning of flags and posters, wearing certain clothing and making physical gestures. A person can also express emotions through behaviour and body language in order to communicate belief or objection. De Waal, Currie and Erasmus (2001:311) state that "every act by which a person attempts to express some emotion, belief or grievance should qualify as a constitutionally protected expression". Therefore, it is clear that the broad meaning and different activities



associated with the word “expression” lends itself to problems regarding the interpretation thereof and is the reason why the literature is drenched with research indicating that educators find it problematic to understand the principles of freedom of expression regarding the promotion, protection and the limitation of rights. van Vollenhoven et al. (2006:10) state that school governors seem to find it particularly challenging to acknowledge freedom of expression that contrasts with their own interpretations. The case of Layla Cassim is a good example of a learner who expressed an objection or opinion and the school not interpreting or understanding the right to freedom of expression correctly – they subsequently suspended Layla for a month because she provoked ‘behavioural problems’ at school. Layla’s parents reported the matter to the Human Rights Commission of South Africa (van Vollenhoven & Glenn, 2004). In another case, Yusuf Bata, a Muslim teenager, clashed with school authorities after his application to attend the school was declined on the grounds that his religious beliefs differed from the school’s religious ethos. Yusuf informed school governors that he would not shave his beard as it was an expression of his respect and admiration for the teachings of the Qur’an. The rights infringements that occurred here related first and foremost to Yusuf’s right to freely express his religion, and his right to enrol in any school, but it can also be seen as a violation of his right to freedom of expression (van Vollenhoven et al. 2006). In both cases the schools failed to promote, protect and correctly limit the learners’ right to freedom of expression.

1.2 PROBLEM STATEMENT

The democratisation of the South African school system brought with it a bigger focus on learners’ rights. Learners’ rights are mentioned in several documents such as the South African Schools Act (No. 84 of 1996), the Bill of Rights in the Constitution of the Republic of South Africa of 1996 and the National Education Policy Act (No. 27 of 1996). Joubert and Prinsloo (2009) mention that the Constitution is another source of education law. “In section 7(2) of the Bill of Rights it is explicitly stated that the state must respect, protect, promote and fulfil the rights contained in the Bill of Rights, and in section 7(3) it is stated that these rights are subject to the limitations contained in section 36. According to Mkize (2008), these



acts approve and emphasise the fact that all citizens – and specifically educators – must pay attention to learners’ right to freedom of expression.

Unfortunately, these laws are not always upheld. In recent years, schools and educators have received a great deal of negative media coverage because of real and alleged learner rights violations (van Vollenhoven, Beckmann, & Blignaut, 2006). The case of Mariam Adam made newspaper headlines because the school she attended had suspended her for wearing a headscarf. By wearing a headscarf, she communicated her religious beliefs (van Vollenhoven & Glenn, 2006); while in the case of Layla Cassim, she wrote an essay to voice her thoughts and opinions from a Palestinian point of view regarding the clashes between Israel and Palestine. She pinned the essay to the school’s notice board (acting on the advice of an educator) and this conduct led to her suspension from school (van Vollenhoven & Glenn, 2004). These cases are examples of instances where educators did not correctly understand the application of the wording in the Bill of Rights and in particular the right to freedom of expression. Arvan (2014:20) stated that “the understanding of these rights is challenging in itself due to the wording in the Bill of Rights”. This is because the wording in the Bill of Rights lends itself to different interpretations and these interpretations are influenced by educators’ understanding of these rights. In the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (RSA, 1998) the guidelines concur with the statement made by Arvan. In the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct, it is stated that a learner’s right to freedom of expression could become a complicated issue. The Guidelines explain that freedom of expression is more than just freedom of speech. Freedom of expression comprises the right to pursue, listen, read and wear. Visual expressions like choice of clothing and hairstyle are also forms of expression. Therefore, through this proposed research, I will explore how educators’ own understanding of learners’ right to freedom of expression might affect the way in which they promote, protect and limit learners’ rights in their engagements with them.

1.3 STATEMENT OF PURPOSE

The purpose of my research is to conduct an in-depth investigation into the understanding educators have regarding the promotion, protection, fulfilment and



limitation of learners' right to freedom of expression in the school environment. It is hoped that the findings of this research will also contribute in limiting incidents of learners' right to freedom of expression violations in our schools.

1.4 RESEARCH QUESTIONS

1.4.1 Main question

What do educators understand by learners' right to freedom of expression?

1.4.2 Sub-questions

1.4.2.1 What do educators understand by *'freedom of expression'*?

1.4.2.2 What do educators regard as the protection of learners' rights to freedom of expression?

1.4.2.3 What do educators regard as the promotion of learners' rights to freedom of expression?

1.4.2.4 How do educators limit learners' right to freedom of expression?

1.4.2.5 What is educators' understanding of the term dignity?

1.5 RATIONALE

I was motivated to pursue this research, firstly, because of my responsibilities to manage the discipline of the school where I work.

Secondly, the court cases that made headlines further piqued my interest. There are numerous court cases in this regard, including the before mentioned cases of Mariam Adam (Van Vollenhoven, 2006), and Layla Cassim (Van Vollenhoven & Glenn, 2004).

Thirdly, newspaper headlines regarding learners' freedom of expression also motivated me to pursue this study, including the following:

The Mail & Guardian, 29 August 2017 - "Pretoria Girls High School pupil: I was instructed to fix myself as if I was broken." (Pather, 2016)

EWN, 25 July 2017 - "Kempton Park school hair incident a Human Rights issue, says Lesufi." (Magwedze, 2017)



EWN, 14 October 2017 – “Maritzburg students' support for EFF creates controversy”. (Magwedze, 2017)

The problem is that many educators do not appear to understand the right to freedom of expression, and therefore both individual educators and schools often (a) fail to protect and promote this right, and (b) often infringe upon this right during disciplinary processes.

1.6 PRELIMINARY LITERATURE REVIEW

Webster and Watson (2002) pointed out that the literature review is an important aspect of any academic research. A sound literature review will form a steady basis for the gathering of knowledge. It will assist in the establishment of the new theory, it will bring to close areas where adequate knowledge already exists, and it disclose areas where research is needed.

This literature review will commence with a discussion of South African and international perspectives regarding educators' knowledge of education law. This will be followed by a discussion of the Bill of Rights of 1996 with a specific focus on the right to freedom of expression and the case of *Le Roux v Dey*. The literature review will end with an identification of the gaps in the research.

1.6.1 South African perspective: Educators' knowledge of the law

“Those educators who fly by the seat of their pants or who act based on what they think the law should be, may be in difficulty if sufficient thought is not given to the legal implications and ramifications of their policies or conduct.”

(La Morte, cited in Moswela, 2008:99)

According to Maphosa and Shumba (2010), the era of democracy arrived in South Africa after 1994 and the phenomenon of human rights became a “buzzword” in all segments of society, including schools. The South African school system was realigned to be more compatible with the new democratic Constitution that placed a high value on respect for, and the protection of all children and their rights. In fact, South Africa followed the example of other democratic countries and endorsed the



Convention on the Rights of a Child, and is therefore compelled to pass laws and take communal, educational and administrative actions to protect the child (Maphosa & Shumba, 2010). In section 2 of the Constitution it is clearly stated that the Constitution is the highest legislation of the country, and any law or behaviour contradictory to it will be invalid, and that the responsibilities enforced by it must be implemented. The reality is that educators and schools in the new democracy are challenged by various learners' rights that they must promote, protect, fulfil and in some cases limit (Netshitahame, 2008). Kasozi (1994) alluded that it is for this reason that a fundamental knowledge of education law by educators becomes a requirement, as ignorance of the law is normally not an excuse for its breach. According to Moswela (2008:93), educators must have knowledge of the law due to the fact that their responsibilities are not just restricted to teaching and learning. While Moswela's statement is valid, one should also take cognizance of the judgement in *S v De Blom* where the court stated that it would be illogical to assume that everybody should know all aspects of the law (Snyman, 1999). It is important that educators regulate their own conduct when they are engaging their learners regarding their right to freedom of expression by ensuring that they protect, promote and fulfil the learners' right, and where the learners' rights are limited, to follow the correct (due) process. This can only be achieved if educators have knowledge of some basic aspects of the law that governs education (education law). However, research is providing data that sketches a bleak picture of educators' knowledge of the Bill of Rights application, protection and promotion. To give an example, according to Mokhele (2006), school governors and educators find it challenging to adapt to a constitutional democracy where an emphasis is placed on human rights and the specific rights of children in the school situation. An important reason for this is the fact that a sizeable majority of these educators received their training before 1994 and did not receive any education law training. The classroom environment in those days was "stiff" and tended to be stressful, and the learners had no say in school matters (Mokhele, 2006). Furthermore, learners were instructed not to argue and not to query educators or authority. For all intents and purposes, the right to speak openly or to challenge authority did not exist. According to Mazibuko (2002), all the blame cannot be placed on the educators. An argument can be made that learner rights were violated by school



'powers that be' because the educators were caught up in an education structure that did not acknowledge these rights. This can be one of the big reasons why there are still so many encroachments of learners' rights taking place in our schools (Mazibuko, 2002). Today, section 16 of the Constitution that deals with the right to freedom of expression affords protection to learners to exercise these rights in schools. In research conducted by Covell, Howe and McNeil (2010), the data collected revealed that school governors are not prepared at this stage to improve on their skills of understanding the legislation and the Bill of Rights. They feel unprotected by what they see as revolutionary thoughts and opinions of the authorities, learners and parents on human rights and aspects regarding leadership (Covell et al., 2010). Even though South Africa is now more than 20 years into a new dispensation, there still appears to be a noticeable lack of understanding and many incorrect interpretations of the Bill of Rights regarding South African schools. In one study, the researcher addressed a number of meetings of school governors and representatives from school governing bodies and came to the alarming finding that only 3% of school principals and governing body members had read the Bill of Rights (Alston, van Staden & Pretorius, 2005). In a study conducted by Duma regarding school governors and educators' knowledge of the Bill of Rights, the research also produced startling results. In the study, 80% of the participants confessed that their knowledge of section 16 ("the right to freedom of expression") was poor, and 100% of the participants stated that their knowledge of section 36 (the limitations of rights) was poor (Duma, 2010).

1.6.2 International perspective: Educators' knowledge of education law

In terms of Section 39 (1) of the Constitution, when interpreting the Bill of Rights, a court, must take into account transnational law. Therefore, an international perspective regarding educators' knowledge of education law is necessary. In the realm of education, all stakeholders need to be cognisant of the law and their obligation to uphold it. However, the research has shown that, through no fault of their own, most educators are not sufficiently literate in school law. The non-existence of any general education on education law in the mainstream of teacher qualifications and professional improvement programmes is the main reason for this privation of legal literacy in the USA (Schimmel & Militello, 2007). According to



Schimmel and Militello (2007), two serious problems were identified because of the absence of providing educators with an understanding of the laws that affect them. Firstly, educators might have good intentions in their interactions with learners but many educators infringe upon learners' rights because they are oblivious to the fact that, as educators, they function as agents of government and are also bound by the Bill of Rights. Secondly, educators' main source of information and misinformation about education law comes from fellow educators who are equally misinformed. In a study conducted in neighbouring Botswana, the data collected revealed that educators' knowledge of education law was insufficient (Moselwa, 2008). The study revealed that only 18% of educators were considered literate with regard to education law, while the other 82% of educators were deemed illiterate (Moswela, 2008). The University of Massachusetts did a study that came to the conclusion that many teachers are uninformed or misinformed about education law. The above South African and international research concluded that it should not come as a revelation to see undesirable newspaper headlines regarding school infringements on learners' rights (Van Vollenhoven & Glenn, 2004).

1.6.3 South African Constitutional Court judges' interpretation of the right to Freedom of expression.

The case of *Le Roux v Dey* 2011 (3) SA 274 (CC) is a good example of how difficult it is to interpret the wording in the Bill of Rights. At the end of this case, the judges came to three different judgements. If Constitutional Court judges interpret the Bill of Rights so differently from one another, then one can only imagine how difficult it would be for an educator who is not legally trained to interpret and understand the wording in the Bill of Rights. In this particular case, three pupils produced an image on a computer portraying the bodies of two nude men sitting together on a couch with their legs provocatively spread. One man's leg lay across the other's lap while their hands touched their genitals. Both their hands and genitals were concealed using the school emblem, while the learners superimposed the heads of the principal and deputy principal on the figures of the nude men (De Waal & Serfontein, 2014).



1.6.4 Judgement

Six members of the Constitutional Court agreed with the ruling of the Supreme Court of Appeals, finding that the image was offensive in nature, and that Dey's feelings were injured by the image. Two members of the court, Judges Froneman and Cameron, also concurred that Dey's feelings were hurt by the image but did not find the image offensive. The other two members of the court, Judges Yacoob and Skweyiya, believed the images were not offensive and that it did not cause injury to Dey's feelings (de Waal & Serfontein, 2014).

1.6.5 Critical opinion about the judgement

The Constitutional Court was approached in this matter to evaluate the complexity of the constitutional issues in this case, and the impact of the findings for the parties involved. The ruling of Justices Yacoob and Skweyiya was met with a lot of criticism. Law professionals pointed out that they overstated the notion of freedom of speech in respect of the learners and did not take the educators' human dignity, which was infringed on by the learners' actions, into account. It was argued that if the two judges had accurately evaluated and weighed these constitutional rights against each other, they would have come to a different decision – that the image had infringed on Dey's dignity (De Waal & Serfontein, 2014).

1.6.6 Summary

In studying the literature, it becomes clear that schools and individual educators generally struggle with the phenomena of freedom of expression and "human rights", specifically with the promotion, protection and limitation thereof. In a study conducted by Duma (2010), the research results pointed out that 80% of the participants had meagre knowledge of section 16 (freedom of expression) and 100% of the participants had a poor knowledge of section 36 (the limitation of rights).

Internationally, educators don't fare any better than their South African counterparts. Research conducted by Littelton (2008) emphasised that educators had a dreary understanding of education law and legal issues pertaining to their



job. Research conducted by Millitello, Schimmel & Eberwein (2009) came to the conclusion that 85% of the principals were uninformed or misinformed on education law.

The literature contains ample evidence indicating that the role players in school communities, including educators, do not have sufficient knowledge of the Bill of Rights and education law in general. In my literature review, I also found a variety of studies on learners' understanding of their rights in the Bill of Rights, but to my knowledge sufficient research has not been done on educators' understanding of learners' rights of freedom of expression and in particular the promotion, protection and limitation thereof by educators in the school context in South Africa. The case of *Le Roux v Dey* 2011 (3) SA 274 (CC) also caught my attention since the Constitutional Court judges' understanding and interpretation of the wording in the Bill of Rights were different from one another when judgement was delivered. This made me want to establish what educators' understanding is of the Bill of Rights, particularly regarding the right to freedom of expression.

1.7 THEORETICAL FRAMEWORK TO SUPPORT THE CONCEPTUAL FRAMEWORK

The theoretical and conceptual framework provides a basis for the literature review, and most importantly, the processes and manners to examine something (Grant & Osanloo, 2014).

My study will explore educators' understanding of learners' right to freedom of expression, which is a human right that is entrenched in the Bill of Rights in chapter 2 of the Constitution. According to van Vollenhoven et al. (2006), the investigation of any legal topic in South Africa must begin with the Constitution, as it is the highest law in South Africa and all other law, e.g. national legislation or subordinate legislation, is to be considered according to the Constitution in a court of law. Therefore, the 'grounding base' for my conceptual framework is chapter 2 of the Constitution, which contains the Bill of Rights and the right to freedom of expression. However, to strengthen my conceptual framework I will also make use of the theory of "dignitas". The rationale to include dignity as a theoretical framework is due to the fact that the South African Constitution is founded on the fundamental value of



dignity (Reyneke, 2011), and according to Beitz (2013), dignity is a global notion in the current discussions of human rights.

1.8 THEORETICAL FRAMEWORK (ROSEN'S THEORY)

I will use Michael Rosen's theory of dignity to support human dignity as a facet in the validation of human rights. Rosen indicated that there are three "strands" regarding dignity (Beitz, 2013).

1.8.1 First strand: Rank or Status

The first strand is rank or status. Persons that have attained certain positions of social rank in society are known as "dignitaries". Therefore, rank or status could be a constituent that defines social distinction, where a selected group of people have earned or deserved the right to be treated differently from the rest of the people in society (Beitz, 2013). It is possible to link rank or status to my study in the sense that educators deserve that their rights must be promoted, protected, fulfilled and limited by virtue of being in a position of authority and being the person responsible for guiding learners to eventually become respected citizens. Learners on the other hand deserve their rights to be promoted, protected, fulfilled and limited by their educators by virtue of being in a position where they are still learning and are vulnerable because they lack life experience (Beitz, 2013).

1.8.1.1 In loco parentis

The term *in loco parentis* can also be used to support the first strand of rank and status. The term is a Latin phrase meaning in the place of a parent, or instead of a parent. Alexander and Alexander (1998) defined it as a legal dogma that describes a bond that is similar to the relationship between a parent and a child. It refers to a person who adopts a parental stance by taking on the accompanying responsibilities for another individual, usually a younger individual, without lawfully adopting that person (Mohammed, Gbenu & Lawal, 2015). Educators become accountable through the rank or status they hold by virtue of being educators. Therefore, they must act in the best interests of the learners as they deem fit, and educators may limit the conduct of learners that could lead to the possible violations of other learners' fundamental rights.



My conceptual framework is derived from section 7(2) of the Bill of Rights which declares that the state must respect, protect, promote and fulfil the rights in the Bill of Rights and Section 7(3) that states that the rights in the Bill of Rights are subject to the limitations contained or referred to in section 36 or elsewhere in the Bill. As educators are, in most cases, employed by the state, they may be viewed as part of the state and thus carry the same responsibilities as the state. It therefore becomes the obligation of educators to take over the responsibilities of parents regarding the protection, promotion and limitation of their children's' rights.

1.8.2 Second strand – Value

A second 'strand' is the notion that can be seen as a value. In other words, a thing has value by ascribing value to it. According to Beitz (2013), God created human beings in His own image with the capacity to make choices, and humans also take up the highest position within His creation. Therefore, educators and learners have the right to dignity by virtue of the valuable place they occupy in God's creation. Rosen also explained Kant's viewpoint of value in regard to dignity. Kant sees value as an inherent, absolute and unsurpassed form of moral/ethical law. Human beings have the right to dignity because they have the capacity to follow moral law. In the context of my study, the moral law that educators and learners must follow would be chapter 2 of the Bill of Rights with the specific focus on section 7(2) which states that it is the government's duty to respect, promote, protect and fulfil the rights of their people; as well as section 7(3) which indicates that this right may be limited by making use of the criteria set out in section 36. Educators and learners have the unique capacity to follow these moral rules and laws and through this virtue they deserve the right to dignity.

1.8.3 Third strand – Commending conduct

The third strand is the role of dignity in praising conduct. In other words, this speaks to whether a person conducted him or herself in a dignified manner. Dignified conduct is determined on the context/situation in which it takes place, for example, whether the educator acts appropriately within a given role (Beitz, 2013). Therefore, educators must regulate their behaviour when they engage learners regarding their right to freedom of expression (Beitz, 2013).



1.9 CONCEPTUAL FRAMEWORK

My conceptual framework is derived from section 7 (2) of the Bill of Rights which declares that the state must respect, protect, promote and fulfil the rights in the Bill of Rights and Section 7(3) which states that the rights in the Bill of Rights are subject to the limitations contained or referred to in section 36 or elsewhere in the Bill. As educators are, in most cases, employed by the state, they may be viewed as part of the state and thus carry the same responsibilities as the state. My theory is, therefore, that it is the duty of educators to respect, protect, promote and fulfil learners' rights to freedom of expression and this forms part of the expectations educators must comply with. (Attached is annexure G – This annexure will assist in linking the conceptual framework with my interview schedule)

1.10 PARADIGMATIC PERSPECTIVE

A paradigm signifies a researcher's own scheme of beliefs, values and perceptions of the world they live in, or put differently, the methodological assumptions or background that give direction to the researcher in the specific area of study (Taylor, 2013; O'Neil & Koekemoer, 2016). According to Taylor's (2013) philosophical point of view, a paradigm includes how researchers see reality (i.e., ontology) - whether it is exterior or interior to the person familiar with it; an intersected understanding of the nature of information that could be created and the criteria used for validating it (i.e., epistemology); and finally, a disciplined approach to creating that knowledge (i.e., methodology). In my study I plan to make use of the interpretive paradigm. The interpretive paradigm involves teachers as self-examining practitioners in creating a better understanding of how the learners they teach make sense of the world (Taylor, 2013).

1.11 INTERPRETIVE PARADIGM

Interpretivists are more inclined to give preference to the Qualitative approach (Thanh & Thanh, 2015). I decided to make use of the interpretive paradigm as it accommodates numerous perceptions and versions of facts. According to Willis (2007), interpretivism normally pursues to understand a specific context, and the fundamental principle of the interpretive paradigm is that reality is socially created.



1.12 ONTOLOGY

Ontology can be seen as the philosophical study area that revolves around matters of existence and obtaining a clearer understanding and interpretation of the things that exist in the world (Dieronitou, 2014). Interpretivists make use of relativist ontology which states that reality as we know it is created inter-subjectively (Virginia Commonwealth University, 2012). According to Dieronitou (2014) the relativists believe that there are different understandings of reality, each being locally and historically specific and unlikely to state whether these psychological constructions are wrong or right. This 'relativistic-ontological' perspective will enable me to determine the different ways in which educators understand the right to freedom of expression. As established, the Bill of Rights as a legal instrument is open to multiple interpretations of reality and educators' realities certainly differ from each other.

1.13 EPISTEMOLOGY

O' Leary (2017) explained that epistemology is the manner in which we come to have authentic understanding of the world; the rules for knowing the personal epistemologies an individual has will impact the manner in which they come to understand the world, for example, how their believe in God was formed, how to comprehend love or how certain morals were adopted. Schraw (2013) refers to the epistemological worldview as the individual's joint belief system about the type and collection of knowledge. He uses the term relative to other terms in the literature such as personal epistemology and epistemological stances, which interconnectivity refer to a series of ideas or a personal theory about knowledge and knowledge validation (Schraw, 2013). This epistemological worldview comprises all of a person's clear and hidden beliefs, attitudes, and expectations about the attainment, construct, representation, and application of knowledge. It is important to take note of the differences between epistemological beliefs and epistemological worldviews. Epistemological beliefs are the gathering of certain beliefs about a specific dimension of knowledge such as its certainty, simplicity, origin, or justification (Schraw, 2013:2). Epistemological worldviews comprise of a set of beliefs that jointly describe a person's attitudes about the nature and acquisition of knowledge. Therefore, it can be assumed that every adult has fixed epistemological viewpoints that are counted within an epistemological worldview, which may also consist of



additional beliefs such as the manner in which epistemological beliefs are attained and improved, and the ways in which these beliefs change over time (Schraw, 2013) Therefore, it becomes obvious that the frame of reference in which the educator grew up with will contribute in moulding the educators' views, attitudes and suppositions about the attainment, construction, depiction, and application of knowledge which eventually forms the educators' worldview. Inside of this epistemological worldview, the educator compartmentalises a precise set of beliefs about particular dimensions of existence that defines the educators' attitude and conduct on particular issues. A further assumption is that the personal epistemological beliefs the educator holds would impact on the choice of classroom tasks and the way in which the educator engages with the learners in his or her classroom. Finally, the conclusion can be drawn that the epistemological beliefs the educator holds regarding the promotion, protection and limitation of learners' right to freedom of expression will have a direct influence in the manner educators engage the learners regarding these rights. My own epistemological view on getting to know the truth about educators' understandings on learners' right to freedom of expression is through knowing the educators' personal epistemologies regarding learners' right to freedom of expression.

1.14 RESEARCH METHODOLOGY

1.14.1 Research approach: A qualitative approach

According to Creswell and Poth (2017:42-43),

qualitative research begins with the assumptions and the use of interpretive/theoretical frameworks that inform the study of research problems addressing the meaning individuals or groups ascribe to a social or human problem. To study this, researchers use an emergent qualitative approach to inquire, the collection of data in a natural setting sensitive to the people and places under study, and data analysis that is both inductive and deductive and establish patterns or themes. The final written report includes the voices of the participants, the reflexivity of the researcher, a complex description and interpretation of the problem, and its contribution to the literature or a call to change.

A qualitative approach will suit my study the best since I need to understand educators' understanding of a human problem, namely how the right to freedom of



expression should feature in the school, from their point of view and through their own words.

1.14.2 Research design

My research is a multi-case study in the sense that I will study and analyse different educators to determine their understanding of learners' right to freedom of expression. Creswell and Poth (2017) refer to a case study as a qualitative approach in which the researcher explores an everyday realistic, bounded system (a case), over a period of time, through comprehensive, in-depth collection techniques like interviews, documents and reports. Therefore, the case study is the most suitable design for my research. This design will assist me to collect the necessary data from the educators regarding their own understandings of the promotion, protection and the limitation of: learners' right to freedom of expression" in the school context.

1.14.3 Participants and sampling

I decided to make use of purposive sampling in the selection of my participants. According to Creswell and Poth (2017), purposive sampling will help the researcher to identify sites and participants that will best support the researcher to comprehend the problem and research questions. The individuals chosen for this study therefore had to have experiences to share with the researcher regarding the phenomena of learners' right to freedom of expression. Participants had to be willing to reflect on, and share their knowledge. Teddlie and Yu (2007) refer to purposive sampling as elements centred around particular qualities/features related to answering the research study's questions. To best achieve the correct selection of my participants, I made use of the sampling criteria below. The sampling criteria are the characteristics that the researcher is looking for in the selection of the participants (Burns & Grové, 2001).

1.14.4 General sampling criteria

For my study, the sampling criteria will be:

I plan to interview educators at schools in different positions (Principals, HOD's, Post Level 1). I will also purposefully interview educators from different age groups, as I want to determine if and how the younger educators' understanding of learner rights



varies from that of the older educators. With age and experience people's understanding and perceptions change. It is understandable that the older generation, that grew up in an era when fundamental human rights were not acknowledged in South Africa, may have perceptions different to those of the younger generation who grew up knowing that they have "fundamental human rights" which are entrenched in the Bill of Rights. I will interview educators in Post Level 1 positions as well as those in management positions at the schools to determine their respective levels of knowledge and understanding with regard to learner rights.

1.14.5 Specific selection criteria for Post Level 1 educators

To help ensure balance, I selected experienced educators as well as some that only recently started to teach. By 'recently' I am referring to educators who have not been teaching for more than 3 years. If they only recently started to teach, the education law part of their studies should still be relatively fresh in their memories and they should have a better idea of learner rights issues.

I also selected educators that have been teaching at Post Level 1 for at least 10 years and who have had some in-service training on education law matters. The reason for this selection criterion is that one tends to forget the content of studies over time. It would also indicate to what extent their understanding of learner rights differs when considering their years of teaching experience and in-service training.

1.14.6 Specific selection criteria for educators in management positions

Principal and deputy principals that have been heads of schools or in deputy principal posts for at least 10 years will be selected. Educators that have been heads of department for at least 3 years will also be included in the sample. It is important to determine the understanding of these educators in management positions as one of their main responsibilities is to lead and train subordinates. They must also be able deal with and resolve possible disputes that may arise between educators and learners. It should be noted that the schools selected were affected by the protest actions that occurred in the communities around the end of 2016 and the beginning of 2017 as a result of poor service delivery. These communities view rights as a



serious issue, and it therefore makes sense that learners would emulate the citizens in the community and come to school with these rights issues imprinted on them.

1.15 DATA COLLECTION

The data will be collected through:

1.15.1 Semi-structured interviews

According to Alshenqeeti (2014), the semi-structured interview is not a rigid type of interview in the sense that it permits the researcher to achieve deeper 'penetration' by giving the interviewer the opportunity to probe and expand on the interviewee's responses. For the purpose of my research, I opted for this type of interview, as it would allow greater flexibility in covering various issues concerning my study, namely the protection, promotion and limitation of learners' right to freedom of expression.

1.15.2 Literature review

To improve our shared understanding, a researcher needs to understand what research was conducted by other researchers, what the strong and weak points of current studies are, and the possible meanings of these studies. It is impossible for a researcher to do meaningful research without first understanding the literature in the field (Boote & Beile, 2005). I will probe local and international literature on learner rights to enable me to get a better understanding of learner rights issues in schools.

1.15.3 Case law

Case law can be seen as a segment of common law and consists of judgements handed down by higher courts in understanding the statutes relevant to cases brought before them. In law jargon they refer to it as precedents, and such judgements are binding on all courts (within the same jurisdiction) and are to be adhered to as the law in similar cases. I will probe case law to get a better understanding of how the courts interpret the right to freedom of expression.



1.16 Data analysis

The method that I made use of is called data coding. Data coding starts with small parts of data that stand on their own. We refer to these data parts as segments, which are used to arrange the data set (McMillan & Schumacher, 2014). After I have identified the segments, I will analyse them to formulate codes (McMillan & Schumacher, 2014). In the next step I will isolate the appropriate words or phrases and arrange them into categories (McMillan & Schumacher, 2014). The next step will be to group the categories into themes and the themes into clusters of themes. Finally, I will group the themes and clusters of themes into patterns (McMillan & Schumacher, 2014).

1.17 TRUSTWORTHINESS AND CREDIBILITY

I will measure the trustworthiness and credibility of my research against the following criteria:

1.17.1 Triangulation

According to Anney (2014:277), triangulation involves the use of a variety of methods, investigators, sources and theories to obtain corroborating evidence. I will be making use of methodological triangulation that uses different research methods.

1.17.2 Literature review

I will probe local and international literature on learner rights to enable me to get a better understanding of learner rights issues in the context of schools.

1.17.3 Document analysis

Finally, I will probe legislation and court judgement on the topic of freedom of expression in schools.

1.17.4 Member Checks

Member checks, also known as respondent validation, is a method that helps to increase the quality of qualitative data. This method involves testing the data gathered from members of diverse audiences and groups (Anney, 2014). Member checks are an imperative that any qualitative researcher should undertake because it is at the center of credibility (Anney, 2014). It is essential for researchers to take into account the voices of the participants in their research, and in this regard,



member checks help to confirm accuracy and resonance with respondents' actual experiences. The goal of doing member checks is thus to restrict researcher bias when scrutinizing and interpreting the results. The process involves sending the analysed and interpreted data back to the participants for them to evaluate the interpretations made by the researcher. They can then propose amendments if they are not satisfied with it or feel that they have been misreported (Anney, 2014).

1.17.5 Reflexive Journal or Practice

Trustworthiness can also be attained by making use of a reflexive or field journal. Anney (2014) describes a reflexive journal as reflexive documents kept by the researcher in order to reflect on, tentatively interpret, and plan data collection. The reflexive journal allowed me to write down all the occurrences that transpired in the field, specifically personal reflections in relation to my study.

1.18 ETHICAL CONSIDERATIONS

To ensure that my research is ethical I will follow certain steps. Firstly, I will apply for ethical clearance from the university to conduct my research in the name of the university. Secondly, I will apply to the owners/directors of the private school groups where I plan to conduct my research to grant me permission to access their schools. Thirdly, I will apply to the Director of the Tshwane South School District to grant me permission to access two of the selected schools in the district. Fourthly, I will approach the principals of the selected schools to grant me permission to enter their school to conduct my research. I will also approach the participants (as identified in my selection criteria) for permission to conduct interviews with them.

1.19 SIGNIFICANCE OF RESEARCH

The aim of this research was to contribute to the field of education law. This study will also aim to generate a more profound insight into educators' understanding of the promotion, protection and limitation of learners' right to freedom of expression in order to limit the violations thereof in our schools.



1.20 WORK PLAN

▪	Defend proposal successfully. (End October 2017)
▪	Apply for ethical clearance through the University of Pretoria. (November 2017)
▪	Apply for permission at the head office of the private school group to conduct research in their schools. (February 2018)
▪	Enter the field to conduct the planned interviews. (March – May 2018)
▪	Analyse the collected data. (June – August 2018)
▪	Draft the report on the research. (August 2018)
▪	Submit the research report. (October 2018)

1.21 FINAL SUMMARY

In Chapter 2 of the Constitution, the rights and values of the citizens of the Republic are affirmed. In this study, I want to explore the understanding of educators regarding the protection and promotion of learners' rights to freedom of expression in schools. I also aim to explore educators' understanding of the limitation of the rights of learners in the school context. When looking at existing literature as well as recent legal cases and media reports, it would seem that educators' understanding of the promotion, protection and limitation of learners' right to freedom of expression is not always in line with the real intent of the Bill of Rights. The proposed study will make use of an emergent qualitative approach and will be a multi-case study in the sense that I will study and analyse different educators' understanding of learners' right to freedom of expression. I truly believe that the findings of this research will assist the role players in education, such as departments of education, unions and governing body associations, to limit the incidents of learner right violations regarding freedom of expression.



CHAPTER 2

LITERATURE REVIEW

2. INTRODUCTION

The literature review is an important part of any academic project. A good literature review forms a solid foundation for the gathering of knowledge. It leads to new theory, concludes areas where sufficient knowledge already exists, and brings to light areas where more research is required (Webster & Watson, 2002).

This literature review will commence with a discussion of Chapter 2 of the Constitution of the Republic of South Africa (1996), with a specific focus on section 7(2) concerning the promotion and protection of human rights, section 7(3) with regard to the limitations of human rights, as well as section 16, namely the right to freedom of expression. Thereafter, literature on educators' knowledge of education law will be reviewed, specifically the research findings regarding South African educators and their international counterparts' knowledge of education law. This will be followed by a discussion of South African constitutional judges' interpretation of the right to freedom of expression as reflected in the *Le Roux v Dey* case. The chapter will end with a discussion of the promotion and protection of learners' rights, and a discussion of the limitations criteria of section 36 of the Constitution followed by an international perspective of case law providing guidance to schools regarding the limitation of learners' right to freedom of expression.

2.1 Chapter 2 – Bill of Rights

In Chapter 2 of the Constitution of the Republic of South Africa (1996), hereinafter the Constitution, the rights and values of the people of the Republic are affirmed. In section 7(2) of the Constitution it is stated that the government must respect, protect, promote and fulfil the rights mentioned in the Bill of rights. In this study, I want to explore the understanding educators have regarding the protection, promotion and fulfilment" of learners' right to freedom of expression in schools. Section 7(3) of the Constitution emphasises that the rights in the Bill of Rights are subject to the limitations contained or referred to in section 36. Through this study, I also aim to investigate educators' understanding of the limitation of the rights of learners in the school environment.

Section 16 of the Bill of Rights states that freedom of expression consists of the freedom of the press and the media, the freedom to accept and disperse information or ideas, the freedom of artistic creativity and, lastly, scholarly freedom in doing scientific research. It is clear from section 16 that freedom of expression is a broad term and therefore the word 'expression' must be clearly defined in order to understand its meaning when reading about it in the legislation. In attempting to define 'expression', one concludes that the word expression has a much broader meaning than speech.

van Vollenhoven and Glen (2004) suggest that expression could also include art activities such as painting and sculpting, the designing of posters, dancing and the printing of photographs. Expression can also be linked to symbolic acts like the burning of flags and posters, the wearing of certain items of wardrobe and physical actions. Emotions can also be expressed through conduct and body mannerisms to communicate belief or objection (van Vollenhoven & Glen, 2004). De Waal, Currie and Erasmus (2001:311) state that "every act by which a person attempts to express some emotion, belief or grievance should qualify as a constitutionally protected expression". It is clear that the word expression can be seen as an umbrella term that includes a variety of forms. Therefore, it doesn't come as a surprise that the literature is saturated with research reports of schools and educators' that failed to correctly apply the principles of promoting, protecting and limiting learners' right to freedom of expression. In addition to the complex nature of the right to freedom of expression, school authorities are also challenged to accept displays of freedom of expression that clash with their own views (Van Vollenhoven et al., 2006).

The case of *Layla Cassim* is a good example where a learner expressed a grievance or opinion and the school did not interpret or understand the implementation of the right to freedom of expression correctly and subsequently suspended Layla for a month because she incited 'behavioural problems' at school. Layla's parents reported the matter to the Human Rights Commission of South Africa (Van Vollenhoven and Glen (2004).

In another case, *Yusuf Bata*, a Muslim teenager, clashed with school authorities because of the religion he practiced. He refused to shave his beard in order to express his respect for the Qur'an. Yusuf was subsequently refused admission to the school. The rights violation that occurred here was mainly about Yusuf's right to



freedom of religion, and the right to attend a school of his choice, but it was also a violation of his right to freedom of expression (Van Vollenhoven et al., 2006). In both cases the schools failed to promote, protect and limit the learners' right to freedom of expression correctly.

2.2 South African perspective: Educators' knowledge of the law

“Those educators who fly by the seat of their pants or who act based on what they think the law should be may be in difficulty if sufficient thought is not given to the legal implications and ramifications of their policies or conduct.”

(La Morte, cited in Moswela, 2008:99).

According to Maphosa and Shumba (2010), South Africa entered the democratic era after 1994 and from that period on the concept of human rights became a buzzword in all parts of society. The South African school system was realigned with the doctrines of a new democratic Constitution that placed a great emphasis on dignity, as well as respect for and preservation of children's rights (Maphosa & Shumba, 2010). In fact, South Africa followed the example of other democratic countries in supporting the international Convention on the Rights of the Child, and as a result we are now bound to pass laws and take social, educational and administrative action to protect children (Maphosa & Shumba, 2010). Horsten and Le Grange (2012) mention that the Committee on the Rights of the Child emphasised the fact that children depend on accountable authorities like schools, and in particular educators, to act in their best interests when it comes to decisions and actions that have an impact on their welfare. The Government's obligation to comply with the values of the Convention of the Rights of the Child is clear when one reads through the different pieces of legislation pertaining to education and children's rights. To give an example, according to section 17 of the Employment of Educators Act (No. 76 of 1998) an educator shall be in the wrong if he or she doesn't follow the Act or any other Act with regard to education; conducts themselves in such a way that is detrimental to the administration, discipline or proficiency of any department of education, departmental office or any educational establishment; is careless or lethargic in the execution of his or her duties; behaves in inappropriately, unfitting or improper manner, or, while on duty is impolite to any person; not attending work or duty without leave or without any satisfactory reason; defies ,



neglects or intentionally fail to carry out an official instruction assigned to the educator or an authoritative person.

The rights of the child are also emphasised in the South African Schools Act (No. 84 of 1996), hereinafter SASA. The preamble of SASA states that there is a need for a new national structure of schools which will, amongst other things, uphold the rights of all learners. Learner rights are also reaffirmed in the National Education Policy Act (No. 27 of 1996), hereinafter NEPA, that emphasises the importance of upholding learner rights by stipulating in section 4 that South Africa's education policy aims to improve and protect the rights of each citizen and child, and the advancement of basic rights in education.

Supplementary to the above-mentioned Acts we have the general notice, namely the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (Department of Education, 1998). This code unambiguously declare that learners have a right to the absence of harassment.

Finally, to interpret human rights in the classroom and school management context, the South African Department of Education issued the Guidelines for Safe and Caring Child-Friendly Schools in South Africa (Department of Education & [United Nations Children's Fund] UNICEF South Africa, 2008). In these Implementation Guidelines the value of a rights-based school is affirmed. According to these Implementation Guidelines, a rights-based school encourages schools to keep an eye on the rights and welfare of all children (Department of Education & [United Nations Children's Fund] UNICEF South Africa, 2008). Becker, de Wet and van Vollenhoven (2015:1) state that rights-based schools merge the doctrine of human rights and social justice into their teachings. All of the abovementioned legislation, notices and guidelines are drafted in legislation and policy to assist educators and schools in the new democracy where they must manage a panoply of learners' rights that they are required to promote, protect, fulfil and, in special circumstance, limit (Netshitahame, 2008). Therefore, it is important to take notice of Kasozi (1994:44), who states that today's school environment makes it a requirement for educators to have a basic knowledge of education law as ignorance of the law is normally not a defence of its violation.

Academics doing research in the field of education law all concur that educators must have a basic level of education law knowledge upon entering the school environment. According to Moswela (2008), educators must have a basic



comprehension of the law since their duties entails more than just teaching and learning. Snyman (1999:202) states that Moswela's assumption is correct, but that he should have based his assumption on the ruling in *S v De Blom* 1977(3) SA 513v (A) where the court stated that in the development of our law it must be accepted that the cliché that every person is presumed to know the law has no basis for existence and that the saying ignorance of the law is no excuse cannot be justifiably applied in the present-day theory of fault in our law. However, it can be stated that a person presently working in a particular sphere can be presumed to have a basic knowledge of the laws associated with that particular industry (Alston, van Staden and Pretorius, 2005). Therefore, on the whole, it may be deemed that schools and educators need to be familiar with their constitutional duties and can be expected to understand the Bill of Rights and education law in general.

However, all the legislation, policies and guidelines that currently exist with regard to human rights issues in schools seem to be largely ineffective, because the available research about educators' knowledge of the Bill's application, protection, promotion and limitation is sketching a bleak picture. Research conducted by Maphosa and Shumba (2010), came to the conclusion that educators' understanding and interpretation of the Bill of Rights is not always in accordance with a proper interpretation of the Constitution. Differences in the understanding and interpretation between the Constitution and the majority views have led to precarious issues in our schools (Maphosa & Shumba, 2010). To give an example, according to Mokhele (2006), many school governors and educators have found it arduous to adapt to a constitutional democracy where a strong importance is placed on learner rights in the school environment. An important reason for this is the fact that a sizeable majority of these educators received their training before 1994 and did not receive any education law training. Another important fact is that, before 1994, the South African school system allowed the use of corporal punishment. In this way, educators came to see control and authority as the means to regulate the discipline of learners. The classroom atmosphere was strict and stressful, and the learners had no input in school matters (Mokhele, 2006). Furthermore, learners were instructed not to debate and not to query educators or authority, while both learners and educators were stifled in terms of their critical thinking and questioning the status quo. For all intents and purposes, the right to speak unambiguously or to oppose authority did not exist (Mokhele, 2006).



According to Mazibuko (2002), the educators can't be held responsible for all the wrongdoing that is taking place in our schools. It can be argued that some of these educators are the legacy of an education regime where learner rights were not considered very important. Mazibuko was also of the opinion that this could be a justified reason why there are still so many violations of learners' rights taking place in schools. Today, section 16 of the Constitution that deals with the right to freedom of expression affords protection to learners to exercise these rights in schools. But, research conducted by Covell, Howe and Mcneil (2010), indicates that school governors are hesitant to develop their skills in order to obtain a better comprehension of the legislation and the Bill of Rights and more specifically, learners' rights to freedom of expression. They feel 'unprotected' by what they perceive as anarchic or extremist ideas and opinions that are imposed on them by authorities, learners and parents regarding human rights and leadership aspects (Covell et al., 2010).

Although South Africa is now more than 20 years into a democratic dispensation, there still appears to be a perceptual absence of understanding and many wrong interpretations of the Bill of Rights in the context of South African schools. In their research, Alston et al. (2005:144-145) came to the shocking conclusion that, after attending several gatherings of school principals and members from governing bodies, that only 3% of school principals and governing body members had actually read the Bill of Rights. In another study conducted by Duma regarding school governors and educators' knowledge of the Bill of Rights, the research produced some startling results. In the study, 80% of the participants pointed out that their understanding of section 16 (the right to freedom of expression) was poor, and 100% of the participants shared that their understanding of section 36 (the limitations of rights) was poor (Duma, 2010:121-122).

2.3 International perspective: Educators' knowledge of education law

In terms of Section 39 (1) of the Constitution, when interpreting the Bill of Rights, a court, tribunal or forum must consider international law. Therefore, an international perspective regarding educators' knowledge of education law is necessary. In a perfect world in the domain of education, all the role players in education need to be aware of the law and their responsibility to uphold the law. However, international



research conducted has indicated that South African educators' international counterparts do not perform any better regarding their knowledge of education law. Many studies have shown that it is not always the educators' fault for not having acquired sufficient knowledge of education law. According to Schimmel & Militello (2007), the absence of any general education or training pertaining to education legislation (education law) in most of the teacher qualifications and professional development programmes gave rise to this inadequacy of legal literacy in the USA. They identified two important points regarding the failure of the relevant role players in education to provide educators with an understanding of the laws that affect them. Firstly, educators might have good intentions in their engagements with learners but many educators violate learners' rights because they are unaware that, as educators, they perform their duties as representatives of government and are also restricted by the Bill of Rights. Secondly, educators' primary source of information and misinformation about education law is in fact other educators who are similarly misinformed.

As mentioned earlier, it should not come as a surprise why several studies – mainly doctoral theses – that studied public school educators' understanding of education law, established that educators have a “grim” command of education law and legal matters relating to their profession (Littleton, 2008). In another study conducted in neighbouring Botswana, the data that was collected indicated that educators' knowledge of education law is very limited (Moselwa, 2008). The study concluded that only 18% of educators could be considered literate with regard to education law, while the other 82% were classified as being illiterate in this regard (Moswela, 2008).

In a study done by the University of Massachusetts, the research made known that most teachers are uninformed or misinformed about education law. In a national survey about principals' knowledge of the rights of students and teachers, the survey discovered that 85% of the principals were uninformed or misinformed on education law (Militello, Schimmel & Eberwein, 2009). In research conducted by the University of North Carolina, the research discovered that educators lacked knowledge in the areas of corporal punishment and learner and teacher rights (Reglin, 1990).

With both South African and international research highlighting significant levels of ignorance among educators, it should not come as a surprise to see negative newspaper headlines about schools violating learners' rights (van Vollenhoven &



Glenn, 2004:1). At school level, it is important to accept that different individuals have needs and interests that are not necessarily in agreement with one another. This may lead to friction between the rights of educators and learners and therefore it becomes important for educators to have knowledge regarding learner rights to avoid unnecessary friction in the school (de Waal & Serfontein, 2014).

2.4 South African Constitutional judges' interpretation of the right to freedom of expression.

The case of *Le Roux v Dey* 2011 (3) SA 274 (CC) is a good example of how difficult it is to interpret the wording in the Bill of Rights. At the end of this case, the Constitutional Court judges came to three different judgements. If such highly experienced and qualified judges interpret the Bill of Rights so differently from one another, then one can only imagine how difficult it would be for an educator who is not legally trained to interpret and understand the wording in the Bill of Rights. In this case, three pupils created an image on a computer that depicted the bodies of two naked men sitting together on a couch with their legs spread suggestively. One man's leg was on the other's lap with their hands on the genital areas. Their hands and genitals were covered with the school's emblem, while the learners superimposed the heads of the principal and deputy principal on the bodies of the naked men (de Waal & Serfontein, 2014).

2.4.1 Judgement

Six members of the Constitutional Court concurred with the finding of the Supreme Court of Appeals that the image was offensive in nature, and that Dey's feelings were also injured by the image. Two members of the court, Judges Froneman and Cameron, also agreed that Dey's feelings were injured by the image but did not find the image to be offensive. The other two members of the court, Judges Yacoob and Skweyiya, believed the images were neither offensive nor injurious to Dey's feelings (de Waal & Serfontein, 2014).

2.4.2 Critical opinion about the judgement

The Constitutional Court was approached in this matter to weigh the different constitutional matters of the parties against each other. The judgement of Justices Yacoob and Skweyiya received a great deal of criticism. Law experts concluded that



they overemphasized the concept of freedom of speech in respect of the learners at the expense of the human dignity of the educator. If the two judges properly compared these constitutional rights with each other, they would have concluded that the image violated Dey's dignity (de Waal & Serfontein, 2014).

2.5 SUMMARY

In reading through the literature, it becomes clear that the phenomenon of human rights gave many schools and educators problems regarding the promotion, protection and limitation thereof. The research conducted by Mokhele (2006) concluded that many educators find it difficult to adjust to a constitutional democracy where a strong emphasis is placed on human rights. Local research also indicates that educators' understanding of the Bill of Rights and their general understanding of legislation pertaining to education law are poor. In a study conducted by Duma (2010), the research results indicated that 80% of the participants had a poor knowledge of section 16 (freedom of expression) and 100% of the participants had a poor knowledge of section 36 of the Constitution of 1996 (the limitation of rights). Internationally, educators don't fare any better than their South African counterparts. Research conducted by Littelton (2008) indicates that educators had a "grim" understanding of education law and legal matters regarding their profession. Research conducted by Millitello, Schimmel & Eberwein (2009) concluded that 85% of the principals were uninformed or misinformed on education law. The case of *Le Roux v Dey* 2011 (3) SA 274 (CC) also caught my attention, since the Constitutional Court judges' understanding and interpretation of the wording in the Bill of Rights were different from one another when judgement was delivered. This made me want to establish what educators' understandings are of the Bill of Rights and in particular the right to freedom of expression.

2.6 PROMOTION, PROTECTION AND LIMITATION OF LEARNERS' RIGHT TO FREEDOM OF EXPRESSION

"The ultimate and essential goal of all law ... [is] to promote, protect and to guarantee the dignity of the human person."

(Mamberti, 2012 in Neal, 2014:26)



The question arises on how educators can promote, protect and limit learners' right to freedom of expression. Local and international legislation and academic literature indicates that a person's rights can be promoted, protected and limited by treating the person with dignity. Covenants, both international and national, past and present, broad and more specific, explicitly and implicitly, nearly all mention the concept of human dignity (Henette-Vauchez, 2011 & Neal, 2014). According to Beitz (2013:259), "the idea of human dignity is ubiquitous in the contemporary discourse of human rights". To give an example, the preamble of the Universal Declaration on Human Rights emphasises the inherent dignity and the uniform and absolute rights of all the members of the human family, and article 1 states that human beings are born free and equal in dignity and rights. Likewise, article 1 of the European Union Charter of Fundamental Rights states that Human dignity is inviolable, and it must be respected and protected (Neal, 2014). According to Neal (2014), dignity can be described as the very essence of the European Convention on Human Rights.

The South African Constitution is also based on the founding value of dignity. Therefore, dignity becomes an enforceable right and a notion that carries a legal presence (Reyneke, 2011 & Henette-Vauchez, 2011). Becker, de Wet and van Vollenhoven (2015) describe dignity as a fundamental right and freedom that must be promoted and protected. According to Du Bois (2008), dignity receives a great deal of attention in the South African Constitution.

Section 10 of the Constitution affirms that every person has an innate dignity and the right to have their dignity respected and protected, and section 7(1) of the Constitution underlines that the Bill of Rights is the foundation of democracy in South Africa and it protects the rights of every person in our nation and upholds the democratic values of human dignity, equality and freedom. According to Henette-Vauchez (2011), the concept of dignity could be defined in terms of what one might call legal humanism, and legal humanism could be a fundamental right and the foundation of all primary rights and, sometimes, even the founding value of legal orders altogether. To put it briefly: "If we were looking for one phrase to capture the last fifty years of European legal history ... we might call it the high era of dignity" (Henette-Vauchez, 2011:33). For these reasons, a logical presumption can be made that a person's human rights will be promoted, protected and limited (in



accordance with the criteria referred to in section 36) when that person is treated with dignity. In the context of my study it becomes clear that dignity must be a key element in the promotion, protection and the limitation of learners' right to freedom of expression.

2.7 LINKING “DIGNITY” TO THE PROMOTION, PROTECTION AND LIMITATION OF LEARNER RIGHTS THROUGH ROSEN’S PHILOSOPHICAL STAND OF DIGNITY

The correlation between dignity and the promotion, protection and limitation of learner rights could be explained by focusing the attention on the work of Michael Rosen. Rosen indicates that the thought of human dignity as an ethical aspect assists with the promotion, protection and limitation of human rights. Rosen's work distinguishes three strands in the philosophical and legal history of the term dignity (Beitz, 2013).

2.7.1 First strand: Rank or status

The first strand is rank or status. In the past, people in high social positions were referred to as “dignitaries”. Therefore, rank or status could be a form of social division, and band one group of people together in a unique way to afford them special treatment that the ordinary classes don't receive (Beitz, 2013). It is possible to link rank or status and the promotion and protection of learners' rights. The educator by virtue of his or her rank or status replaces the parents at school.

According to Mohammed, Gbenu and Lawal (2014), the replacement of the parent is referred to as *in loco parentis*, a Latin phrase meaning that a person acts in the place of the parent. In the context of this study, the educator takes the place of the parent. At the school level, the use of this expression is now well established. Therefore, educators deserve the right to respect and to be treated with dignity by virtue of their rank or status they have as stand-in parents to the learners. The learners, on the other hand, deserve the right to be treated with respect and dignity by virtue of being in the position where they are vulnerable and seek the guidance of the educator, who is essentially their guardian in the school context.

There is another way to understand the idea of rank and social status. Human beings deserve the right to human dignity by virtue of their rank and status as humans. As part of God's creation, humans have the unique ability to shape their



nature by making their own choices (Beitz, 2013). Educators and learners therefore have an inherent right to dignity because they are human beings.

2.7.2 Second strand – Value

A second strand is the idea of dignity as a value or a kind of value. In other words, a thing acquires value when somebody attributes value to it. Because human beings are created in the image of God and are able to make choices, they assume the top position within the bigger creation of God (Beitz, 2013). Therefore, educators and learners have the right to be treated with respect and dignity because both educators and learners are created in the image of God.

Rosen also interpreted Kant's notion of value regarding dignity. Kant sees value as intrinsic, unconditional and incomparable in the form of moral law. Human beings have the right to dignity because they have the capacity to obey moral law. This forms the basis of the obligation of the right to treat other people with respect (Beitz, 2013). Educators and learners have the unique ability to follow rules and laws and therefore deserve the right to be treated with respect and dignity.

2.7.3 Third strand – Commending conduct

The third of Rosen's strands is the role of dignity in characterising and commending conduct. In other words, to state that a person behaved in a dignified manner. Dignified conduct is determined by the context in which it takes place for example whether the person acts appropriately within a role (Beitz, 2013). A more current understanding of dignified conduct is of a combination of self-control and to be at peace, protective and unbecoming. Therefore, educators must regulate their behaviour when they engage learners regarding their right to freedom of expression. Unfortunately, literature and media headlines tell a different story with regard to educators' conduct when engaging learners regarding their right to freedom of expression. An example is the case of Antonie, a 15-year-old grade 10 learner that affiliated herself with the Rastafarian religion and decided to express her beliefs by wearing dreadlocks and a Rastafarian cap to school, which subsequently led to her suspension from school (van Vollenhoven, 2006). Some of the other recent newspaper headlines include:

The Mail & Guardian, 29 August 2017 - "Pretoria Girls High School pupil: I was instructed to fix myself as if I was broken." (Pather, 2017);



EWN, 25 July 2017 – “Kempton Park school hair incident a Human Rights issue, says Lesufi.” (Magwedze, 2017);

EWN, 14 October 2017– “Maritzburg students' support for EFF creates controversy.” (Magwedze, 2017).

2.8 SUMMARY

Learners and educators' human rights are promoted, protected and fulfilled by, firstly, respecting the person's rank or status. Secondly, educators and learners have the right to be treated with respect and dignity because both educators and learners are created in the image of God, and by virtue of their place in God's creation. Finally, to act with dignity is to act in such a way that indicates a responsibility or duty to treat others with dignity and to show respect for someone as a being with the capacity to do the same.

2.9 THE BALANCING ACT OF LIMITING LEARNERS' RIGHT TO FREEDOM OF EXPRESSION WITHOUT VIOLATING THE PROMOTION AND PROTECTION OF THEIR DIGNITY.

Misbehaviour is a common occurrence in the present-day school environment and educators have to manage different types of learner misbehaviour which leads to a conflict of interests (De Waal, 2014). To maintain the equilibrium of rights in these situations is of utmost importance, and dignity becomes an important factor in rights that clash as a result of the limitation clause (Reyneke, 2011). Educators are clearly finding the application of the limitation clause challenging, as one only needs to take note of the many cases where South African courts have been involved amongst other things to accurately apply the constitutional norms to limit the freedom of expression of learners in the school environment.

Due to the limited scope of the mini dissertation I am only able to broadly discuss the criteria regarding the limitations of rights. The limitation clause has a four-fold purpose. Firstly, the limitation clause points out that the rights in the Constitution are not unlimited and may be restricted where the boundaries can satisfy the test laid out in the limitation clause. Secondly, the limitation section informs us that rights may only be restricted when the intention of the limitation is to strengthen the ideals of the Constitution (Woolman & Botha, 2008). Thirdly, the test determined in the limitation section allows for the straightforward contemplation of those public goods or private interests that the law determined in conflict to the rights and freedoms



protected in Chapter 2. Fourthly, the limitation clause is used as a means to evaluate the problem for legal evaluation by instituting a test that regulates the degree to which the government may create regulations that restrict our constitutionally guarded rights and the degree to which an unelected court may overrule the common desire by reference to the basic law (Woolman & Botha, 2008).

2.9.1 The two-stage approach

Once the initial concerns have been dealt with in direct Bill of Rights litigation, the court examines two questions. Firstly, if one of the rights in the Bill of Rights has been violated on by law or the conduct of the respondent. Secondly, can the violation be substantiated as an acceptable limitation of the right (the second question depends on a positive answer to the first question) (Currie & De Waal, 2005). In analysing the second part of the test that discusses the reasonableness and justifiability of a restriction of the right, the factors in section 36(1)(a) to (e) must be considered:

2.9.2 Nature of the affected right (section 36[1][a])

An assessment of the significance of the particular right must be made in relation to other rights to determine the proportionality analysis. In applying section 36, South African courts always take into consideration the value of the right by considering to how important it is in an open and democratic society based on human dignity, equality and freedom (Rautenbach, 2014).

2.9.3 Importance of the purpose of the limitation (section 36[1][b])

A valid principle must be guarded or endorsed and the actions to implement the restrictions must be within the authority of the individual or organisation that restricts the right (Rautenbach, 2014).

2.9.4 Nature and the extent of the limitation (section 36[1][c])

The nature and the degree of the limitation depends on the report on how invasive the restriction was in respect of the conduct and welfares that are guarded by the right (Rautenbach, 2014).

2.9.5 Relation between the limitation and its purpose (section 36[1][d])

Taking into account if there is a correlation between the limitation and its goal to determine if the limitation will indeed lead to the accomplishment of the object (the



so-called rational relationship test) and, if it does, what the degree of the input is. If the restriction is unable to promote the purpose, it is unconstitutional (Rautenbach, 2014)

2.9.6 Less restrictive means to achieve its purpose (section 36[1][e])

This test established the proportionality component, meaning that when there are two or more appropriate approaches of improving the purpose of a restriction efficiently, the one that restricts less the right that is to be restricted, need to be chosen (Rautenbach, 2014).

2.9.7 Conclusion regarding section 36: the limitation clause

It is evident that the limitation clause is a complex piece of legislation and it is not surprising that the assistance of the courts is called upon to correctly apply this clause. Educators need to be skilled in order to correctly apply its criteria when restricting or limiting a learner's right to freedom of expression in instances where the reasonable interests of the school or other learners are at stake (Van Vollenhoven & Glenn, 2004).



CHAPTER 3

RESEARCH METHODOLOGY

3.1 INTRODUCTION

The crux of my study was to explore the understanding educators have of learners' right to freedom of expression. It was imperative to design the study in such a way as to get as close as possible to the participants. This allowed me to get an insider's perspective of how educators understand and interpret the concepts of promotion, protection and the limitation of learners' right to freedom of expression. According to Creswell & Poth (2017), philosophical beliefs are generally the first beliefs a researcher has in the development of a study. These philosophical beliefs assisted the researcher by providing a pathway for how the researcher had to go about doing the study. My own view on reality (ontology) and how I made sense of reality (epistemology) made me choose the interpretive paradigm. Creswell and Poth (2017) mention that, in the interpretive paradigm, the central objective of research is to be contingent as much as time allows the researcher regarding the participants' understandings of the situation. Therefore, I decided to make use of the qualitative research approach. My research design was in the form of a case study. The case study is a qualitative approach which enabled me to probe into the participants' real life, bounded system referred to as a multiple case study, by making use of in-depth data collection techniques such as in-depth interviews (Cresswel & Poth, 2017).

3.2 PROBLEM STATEMENT

After 1994, learners' rights received a great deal of attention in documents such as the South African Schools Act 84 of 1996, the Bill of Rights in the Constitution of the Republic of South Africa of 1996 and the National Education Policy Act 27 of 1996. In section 7(2) of the Bill of Rights it is clearly stated that the state must respect, protect, promote and fulfil the rights in the Bill of Rights, and in section 7(3) it is stated that the rights in the Bill of Rights are subject to the limitations contained in section 36. According to Mkhize (2008), these acts promote and call attention to the fact that educators must take notice of learners' right to freedom of expression. Unfortunately, schools and educators have been making the headlines because of



real and alleged learner rights violations (van Vollenhoven, 2006). Several studies corroborated each other's findings that educators in general do not correctly understand the application of the wording in the Bill of Rights, and in particular the right to freedom of expression. The wording in the Bill lends itself to different interpretations and these interpretations are influenced by educators' understanding of these rights. Through a qualitative research approach and making use of a case study research design sought to answers the following research questions:

3.2.1 Main question

3.2.1.1 What do educators understand by learners' right to freedom of expression?

3.2.2 Sub-questions

3.2.2.1 What do educators understand by '*freedom of expression*'?

3.2.2.2 What do educators regard as the protection of learners' rights to freedom of expression?

3.2.2.3 What do educators regard as the promotion of learners' rights to freedom of expression?

3.2.2.4 How do educators limit learners' right to freedom of expression?

3.2.2.5 What is educators' understanding of the term dignity?

3.3 RESEARCH APPROACH

According to Creswell and Poth (2017:42-43),

qualitative research begins with the assumptions and the use of interpretive/theoretical frameworks that inform the study of research problems addressing the meaning individuals or groups ascribe to a social or human problem. To study this, researchers use an emergent qualitative approach to inquire, the collection of data in a natural setting sensitive to the people and places under study, and data analysis that is both inductive and deductive and establish patterns or themes. The final written report includes the voices of the participants, the reflexivity of the researcher, a complex description and interpretation of the problem, and its contribution to the literature or a call to change.

Mayan (2016:43) describes a qualitative approach as an exploratory analysis that is mainly true-to-life, interpretive and inductive. The qualitative approach was used



to study natural events as they take place in order to interpret the understandings of the significance people involved in this study attach to these events (Mayan, 2016). The qualitative approach has definite characteristics. In the first place, qualitative researchers normally gather information in the field at the location where respondents are facing the issue or difficulty of the study also known as the natural setting (Creswell & Poth, 2017). In my research I visited the selected educators at the schools where they teach to conduct my interviews. Secondly, I collected and analysed the data myself by means of probing relevant documents, observing behaviour and interviewing participants. As researcher, therefore was the central tool in the research (Creswell & Poth, 2017). In the third place, qualitative researchers collect different forms of data, such as interviews, observations, and documents, rather than being depended on just one data source. I collected data by conducting in-depth investigations of literature regarding freedom of expression in schools. Additionally, I also did a document and case law analysis. Furthermore, qualitative researchers make use of complex thought processes like inductive and deductive logic. This involved the arrangement of data patterns, groupings, and topics from the lowermost up by arranging the data inductively into gradually more intellectual components of data. This inductive practice consisted of the cooperation of participants that interactively structured the themes or abstractions that emerged from the process. Researchers also use deductive thinking in that they construct themes that are recurrently being 'crisscrossed' alongside the data (Cresswel & Poth, 2017). The inductive/deductive reasoning practice means that the qualitative researcher makes use of multifaceted thought processes during the progression of the research (Cresswel & Poth, 2017). I used data coding to analyse my data inductively from meaningful segments to codes, then into categories and clusters, and finally into themes. In the qualitative research process, the researchers continue to concentrate on the 'unearthing' of the participants' problems or issues, and not the opinions and beliefs of the other scholars the researcher came across in previous research studies conducted in the field. The participants' understandings further suggest different viewpoints on a topic (Creswell & Poth, 2017). The essence of my research was to explore the understandings that educators hold regarding the promotion, protection and the limitation of learners'



right to freedom of expression. In order to get their perspectives, I was weary of researcher bias. Another characteristic of the qualitative approach is that the research takes place in the natural setting of the participants. In order to better understand the setting in which the problem is being studied, the researcher must try to understand the circumstantial position and the way in which they influence the participants' personal experiences of the setting (Cresswel & Poth, 2017). In order to understand the contextual influences that have an effect on the participants, I visited each school a number of times and conducted more than one interview at a specific school. Furthermore, it was important to note that the qualitative research approach was a dynamic and continually changing process. This could have an impact on how the research approach will be used because some of the stages of the research process could evolve or change after the researcher has entered the field to collect data (Creswell & Poth, 2017). The qualitative approach allowed me to change the format of my questions or the initial participants that I selected for my research. In other words, the qualitative approach's flexibility allowed me to retrieve rich data from my participants.

3.4 RESEARCH DESIGN

In my proposed research I made use of a multi-case study in order to analyse different educators' understandings of learners' right to freedom of expression.

3.4.1 What is a case study?

A case study is a qualitative approach in which the researcher investigates a real-life, present-bounded system (a case), over a time and space, through detailed, in-depth data gathering practices like interviews and the collection and analysis of documents and reports (Cresswel & Poth, 2017; Dawson, Hancock & Algozine, 2016). Case studies allow researchers to acquire a deeper understanding of situations and meaning from those involved (Dawson, Hancock & Algozzine, 2016).

3.4.2 Characteristics of a case study

A case study has several characteristics. Firstly, the case study will support the researcher in identifying a specific case to investigate. Typically, case study researchers study evolving, real-life cases that are continuously 'playing out' on a



daily basis in order to collect truthful information not lost through time (Creswell & Poth, 2017). I explored educators' understanding of learners' right to freedom of expression, which is an ongoing phenomenon in schools. For the case identification, it is vital that it be bounded, meaning that it could be explained within specific parameters (Cresswel & Poth, 2017). My study was bounded because I only conducted my interviews at certain schools. Additionally, I chose to only interview educators at the selected schools, which were bounded geographically because they fell within the same school district. Finally, the research was bounded in the sense that I gathered data in schools where incidents of educators infringing on learners' right to freedom of expression have been reported. A multiple case study allowed me to focus on the specific concern at hand, namely freedom of expression, while selecting multiple participants to get their understanding of the issue.

Another feature of a sound qualitative case study is that it offers a detailed insight of the case (Cresswel & Poth, 2017). In order to achieve this, I probed the literature and documents available on this issue as a supplement to the data that I retrieved from the interviews.

The selection of how to approach the data analysis in the case study will also differ (Cresswel & Poth, 2017). I made use of data coding whereby I firstly identify meaningful segments. From the meaningful segments I identified codes which I in turn organised into categories and clusters working towards a theme. Lastly, case studies often conclude with assumptions formed by the researcher about the general meaning emerging from the case(s). In the last chapter I discussed the conclusions of my research. A multiple case study method seemed to suit the qualitative research I conducted the best in order to do an in-depth analyses of the participants I interviewed.

3.5 PARTICIPANTS AND SAMPLING

I decided to make use of purposive sampling in the selection of my participants. According to Creswell and Poth (2017), purposive sampling supports the researcher to differentiate between sites and participants in order to understand the problem and research question better. The individuals must have stories to share regarding their own experiences of the phenomena of learners' right to freedom of expression.

Participants must be willing to think about and share their knowledge. Teddlie and Yu (2007) refer to purposive sampling as selecting units (e.g. individuals, groups of individuals and institutions) based on their particular features.

To simplify my purposive sampling of participants, I made use of sampling criteria. The sampling criteria are the characteristics considered necessary to pick information-rich participants. The sample criteria assist in the selection of the target population, and the sample is selected from the accessible population within the target population. The sample criteria should be appropriate for a study but not so restricted that researchers are unable to attain a suitable number of participants. A study should also specify the inclusion or exclusion sample criteria (Gray, Grove & Sutherland, 2016). Inclusion sample criteria are a fixed group of criteria that were set in advance to help choose the most suitable, information-rich participants for a study. The precise selection of inclusion criteria will add to the external and internal validity of the study, increase its viability, lower its costs, and lessen ethical concerns. More specifically, sound selection norms will assure the similarity of the sample group, lessen misunderstandings, and raise the chances of discovering a valid correlation between exposure/intervention and outcomes (Salkind, 2010).

3.5.1 INCLUSION CRITERIA

I made use of the following inclusion sampling criteria:

Firstly, I planned to interview educators in different positions, including principals, HOD's, and Post Level 1 educators (junior and senior). Secondly, educators of different age groups would be interviewed. This is because I wanted to determine if and how the younger educators' understanding of learner rights varied from that of the older educators'. With age and experience people's understanding and perceptions change. It is understandable that the older generation, that grew up in an era when fundamental human rights were not acknowledged in South Africa, may have perceptions different to those of the younger generation which grew up with the knowledge that they have "fundamental human rights" which have been entrenched in the Bill of Rights.



3.5.2 Inclusion criteria for Post Level 1 educators

Educators who had recently started to teach would be selected. By *recently* I am referring to educators with less than 3 years' teaching experience. Educators who had recently started to teach should still have a relatively fresh memory of the education law component of their studies and they should have a better grasp of learner rights issues. I also selected educators that have been teaching at Post Level 1 for at least 10 years (and therefore completed their education studies at least a decade ago) and who have had some in-service training on education law matters. The reason for this selection criterion was that one tends to forget the content of studies. It would also indicate whether their understanding of learner rights differs after this number of years of teaching experience and some in-service training.

3.5.3 Inclusion selection criteria for educators in management positions

Principal and deputy principals that have been heads of schools or in deputy principal posts for at least 10 years were selected. Educators that have been heads of department for at least 3 years were also be included in the sample. It was important to determine the understanding of these educators in management positions as it is one of their main functions to lead and train subordinates. They are also expected to deal with, and resolve possible disputes that may arise between educators and learners.

3.5.4 Selection of a school/research site

I decided to conduct my research in public and independent schools. The selection of a school or research site was determined by the freedom of expression incidents that took place at the particular school/s. I believed that the identified schools would provide me with information-rich participants in the sense that the participants would be educators who were responsible for managing (promote, protect and limit) these learners' right to freedom of expression.

3.6 SAMPLING PROCEDURES

My sampling procedure commenced with a school visit. During the first visit I presented my planned research to the principal and in the case of an independent school to the board of directors and/or the principal. I enquired from the principal if the school experienced freedom of expression incidents in the past. If I received



positive feedback, I requested the necessary permission to conduct my research at the school (See attached Appendix A, B, D and E). I asked the principals if they could create a list of participants that fit my selection criteria. When I received the requested list of possible participants I went ahead and made appointments to meet the participants to inform them about my research. In the first contact session I provided the participants with the necessary documentation (acceptance to participate in my research, interview schedule) before I met them again for the interview.

3.7 DATA COLLECTION

The data was collected through:

3.7.1 Semi-structured interviews

According to Alshenqeeti (2014), the semi-structured interview is a more adaptive type of interview as it allows the researcher the freedom to unearth and expand on the interviewee's answers. The semi-structured interview enables the researcher to ask supplementary questions as a means to probe for more knowledge about an issue, which also affords the participant the chance to elaborate on a particular issue. The approach of the researcher, and the preparations made in advance of the scheduled interviews together with a well-constructed interview schedule, are essential to the attainment of rich data (Dimond, 2015). During the interviews, I asked pre-formulated questions that were followed up with supplementary questions in order to obtain a deeper understanding of the phenomena in question. Semi-structured interviews are best managed using an interview schedule as a guide. The guide is made up of specific topics to be enclosed, or possible "questions and sub-questions" that the researcher could ask. I mailed a copy of my interview schedule to the participants a week in advance of the scheduled interview date.

3.7.2 Literature review

I collected data by exploring the literature regarding the right to freedom of expression in the school context. Literature reviews should accurately report the current facts or data on a matter and offer a broad review of the best available research from earlier published studies related to the particular topic. Literature reviews help guide researchers in their decision making when they select, explain, and improve hypotheses in order to detect shortcomings in previous research.



Literature reviews could therefore be seen as a tool for confirming hypotheses and views by offering insight to the researcher into the complexities underlying the conclusions of other research and they may offer more decisive outcomes than a single primary research (Baker, 2016).

3.7.3 Analysis of court cases

Finally, I made use of case law to enrich my data collection. Case law is a segment of common law and is made up of previous judgements given by “higher” courts in understanding the statutes (or the requirements of the Constitution) relevant to cases that appeared before them, which are called precedents. Such judgments are binding on all courts (within the same jurisdiction) and are to be abide by as the law in similar cases. Therefore, the narratives of judges to support their judgements had elucidated the meaning of the right to freedom of expression and also possible misunderstandings of such rights.

3.8 DATA ANALYSIS

I made use of data coding to analyse my semi-structured interviews. Data coding begins with small parts that stand alone. These data parts, called segments, divide the data set (McMillan & Schumacher, 2014). After I identified the segments, I went on to analyse the segments in order to establish codes (McMillan & Schumacher, 2014). In the next step I identified meaningful words or phrases and grouped them into categories (McMillan & Schumacher, 2014). From here, the categories were grouped into themes and the themes into clusters of themes. Finally, I sorted the themes and clusters of themes into patterns (McMillan & Schumacher, 2014).

3.9 TRUSTWORTHINESS AND CREDIBILITY

3.9.1 Credibility

Credibility is the level of certainty that can be assigned to the truthfulness of the conclusions made by the research (Korstenjens & Moser, 2018). Approaches to guarantee credibility include triangulation, member checking and reflexive journal.

3.9.1.1 Strategy - Triangulation

According to Anney (2014:277), “triangulation implies the use of various methods, investigators, sources and theories to find validating evidence”. I conducted an in-



depth investigation of the literature, documents and case law available on freedom of expression in schools. This enabled me to compare the data I collected with previous research in the field.

3.9.1.2 Strategy - Member checks

Member checking entails that the data the researcher gathers are tested once it has been collected from members of different audiences and groups (Anney, 2014). This meant sending the analysed and interpreted data back to the respondents for them to assess my analysis and to advise me on amendments if they are dissatisfied with it or because they have been misquoted (Anney, 2014).

3.9.1.3 Reflexive Journal or Practice

According to Kortsjens & Moser (2018), it is important for the researcher to analyse the 'lens' through which they look at their research, and to consider their own views, opinions and beliefs, biases and morals, and how these could have an influence on research decisions in all stages of qualitative studies. One of the means through which this can be realised is through the use of a reflexive journal. Anney (2014) defines a reflexive journal as reflexive documents kept by the researcher in order to reflect on, tentatively interpret, and plan data collection.

3.10 ETHICAL CONSIDERATIONS

According to Morga (2017), ethics is a complicated notion and ethical behaviour is contextual; meaning that what is thought to be right or wrong may be founded on the ethical codes which governs it. These ethical codes are subjective and this is the reason why people will think of and understand ethics in different ways. Nevertheless, it doesn't matter from which angle a researcher ponders about ethics, they are essential because they lead and assist researchers in thinking about their own beliefs, stances and, ultimately, their research ways or manners. They also support the researcher in order to reflect on some of the hypothesis made at different design stages of a research study, and so, researchers are expected to analyse whether the judgements they make and the actions they carry out in the field, or at a desk, are appropriate.

Creswell and Poth (2017) mention that ethical standards apply to all the different phases of the qualitative research practice, including prior to conducting the study



(planning); commencement of the study; and also during the procedure of data gathering and evaluation.

3.10.1 PHASE 1 – Ethical considerations prior to conducting the study

According to Cresswel and Poth (2017), it is important to get the approval of the university's ethics committee to conduct the research study. Obtaining approval from several institutional review boards requires evidence that the researcher is cognisant of fundamental ethical principles such as respect for persons, and concern for welfare and justice.

3.10.1.1 Respect for persons

Respect for participants includes the manner in which participants are treated (Cresswel & Poth, 2017). According to Petrova, Dewing and Camelleri (2016), these considerations arise from the researcher's own mindfulness of the value of confidentiality. To ensure that my research was ethical, I first applied for ethical clearance at the university in order to conduct my research in the name of the university. Thereafter I applied to the specific owners of the private schools (attached Appendix D) and to the principals (attached Appendix B) for permission to conduct my research at their schools. I also applied for permission to conduct research in the two identified public schools through the Gauteng Department of Education's director of the Tshwane South School District (attached Appendix A). In Appendix C, which deals with my invitation to prospective participants to participate in my research, I emphasised that the confidentiality of all participants in my research will be protected through the use of pseudonyms.

3.10.2 PHASE 2 – Ethical considerations in the beginning of the study

According to Creswell and Poth (2017), the start of the study includes the first acquaintance with the research setting and with the individuals. It is essential to communicate the aims of the study to the participants. This is frequently underlined in the informed consent form that must be completed for the university's ethical committee. As a general requirement, such forms always points out that participation in a study is voluntary and that it would not place the participants at undue risk. During an initial meeting which I set up with the principals of the participating schools, I explained the purpose of my research and how this research would contribute to the field of education law (attached Appendix C).



3.10.3 PHASE 3 – Collecting data

Creswell & Poth (2017) indicate that researchers must obtain the consent to conduct research in a setting and communicate to managers, or those in authority, how they will minimize disturbance to the site's regular activities while conducting the research. In the permission letter to the principal to grant me permission to conduct research at the school (attached Appendix B and E) and the invitation to participants to participate in my research (see Appendix C). I clearly stated that my interviews will be carried out after school hours at a preferred venue and time that will suit the participant the best.

3.10.4 PHASE 4 – Analysing data

Bengtsson (2016) emphasises self-reflection as an important aspect in qualitative research. The researcher must take into account his or her pre-understanding both in the planning and the analysis phase to avoid any bias or personal influence creeping into the data. To have predetermined knowledge of the participants and to be familiar with the context can be a benefit as long as it does not influence the informants or the interpretation of the results (Bengtsson, 2016).

To increase the objectiveness of my research, I reported multiple viewpoints. I achieved diversity by establishing sampling criteria for educators in different management positions (principals, deputy principals, head of departments), as well as senior and junior educators teaching in Post Level 1 positions. In addition, I also interviewed educators of different ages in order to compare the views of the younger and older generations.

3.10.5 PHASE 5 – Reporting data

According Cresswell and Poth (2017), researchers must not make known any information that would negatively affect participants in the present or future. As such, I excluded data that was not suitable for publishing. Finally, plagiarism should be avoided by establishing what type of permission is needed to cite other researchers' works in a study.

My research was supervised and sent to external moderators who assisted me in enhancing the quality of my study. This was quite important, as the audience of this report will be the academic community. In terms of acknowledging the authors of existing literature, I made use of the Harvard system in citing other researchers'

work that I refer to throughout this study, and the thesis in its entirety was submitted to undergo Turnitin[®]'s originality checks.

3.11 WORK PLAN

- Defend proposal successfully. (End October 2017)
- Apply for ethical clearance through the University of Pretoria. (November 2017)
- Apply for permission at the head office of the private school group to conduct research in their schools. (February 2018)
- Enter the field to conduct the planned interviews. (March – July 2018)
- Analyse the collected data. (July – September 2018)
- Draft the report on the research. (September 2018)
- Submit the research report. (October 2018)

3.12 CONCLUSION

In this chapter I described the methodology I used to conduct my research. I made use of a qualitative research approach, while the research design that I chose to implement was a multiple case study. During the sampling stage of my research I utilised a purposive sampling approach in order to assist me in identifying sites and participants that would assist me in grasping the problem and research question better. The data collection method consisted of semi-structured interviews, an in-depth investigation of the literature, analyses of documents, as well as the case law available on the issue of freedom of expression in schools. Reference was made to credibility and trustworthiness, which is the certainty that can be assigned to the truth of the research findings.



CHAPTER 4

DATA ANALYSIS AND FINDINGS

4.1 INTRODUCTION

In Chapter 3 I discussed the research design and the methodology used to collect data. The case study approach gave me the freedom to analyse the school environment in which the participants operated on a daily basis. Each of the four school environments that I visited differ from each other and can be seen as a real-life, bounded system (a case), where freedom of expression occurs on a daily basis. I made use of detailed, in-depth data gathering techniques like semi-structured interviews, document analysis and reports on research conducted about freedom of expression in school, laws pertaining to learner rights and educators' knowledge and understanding of education law (Creswell & Poth, 2017; Dawson, Hancock & Algozine, 2016). These techniques enabled me to better understand the situations and the meanings those participants involved in the study have of the research theme (Dawson, Hancock & Algozine, 2016).

I decided to make use of purposive sampling in the selection of my participants. According to Creswell and Poth (2017), purposive sampling supports the researcher to make distinctions between sites and participants in order to understand the problem and research question better. This enabled me to select information-rich participants that have stories to share regarding their own experiences about learners' right to freedom of expression.

In Chapter 4 I will analyse the data I collected through my interviews. I will make use of data coding to analyse the semi-structured interviews. Data coding begins with tiny segments of information standing on its own. These data parts, called segments, divide the data set. After I had identified the segments, I analysed them to formulate codes (McMillan & Schumacher, 2014). The next step was to identify meaningful words or phrases and group them into categories (McMillan & Schumacher, 2014). Next, I arranged the categories into themes and the themes into clusters of themes. Finally, I grouped the themes and clusters of themes into patterns which form connections between categories (McMillan & Schumacher, 2014).



4.2 STRUCTURE OF THE CHAPTER

Based on the analysis of the data, I developed a generative flowchart (Figure 1) displaying the relationships between the overarching theme and sub-themes. This flowchart is a representation of the participants' own thoughts, feelings and understandings that contributed to the themes and the subtheme. The overarching aim was to probe the understandings educators have of learners' right to freedom of expression. This overarching theme was probed by asking the following sub-questions:

4.2.1 What do educators understand by '*freedom of expression*'?

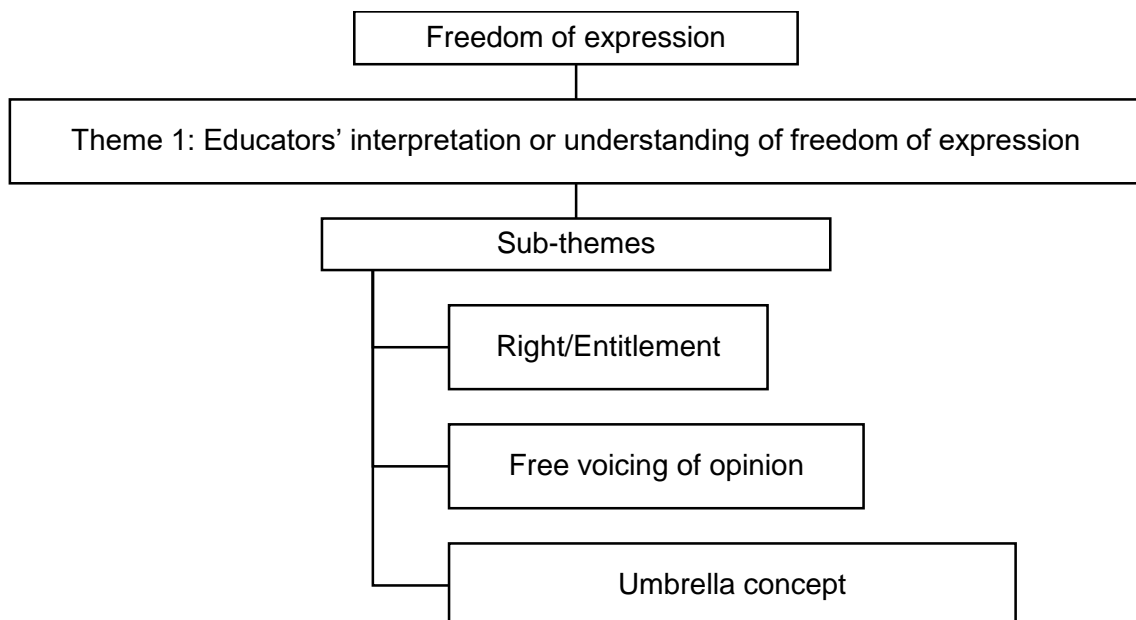
4.2.2 What do educators regard as the protection of learners' rights to freedom of expression?

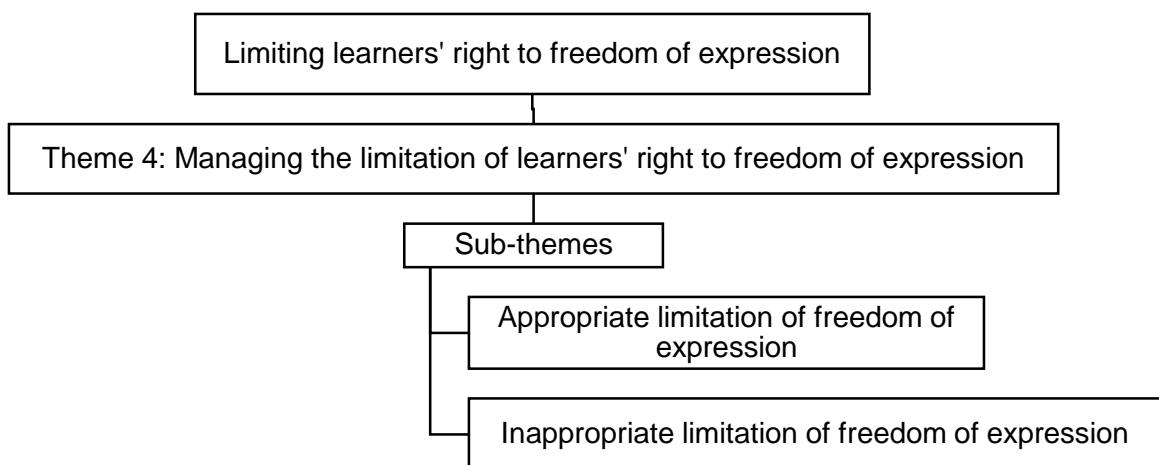
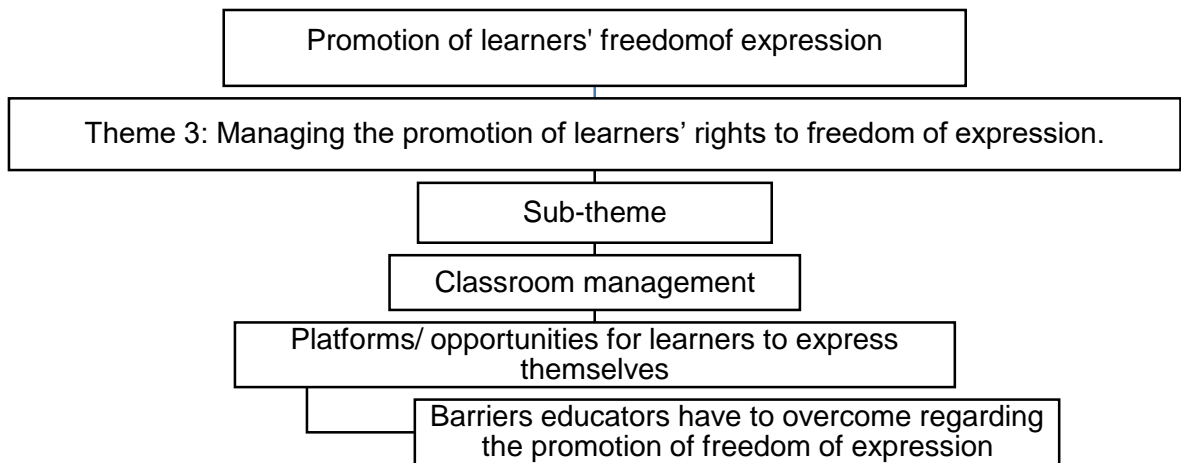
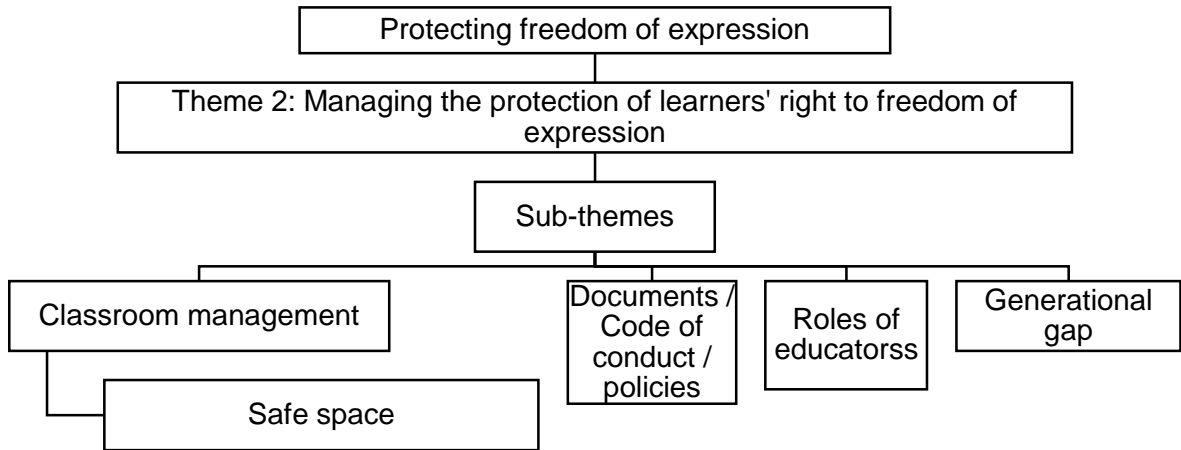
4.2.3 What do educators regard as the promotion of learners' rights to freedom of expression?

4.2.4 How do educators limit learners' right to freedom of expression?

4.2.5 What is educators' understanding of the term dignity?

In the analysis of my data, five themes appeared. I have identified subthemes under each emerging theme (See figure 4).





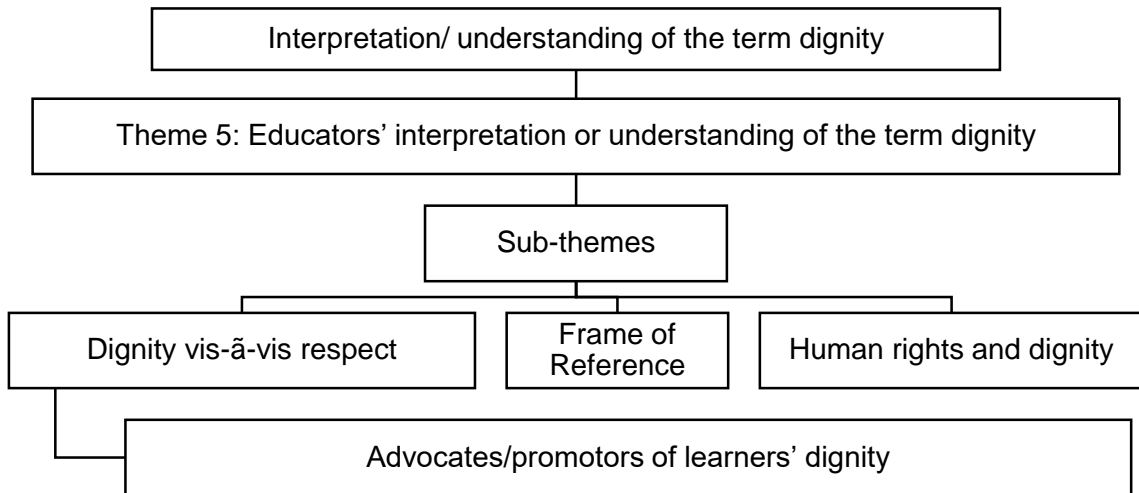


Figure 4: Emerging themes and sub-themes

4.3 FREEDOM OF EXPRESSION

As pointed out in paragraph Chapter 3, I began all my interviews by asking the participants what their understanding of freedom of expression was. I had to explore this concept extensively in order to clarify what the participants understood because freedom of expression is quite a broad concept, as explained in Chapter 2 of my literature review.

The following theme and sub-themes emerged from my interviews with the participants and resonated with and/or enriched and informed what I came across in the literature.

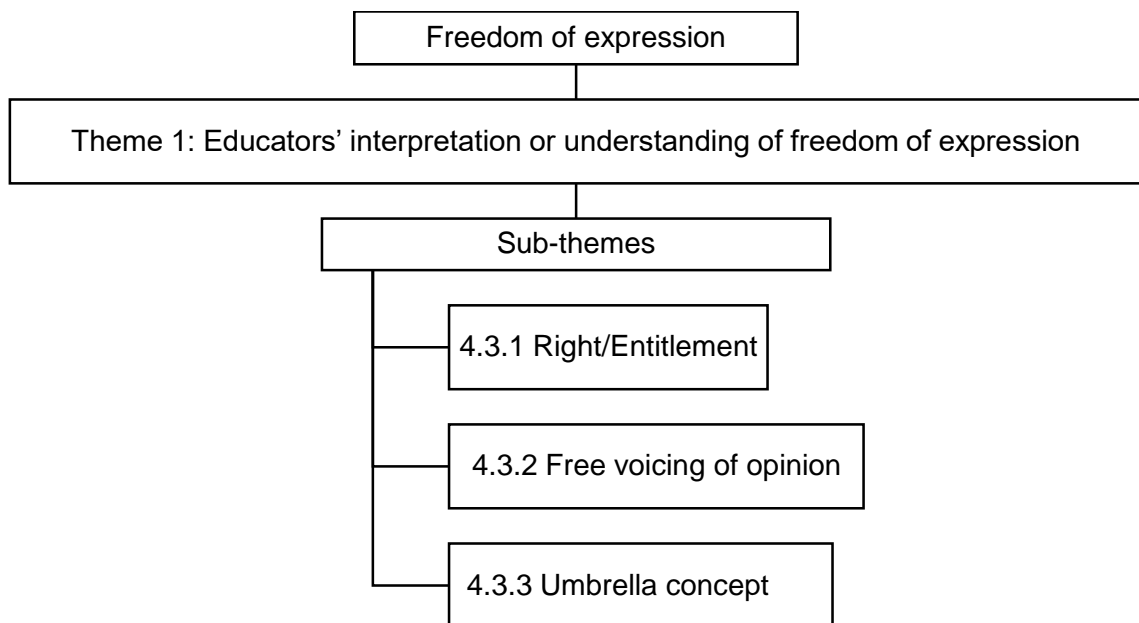


Figure 4.1: Educators' understanding of freedom of expression



4.3.1 Right/entitlement

It surfaced during the interviews that the participants understood freedom of expression as a human right to which a person is entitled. The participants indicated that everyone has a right to a specific opinion or view on something and that it is a basic human right to explain/express your feelings on any particular matter. Some of the participants believed that freedom of expression is the right to say what you believe, as well as to physically express oneself. Participant 9 gave an interesting answer. The participant saw freedom of expression as a birth right which all the learners of today enjoy. Participant 21 said: *“It is a right I have to express myself, therefore I should be heard.”* The keywords ‘right’, ‘opinion’, ‘view’, ‘basic human right’, ‘feelings’, ‘birth right’ and ‘freedom’ derived from the responses of the participants correlate with the literature discussed in paragraph 2.1 of Chapter 2.

In section 7(2) of the Constitution of the Republic of South Africa (1996) it is stated that the government must respect, protect, promote and fulfil the rights mentioned in the Bill of Rights. Therefore, it is the duty of the government to respect, promote and limit the rights of the people. The participants’ repetition of the keyword “right” in their responses is evidence that they understand that freedom of expression is a right or entitlement they have and that it is government’s duty to protect the right.

4.3.2 Free voicing of opinion

The responses from the participants implied that freedom of expression is the right a person has to freely express themselves, verbally and physically, about various aspects of life. The participants indicated that every person has the right to their own view on a specific topic. They shared with me that it is the freedom to say and also act on one’s beliefs – to an extent. Participant 12 actually used the word “freely” when she referred to learners’ expressions: *“... when a person can freely share or give his or her opinion without being discriminated against.”* Participant 16 told me that freedom of expression is the liberty to act in a free manner in society. The keywords “freely”, “freedom”, “right”, “various aspects of life”, “own view”, “opinion” and “liberty” in the responses from the participants correlate with the literature discussed in paragraph 2.1 of Chapter 2. In section 16 of the Constitution, the Bill of Rights states that freedom of expression consists of the right to freedom of the press or media, including the freedom to disperse information or ideas. The keyword in section 16 is freedom – freedom of the press/media and freedom to disperse



information/ideas, which is in line with the keywords identified in the responses of the participants. The participants have a clear understanding that freedom of expression also entails the freedom to make yourself heard.

4.3.3 Freedom of expression – An umbrella concept

During the interviews, the participants mostly referred to freedom of expression as freedom of speech. However, some participants indicated that you can express yourself in different ways. The participants told me that you can express yourself through your body language. They also informed me that expression can take place through story-telling, debates and artwork. Participant 16 said: *“Learners can express themselves through cultural activities like plays. There is actually a battle of the arts that is taking place at the school. They will be participating in music, dance, poetry, etc.”* Some of the respondents said that you can express yourself through the type of clothes you wear. The participants also shared with me that learners express themselves through different hairstyles. The keywords “speech”, “story-telling”, “debates”, “art”, “music”, “dance”, “clothing” and “hairstyles” derived from the participants’ responses correlate with the literature discussed in paragraph 2.1 of Chapter 2.

van Vollenhoven and Glen (2004) suggest that freedom of expression could also include art activities such as painting and sculpting, the designing of posters, dancing and the printing of photographs. Expression can also be linked to symbolic acts like the burning of flags and posters, a persons’ wardrobe, physical actions and emotions. The keywords “dancing”, “physical actions”, “wardrobe” and “art” identified in the literature are in line with the keywords that the participants gave in their responses. It is clear that the participants understand that “freedom of expression” is an “umbrella” concept.

4.4 PROTECTION OF FREEDOM OF EXPRESSION

In my second sub-question I asked the participants: what do they regarded as the protection of learners’ “right to freedom of expression”? The following themes emerged.

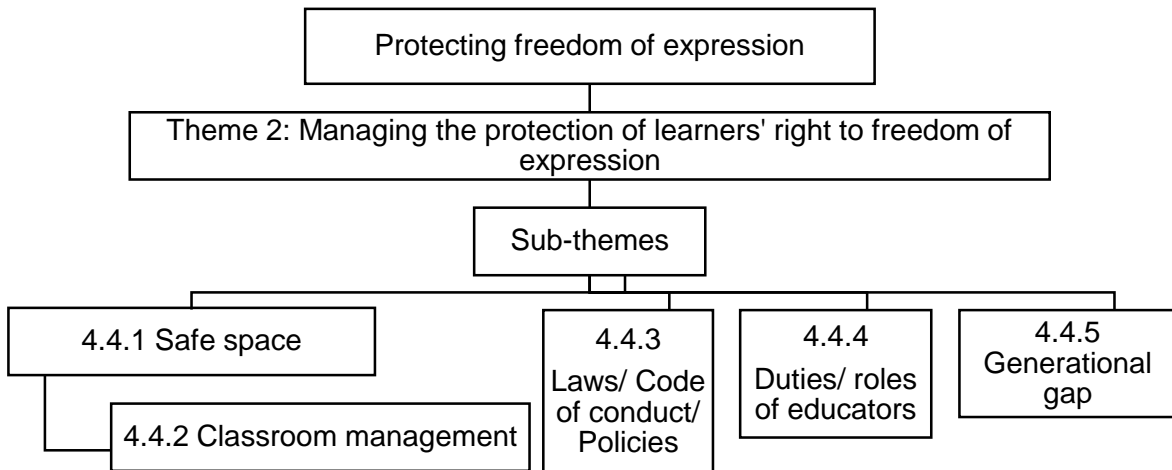


Figure 4.2: Managing the protection of learners’ right to freedom of expression

4.4.1 Safe space

When I questioned the participants about the protection of learners’ right to freedom of expression, a few of the participants mentioned the creation of a safe space. Participant 2 said that freedom of expression can be protected by what he referred to as a “safe space”:

The safe space is literally created by an educator by telling the learners we are going to handle some sensitive issues, let’s say some values regarding religion. We will allow you to share your ideas on this. We are not going to hold anything against you what you are going to say we will listen to you. The safe space is structured in such a way that if one learner, let’s say, shares his ideas then other learners are not allowed to make any comments based on that initially. They can respond to that later on but they are not allowed to interfere ... they must have respect for a learner that is sharing his views.

The key words “protected”, “safe space”, “not holding anything against you”, “share ideas” and “respect” derived from the responses of the participants correlate with the literature scrutinised in Chapter 2. Learners’ rights are reaffirmed in the National Education Policy Act (No. 27 of 1996) that emphasises the importance of upholding learner rights by stipulating in section 4 that South Africa’s education policy must be focused at, amongst other things, the improvement and the safeguarding of the fundamental rights of the child in education. The keywords “upholding learners’ rights” and the “advancement and protection” derived from the literature can be associated with the keywords the participants gave in their responses. The



participants indicated that through the creation of a safe space, learners' freedom of expression will be upheld and protected. The participants have a clear understanding that the safe space is a method that could be used to protect learners' freedom of expression.

4.4.2 Classroom/school management

A number of the participants underlined the importance of classroom and school management as an important factor in the protection of learners' right to freedom of expression. Participant 1 mentioned that the type of school and classroom management practice at a school will have an effect on the protection of freedom of speech. The participant stated that *"it depends on the way we run the school."* Some participants pointed out that freedom of expression can be protected by executing your duties as an educator in an orderly manner, not being biased and by giving learners opportunities to raise their concerns. Participant 5 commented that *"there has to be a lot of control in your classroom. Obviously there must be discipline in your classroom, and rules, so they need to know what the boundaries are."* Participant 10 explained that learners' freedom of expression can be protected through the type of classroom management the educator implements. He stated that in his school he observed two types of management styles. Some educators adopt an authoritarian style where learners are not allowed to voice their opinions – freedom of expression doesn't exist and therefore it can't be protected. On the other end of the spectrum, you will have educators that do allow learners to express themselves and thereby the educators protect the learners' right to express themselves. One of the participants mentioned a balanced class as a method to protect learners right to freedom of expression. A balanced class is a class in which learners are allowed to express themselves without violating the right of the other learners. The keywords "classroom management", "orderly manner", "avoiding victimisation", "control", "rules", "boundaries", "authoritative and non-authoritative" and "balanced class" derived from the responses of the participants correlate with the literature discussed in paragraph 2.2 of Chapter 2. Section 17 of the Employment of Educators Act (No. 76 of 1998) stipulates that educators must take care not to carry out an act which is damaging to the administration, discipline or efficiency of any department of education; must not be careless or lethargic in the execution of their responsibilities; nor must they behave in a dishonourable,



inappropriate or unbecoming manner. In their responses, the participants referred to rules, control, boundaries, establishing a balanced classroom and avoiding victimisation as methods to protect freedom of expression. All of these methods are in-line with section 17 of the Employment of Educators Act and is what is expected from an educator. Therefore, the responses correlate with the literature in Chapter 2. The participants understand that freedom of expression can be protected through classroom management.

4.4.3 Laws/code of conduct/policies

The participants related the protection of learners' right to freedom of expression to specific laws, policies and a school's code of conduct; all of which can be used as tools to protect freedom of expression. It is also important to mention that the participants only touched on these issues. I did not get a single response that delved deeper into the laws, policies and the schools code of conduct. Participant 1 explained that their school is a dual-medium school with a mixture of cultures and that in a school environment like that, policies are an important means of accommodating the different ways in which learners express themselves. The participant went on to mention that his school's code of conduct is based on the Constitution. Participant 2 said that he *"basically knows that the South African Constitution generally gives the framework for the protection of rights."* The keywords "policies", "South African Constitution", and "school code of conduct" correlate with the literature studied in Chapter 2, section 2.2. In that chapter, I also discussed laws like the South African Schools Act, the National Education Policy Act and the Constitution, which all contain aspects that speak to the issue of learners' rights. The literature also refers to policies like the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners that could be used to protect learners' rights.

From the responses gathered, I can state with a great deal of certainty that the participants are merely aware of these laws and policies. The fact that I did not get a single response that went into these laws and policies in depth can also be an indicator that the participants do not have sufficient knowledge about these laws and policies to actually have a discussion about it. The literature in paragraph 2.1 of Chapter 2 supports the conclusions I made about the participants' knowledge of laws and policies pertaining to education. According to Alston, Van Staden and



Pretorius (2005), research showed that only 3% of school governors had actually read the Bill of Rights. In another study conducted by Duma, the study revealed that 80% of the respondents' knowledge of section 16, which relates to the right to freedom of expression, was poor (Duma, 2010).

4.4.4 Duties/roles of educators

During the interviews it became obvious that the participants viewed the protection and promotion of learners' right to freedom of expression as an important part of their role and responsibilities. Some of the participants saw their roles/duties as custodians of discipline and rights. Participant 3 gave an insightful answer by stating that learners' freedom of expression can be protected "*if certain teachers in the school will take on the roles of guardian father and mother figures who could address problems in order to manage things through the right channels.*" Participant 4 told me that learners' right to freedom of expression can be protected "*when we as teachers play our in loco parentis role whereby you treat each and every learner as your own child.*" The participants furthermore mentioned that educators must take on the role/duty of facilitator, guide, referee, nurturer and educator.

The keywords "guardian", "mother and father figures", "in loco parentis", "facilitator", "guide", "referee", "nurturer" and "educator" derived from the responses of the participants correlate with the literature examined in paragraph 2.2 of Chapter 2. In section 17 of the Employment of Educators Act (No. 76 of 1998) it is stated that an educator shall be guilty of misconduct if he or she doesn't take notice of the Act or any other Act regarding education; is careless or lethargic in the execution of his or her duties; or behaves in dishonourable, inappropriate or unbecoming manner. The keywords derived from the responses indicate that the interviewed educators have a good understanding of their duties or roles and what is expected of them according to the Employment of Educators Act.

4.4.5 Generational gap

An interesting phenomenon appeared in some of my interviews regarding the protection of learners' right to freedom of protection. Some educators stated that they noticed that older educators have more difficulties in managing learners' right to freedom of expression. They tend to 'disallow' the right and also evade situations where learners express themselves. This right can't be protected if it is not even allowed to be practised. Participant 1 felt that the older educators struggle to



manage learners' freedom of expression. He continued to say that it depends on the way they have evolved, and added that:

My old headmaster used to refer to teachers with thirty years of experience as educators that repeated their first year of teaching for thirty years because they would do the same things over and over.

The participant also told me that these educators are still pretty much in the chalk and talk mould where they will tell the children how to do the problem, whereas modern-day teaching is a lot more about involving the child and letting him discover the concepts by himself.

Participant 11 articulated the view that:

It seems that universities are teaching the new guys to be open-minded and to allow kids to actually express themselves. They are more prepared to engage the learners in the classroom activities and group discussions. The older educators prefer the old method of just standing in front.

Participant 14 said that “*once in a while due to the generational gap we are bound to stifle them.*” He continued by saying that:

The younger educators might rely on these things while the older educators might not because they were not there during their time of learning. In their time, it was just hard core industrial classrooms with row after row and you have to do it this and that way.

Participant 21 also expressed an interesting opinion regarding the older educators compared to the younger educators:

Without sounding condescending, I see it with the older generation of educators that they tend to squash the notion of freedom of expression by saying that learners should not be heard, they should only be seen ... they don't always allow the learners the freedom of expression.

The participant explained to me that he thinks it has to do with the way the older educators were raised. He pointed out that if you come from a generation where you have very strict parents, where you were told children should not be heard they should only be seen and your opinion doesn't count, then you will be like that when you are older. They come from an older education system we had in South Africa which was very autocratic, it wasn't democratic and they were trained in that autocratic system and for years they practiced education within that system. Then the system changed into a democratic one in which learners are allowed to raise their opinions, even assisting in making classroom rules. It is a paradigm shift and a paradigm shift doesn't happen overnight, it is a process for them. The keywords

“older”, “conservative”, “talk and chalk mould”, “older generation”, and “autocratic system” derived from the participants correlates with the literature in Chapter 2 section 2.2. Mokhele (2006) indicated that a sizeable majority of educators received their training before 1994, a time when the South African school system still allowed the use of corporal punishment. In this way, educators recurrently saw power and authority as mechanisms to control and discipline learners. The classroom environment was formal and tense, and the learners had no input in school matters. According to Mazibuko (2002), educators were the product of an education system that did not place a high emphasis on learner rights. The keywords “before 1994”, “corporal punishment”, “power and authority”, “control”, “formal” and “tense” derived from the literature correlates with the keywords in the responses from the participants. It is clear that the generational gap could be a factor that stifles the protection of learners’ freedom of protection.

4.5 PROMOTION OF FREEDOM OF EXPRESSION

In the third sub-question I asked: What do you regard as the promotion of learners’ right to freedom of expression?

The following emerging theme and subthemes came to front.

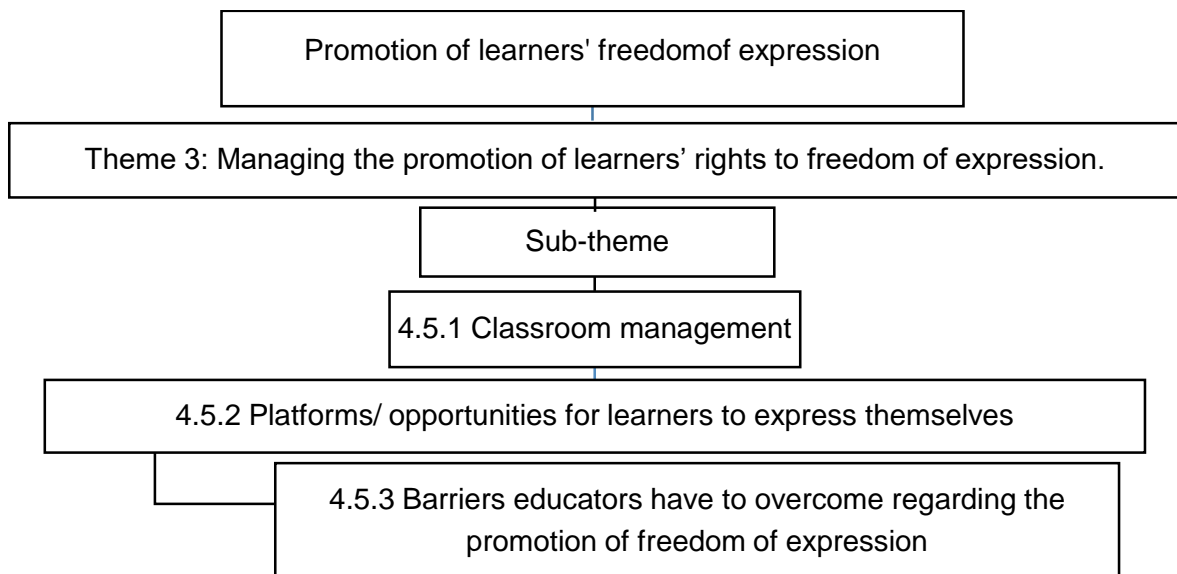


Figure 4.3: Managing the promotion of learners’ right to freedom of expression

4.5.1 Classroom Management

The following replies from the participants indicated that they see classroom management as an important tool to promote learners’ right to freedom of



expression. The type of classroom management that an educator uses can either inhibit or promote learners' right to freedom of expression. Participant 2 said freedom of expression can be promoted by "*providing a well structured environment in the class.*" Some of the participants were of the opinion that learners' right to freedom of expression could be promoted by establishing classroom rules. They highlighted the importance of having an open-door policy which invites and encourages learners to come and discuss their problems. Some participants considered the creation of a more relaxed classroom environment, a democratic classroom system and a classroom in which conversations are regulated and encouraged to take place as ways to promote freedom of expression.

Keywords derived from the responses that correlate with the literature in Chapter 2 include "well-structured", "classroom rules", "open-door policy", "relaxed classroom environment" and "democratic classroom system". The literature discussed the Guidelines for Safe and Caring Child Friendly Schools in South Africa. In these guidelines the importance of a rights-based school is stated. According to these guidelines, a rights-based school exhibits, encourages and monitors the rights and well-fare of all learners. The keywords derived from the responses of the participants are in-line with what society would see as the promotion of learners' rights. Therefore, classroom management can be seen as a way to promote learners' right to freedom of expression.

4.5.2 Platforms/opportunities for learners to express themselves

The participants viewed the provision of opportunities on different platforms in the school environment as an important aspect to promote learners' right to freedom of expression. Some of the participants shared with me that freedom of expression can be promoted by giving learners opportunities to talk about it in assembly or in LO (Life Orientation), in grade periods or even in the quad (open yard) where the learners' line up in the mornings before school. Activities like orators, debating, art festivals, the school newspaper and plays or allowing learners to wear traditional clothes were also seen as opportunities or platforms in which freedom of expression can be promoted. The keywords "opportunities", "talk", "assembly", "LO", "grade periods", "orators", "art festivals" and "school newspaper" derived from the responses of the participants correlates with my literature review. van Vollenhoven and Glen (2004) suggest that expression could also include art activities such as



painting and sculpting, the designing of posters, dancing and the printing of photographs. Expression can also be linked to symbolic acts such as a person's choice of hairstyle and the wearing of certain clothes. The keywords mentioned by the participants and the activities mentioned in the literature can take place in a formal or informal setting in a school. By providing these opportunities or platforms for learners to express themselves, the right to freedom of expression is automatically promoted. The participants demonstrated a clear understanding of the concept that by giving learners opportunities or platforms to express themselves, they are in fact promoting their expression.

4.5.3 Barriers educators have to overcome regarding the promotion of freedom of expression

During the interviews, some of the educators identified certain barriers that educators have to overcome in order to promote learners' right to freedom of expression in the school environment. These barriers refer to the actions, ways of thinking and perceptions that educators have regarding learners' right to freedom of expression. The participants informed me that "old school" teachers don't embrace freedom of expression; such educators just want to follow a certain mould and keep learners in that mould and this stifles expression. Participant 21 highlighted the fact that some educators shoot freedom of expression down because they believe it can create discipline problems in their classrooms, as well as fights and arguments. Rather than to allow the learners to engage in freedom of expression, they would in fact prevent it. Participant 2 explained that educators can do much more to understand the concept of freedom of expression. He also said that: *"they want kids to be still in class, to enter, to shut up and to rather listen than talk or to contribute to the lesson."* Some of the other responses indicated that educators are narrow minded and these educators don't want to see the learners' point of view. The participants also said that conservative and authoritative educators restrict expression. The keywords "old school", "narrow minded", "mould", "stifle", "shoot down", "conservative" and "authoritative" correlate with the literature scrutinised in paragraph 2.2 of Chapter 2. Mokhele (2006) indicates that a sizeable majority of educators received their training before 1994 when the South African school system still allowed the use of corporal punishment. In this way, educators recurrently saw power and authority as mechanisms to control and discipline

learners. The classroom environment was formal and tense, and the learners had no input in school matters. According to Mazibuko (2002), educators were the product of an education system that did not place a high emphasis on learners' rights. The keywords "training before 1994", "authority", "control", "formal and tense" and "no-emphasis on rights" form a clear link with the keywords in the responses from the participants. It is clear that educators must realign their thinking and perceptions regarding learners' freedom if they are in any way serious about promoting this right.

4.6 LIMITING LEARNERS' RIGHT TO FREEDOM OF EXPRESSION

In Chapter 2, I discussed relevant case law and literature regarding the limitation of learners' right to freedom of expression. The following theme and subthemes came to the fore.

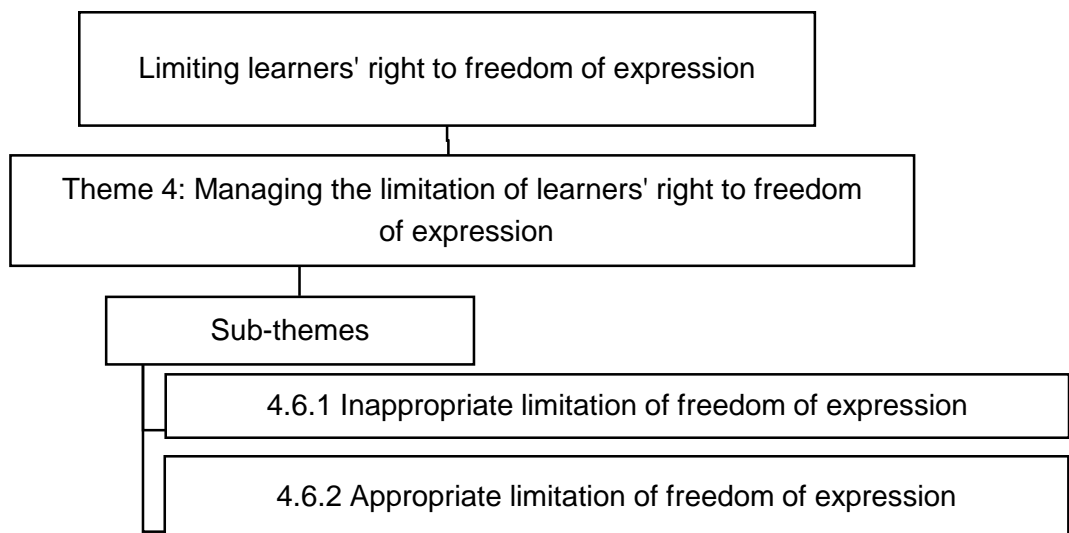


Figure 4.4: Managing the limitation of learners' right to freedom of expression

4.6.1 Inappropriate limitation of learners' right to freedom of expression

The participants emphasised that learners' right to freedom of expression must be limited in an appropriate way or else the school will find themselves in an ungovernable position. Participant 2 explained that when you are limiting a learners' right to freedom of expression and it doesn't have a maximum positive impact on the learner, you should reconsider your method:

Anything [that doesn't have] a maximum positive impact, you should at least place a caution next to that [sic]. [Anything] that has a negative impact on a person that is not positive but negative, that is going to break down,



that is going to take away some of the core values of another person, information that is not the truth.

Participant 3 shared with me that *“educators could have such a dominating personality that they give [the learners] no opportunity at all. You get people with such strong personalities that their discipline is of such an extent that they actually over-discipline and a child can’t even move.”* Some responses indicated that it is very important not to overreach and control to the extent that no learner gets an opportunity to express themselves. The participants cautioned that corporal punishment, intimidation or instilling fear is an inappropriate method to limit learners’ right to freedom of expression.

The following keywords, negative impact”, “breakdown”, “dominating”, “over-discipline”, “corporal punishment”, “intimidation” or “instilling fear” correlate with the analysis of the literature in paragraph 2.2 of in Chapter 2. According to section 17 of the Employment of Educators Act, an educator shall be guilty of misconduct if he or she is careless or lethargic in the execution of their responsibilities, behaves in a dishonourable, inappropriate or unbecoming manner, or, while on duty is disrespectful to any person. The keywords “careless”, “lethargic”, “dishonourable”, “inappropriate or unbecoming manner”, or being “disrespectful” resonate with keywords derived from the responses of the participants, therefore indicate that the participants understand what inappropriate conduct entails regarding the execution of their duties or roles.

4.6.2 Appropriate limitation of learners’ right to freedom of expression

The interviews underlined the fact that educators see restorative justice as the appropriate manner to limit learners’ right to freedom of expression. One of the participants said that when you limit learners’ right to freedom of expression, that limitation must have a maximum positive impact on the person.

The participants also viewed an intervention approach, regulation of discussions, being pro-active, being fair and taking immediate corrective action as appropriate methods of limiting learners’ right to freedom of expression. The keywords “maximum positive impact”, “intervention approach”, “regulation of discussions”, “being pro-active”, “being fair” and “immediate corrective action” resonate with the literature in paragraph 2.2 of Chapter 2.

According to section 17 of the Employment of Educators Act, an educator will be guilty of misconduct if he or she is careless or lethargic in the execution of their responsibilities, behaves in a dishonourable, inappropriate or unbecoming manner, or, while on duty is disrespectful to any person. The responses indicate that the participants understand what their duties or roles should be in the limitation of rights.

4.7 THE IMPORTANCE OF DIGNITY IN FREEDOM OF EXPRESSION

This study was based on the conceptual framework of section 7 of the Bill of Rights, which clearly states in section 7(1) that the Bill of Rights is the cornerstone of democracy in South Africa. It protects the rights of every citizen in our country and upholds the democratic values of human dignity, equality and freedom. To strengthen my conceptual framework, I also introduced the theory of dignitas. Dignity is mentioned as one of the key values in the Bill of Rights, hence it is important to probe the participants' understandings of the term dignity. In the interviews, the following important themes and subthemes came to light.

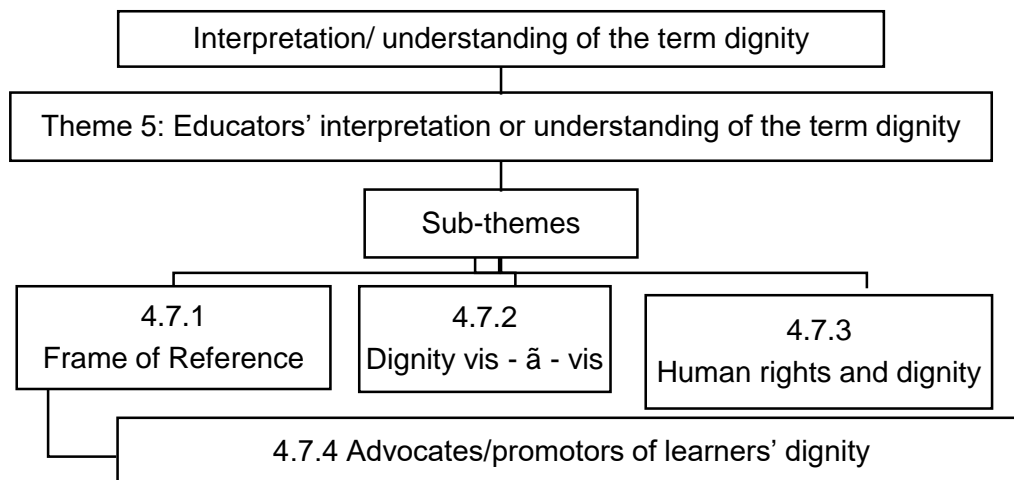


Figure 4.5 Educators' understanding of the term dignity

4.7.1 Frame of reference

During the interviews it became apparent that educators felt the learners' frame of reference has a big influence on a right like freedom of expression. The kind of upbringing a child receives at home where the basic foundations are supposed to be laid, will to a large extent determine how they express themselves at school. It was felt that a learner who was not disciplined or restricted at home will act more impulsively and "say or do anything", whereas a learner from a more conservative (restrictive) background will think before they express themselves. One of the



participants explained that, at her school, many of the learners come from households where basic manners are not taught and these learners don't know how to express themselves properly. The participants pointed out that morality starts at home and if you have learned appropriate moral values at home, you will carry yourself with dignity and respect the dignity of others.

The keywords "restricted background", "unrestricted background", "households", "morality" and "moral values" correspond with the literature discussed in paragraph 2.2 in Chapter 2. According to Mazibuko (2002), educators are the product of an education system in which they were trained. An analogy of Mazibuko's statement would be that learners are the product of their households.

4.7.2 Dignity vis-à-vis respect

The majority of the participants linked dignity to respect. Some of the participants saw dignity as self-respect or respecting other people and underlined that one should be cautious not to infringe on others' rights. The participants understood dignity as the inherent stature of a person and to act in a way that is respectful. Participant 7 stated that *"a person has dignity when the person is treated with respect and [is not] made vulnerable."* Participant 11 told me that *"you build dignity by sharing things that are honourable and respectful."*

The keywords "self-respect", "not infringing on rights", "inherent stature", "not made vulnerable" and "honourable" correlate with the literature to which I refer in paragraph 2.6 of Chapter 2.

According to Section 10 of the Constitution, everyone has a right to inherent dignity and the right to have their dignity respected and protected, while section 7(1) of the Constitution emphasises that the Bill of Rights is the cornerstone of democracy in South Africa and it enshrines the rights of all people in our country. According to Henette-Vauchez (2011), the concept of dignity could be defined in terms of what one might call legal humanism.

The keywords "inherent dignity", "respect", "protect" and "legal humanism" derived from the literature can be directly associated with the keywords derived from the participants' responses. The participants have a clear understanding of the concepts of dignity and respect.



4.7.3 Human rights and dignity

Some of the educators linked dignity to human rights, sharing the view that dignity is a right we deserve by virtue of being human. Participant 4 stated that *“dignity is all about the fact that you are a human being in your own right and people should not attack you because you have certain rights.”*

The keywords “human rights”, “dignity” and “being human” correspond closely with the literature highlighted in paragraph 2.7.2 in Chapter 2. According to Beitz (2013), dignity must be seen as a kind of value, in that something can acquire value if value is attributed to it. Human beings are created in the image of God and therefore acquire the highest place within the larger creation of God. Their common humanity therefore means educators and learners have a right to be treated with respect and dignity.

4.7.4 Educators as advocates for learners’ right to freedom of expression

It was clear from the responses that educators saw themselves as advocates for learners’ dignity and rights. The participants shared with me that educators generally build up and promote the learners’ dignity; one in particular said that by giving learners opportunities to express themselves, you are demonstrating respect for them and affirming their dignity.

Participant 12 said that educators promote learners’ dignity by teaching them the correct ways to behave in certain situations, in other words how to act with dignity. She continued by saying that educators must mould the learners and fill the gaps to make the learners better citizens. Participant 15 gave an answer worthy of note. She explained that at her school, educators are encouraged to take a more liberal approach regarding their engagements with learners. She added that they are expected to talk in a softer tone and to rather talk to learners one-on-one when discussing their behaviour. The school also evaluates the educators’ discipline at regular intervals. According to her, all of this contributes towards the promotion of learner dignity. Participant 16 said that he viewed teaching as a calling to impart knowledge to others, which is indicative of an educator who is genuinely committed to promoting the dignity of learners.

The keywords “build-up”, “promote”, “opportunities”, “fill the gaps”, “liberal approach”, “talking in a softer tone” and “teaching is a calling” derived from the



responses of the participants show a positive correlation with the literature discussed in paragraph 2.1 in Chapter 2. In Chapter 2 of the Constitution, the rights and values of the people of the Republic are affirmed. In section 7(2) of the Constitution it is stated that the government must respect, protect, promote and fulfil the rights mentioned in the Bill. The keywords “respect”, “protect” and “promote” identified in the literature can all be directly associated with the keywords derived from the participants in their responses. An educator can be seen as an advocate for learners’ rights if he or she builds up the learners in their care, promotes learners’ freedom of expression, provides them with opportunities to express themselves, and fills the gaps where they identify shortcomings in the way a learner expresses themselves. This includes taking a more liberal approach when addressing inappropriate behaviour.

4.8 CONCLUSION

It is clear from the responses that the participants have a good understanding of what it entails to protect, promote and to limit learners’ right to freedom of expression. The analysis of the participants’ responses also resonates with the literature reviews findings regarding educators’ knowledge of the law. The fact that I did not get a single response that delved deeper into these laws and policies – which could assist them in the protection, promotion or limitation of learners’ right to freedom of expression – could be an indication that the participants lack the required knowledge to have a discussion about it.



CHAPTER 5

CONCLUSION

5.1 INTRODUCTION

In Chapter 4, I presented the data that I collected through the semi-structured interviews, document analysis. I made use of a generative flowchart to display the relationships between the overarching themes. The themes were derived through the identification of meaningful segments, and the selection of code words that I grouped in to categories. These categories then became the themes. The various generative flowcharts in Chapter 4 are representations of the participants' own thoughts, feelings and understandings which I analysed to generate the themes and the emerging topics.

In the analysis of my data, five themes appeared. I identified sub-themes under each emerging theme that came to light during the analysis of the data. In this chapter, I present an overview of each chapter of the dissertation. I reiterate the purpose of the study and then discuss the findings of the study before I offer my conclusion about the working assumptions of this research. I also discuss the limitations and the significance of my research and make recommendations for the improvement of practice and for further research before I conclude with what I regard as the greatest contribution of the research.

5.2 OVERVIEW

5.2.1 CHAPTER 1: Roadmap

Chapter 1 could be viewed as the roadmap of my research. The chapter started with a discussion of my problem statement. The democratisation of the South African school system brought with it a bigger focus on learners' rights. In section 7(2) of the Bill of Rights it is clearly stated that the state must respect, protect, promote and fulfil the rights in the Bill of Rights, and in section 7(3) it is stated that the rights in the Bill of Rights are subject to the limitations contained in section 36. According to Mkhize (2008) these acts endorse and emphasise the fact that all educators must take notice of learners' right to freedom of expression.

Next, the chapter discussed the purpose of my research. In this research I conducted an in-depth investigation into the understandings educators have regarding the promotion, protection, fulfilment and limitation of learners' right to freedom of expression in the school environment.



Chapter 1 also highlighted the rationale of this research. In part, I was motivated to conduct this study because of my own responsibility to manage discipline in the school where I work. The court cases and all the newspaper headlines regarding violations of learners' right to freedom of expression was another reason. Furthermore, the chapter discussed what previous literature revealed about educators' understanding of education law in general, and explained that my study would explore educators' understanding of learners' right to freedom of expression, which is a human right that is entrenched in the Bill of Rights in chapter 2 of the Constitution. Therefore, the basis for my conceptual framework is chapter 2 of the Constitution.

In addition to the conceptual framework, I made use of the theory of "dignitas" to support the conceptual framework. The rationale for including dignity as a theoretical framework in my study is because the South African Constitution is based on the founding value of dignity (Reyneke, 2011), and according to Beitz (2013) dignity is an ever-present concept in the current discussions on human rights.

Chapter 1 also contains a discussion of the pragmatic perspective, ontology, and the epistemology paradigm that I made use of in my study. The interpretive paradigm engages teachers as inward-looking practitioners in developing a better understanding of the worldviews of their learners. The ontology refers to the philosophical study area that revolves around issues of existence and how to better understand and interpret the things that exist in the world (Dieronitou, 2014). Interpretivists make use of relativist ontology which proposes that reality as we know it is created inter-subjectively (Virginia Commonwealth University, 2012).

Also in this chapter, I emphasised that the "relativistic-ontological" perspective would enable me to determine the different ways in which educators understand the right to freedom of expression. The chapter concluded with a discussion of the research methodology on which the research was based, the participants and sampling, the data collection techniques, the trustworthiness and credibility and finally the ethical considerations of my study.

I explained why I made use of the qualitative approach. Creswell and Poth (2017) refer to a case study as a qualitative approach in which the researcher investigates a real-life, bounded system (a case), over a time, through detailed, in-depth collection techniques like interviews, documents and reports. This is the reason why I chose to make use of the multi-case study. It allowed me to study and analyse different



educators to determine their “understanding of learners’ right to freedom of expression”.

I chose purposive sampling in the selection of my participants. According to Creswell and Poth (2017), purposive sampling assists the researcher to select research settings and respondents that will contribute to the research in order to understand the problem and research questions better.

I collected data through semi-structured interviews, as well as by studying existing literature and case law. I explained that the trustworthiness and credibility of my study would be strengthened through triangulation, member checks and a reflexive journal. Finally, the chapter ended with a discussion of the ethical considerations regarding my study.

5.2.2 CHAPTER 2: Literature review

The literature review commenced with a discussion of Chapter 2 of the Constitution of the Republic of South Africa (1996) with a specific focus on section 7(2) concerning the promotion and protection of human rights, section 7(3) with regard to the limitations of human rights, as well as section 16, which deals with the right to freedom of expression”.

Thereafter, literature on educators’ knowledge of education law was reviewed. In this section I discussed research findings regarding South African educators and their international counterparts’ knowledge of education law.

This was followed by a discussion of South African constitutional judges’ interpretation of the right to freedom of expression as reflected in the *Le Roux v Dey* case. The chapter ended with a discussion of the promotion and protection of learners’ rights, a discussion of the limitations criteria of section 36 of the Constitution, followed by a review of international case law that could provide guidance to schools regarding the limitation of learner’s right to freedom of expression.

5.2.3 CHAPTER 3: Research methodology

In Chapter 3, I discussed the research design and the methodology I used to collect data. I made use of a case study qualitative approach. The case study approach gave me freedom as a researcher to analyse a real-life, bounded system (a case), through detailed, in-depth data gathering techniques like interviews and documents analysis (Cresswel & Poth, 2017; Dawson, Hancock & Algozinne, 2016). This



enabled me to better understand the situations and the views of the participants involved in the study (Dawson, Hancock & Algozzine, 2016).

I decided to make use of purposive sampling in the selection of my participants. According to Creswell and Poth (2017), purposive sampling supports the researcher to differentiate between sites and participants in order to understand the problem and research question better. This enabled me to select information-rich participants that have stories to share regarding their own experiences about learners' right to freedom of expression.

5.2.4 CHAPTER 4: Data analysis and findings

In Chapter 4, I analysed the data I collected through my interviews. I used data coding to analyse the semi-structured interviews. The data coding began meaningful segments, data segments clear or understandable by themselves and containing one idea, episode, or piece of pertinent information (McMillan & Schumacher, 2014:399).

After I had identified the segments, I analysed them to formulate meaningful words or phrases that I grouped into categories. The categories were the main ideas that were used to describe the meaning of similarly-coded data (McMillan & Schumacher, 2014:404). Next, I arranged the categories into themes and the themes into clusters of themes. Finally, I grouped the themes and clusters of themes into patterns. A pattern formed the connections between categories (McMillan & Schumacher, 2014). Based on the analysis of the data, I developed a generative flowchart (Figure 1, Chapter 4) displaying the relationships between the overarching themes and subthemes.

5.3 PURPOSE OF THE STUDY

The purpose of my research was to conduct an in-depth investigation into the understandings educators have regarding the promotion, protection and limitation of learners' right to freedom of expression in order to limit these incidents of learner right violations in our schools.



5.4 FINDINGS OF THE STUDY

5.4.1 What do educators understand by learners' right to freedom of expression

The following main theme emerged: Educators' interpretation or understandings of Freedom of expression. The following sub-themes support the main theme:

5.4.1.1 Right/entitlement

During the interviews, it became clear that the participants understood freedom of expression as a human right to which every person is entitled. The keywords "right", "opinion", "view", "basic human right", "feelings", "birth right" and "freedom" derived from the responses of the participants correlate with section 7(2) of the Constitution. The participants' repetition of the keyword "right" in their responses was evidence that they understand that freedom of expression is a right or entitlement they have and that it is governments duty to protect the right.

5.4.1.2 Free voicing of opinion

The responses from the participants implied that freedom of expression is the right a person has to freely express themselves about various aspects of life. In section 16 of the Constitution, the Bill of Rights states that freedom of expression includes the right to freedom of the press or media and to disperse information or ideas. The keyword in section 16 is "freedom" of the press/media and "freedom" to disperse information and ideas is in-line with the keywords identified in the responses of the participants. The participants have a clear understanding that freedom of expression also entails the freedom to make yourself heard.

5.4.1.3 Freedom of expression an "umbrella concept"

The participants mostly linked freedom of expression with freedom of speech. However, some participants indicated that you can express yourself in different ways. The keywords "speech", "story-telling", "debates", "art", "music", "dance", "clothing" and "hairstyles" were all derived from the participants' responses. According to Van Vollenhoven and Glen (2004), freedom of expression could also include art activities such as "painting and sculpting, the designing of posters, dancing and the printing of photographs". It is clear that the participants understand that freedom of expression is an "umbrella concept".



5.4.1.4 Platforms of expression

The participants indicated that freedom of expression can take place on various platforms either on informal or formal platforms. Van Vollenhoven and Glen (2004) suggested that freedom of expression could also include art” activities such as painting and sculpting, the designing of posters, dancing and the printing of photographs”. Expression can also be linked to symbolic acts like the burning of flags and posters, the wearing of certain garments, as well as physical actions and emotions. The participants demonstrated a clear understanding of the fact that freedom of expression can take place on different platforms.

5.5 What do educators regard as the protection of learners’ “right to freedom of expression”?

The following main theme appeared: Managing the protection of learners’ rights to freedom of expression. The sub-themes support the main theme:

5.5.1 Safe space

The participants indicated that through the creation of a safe space, learners’ freedom of expression will be upheld and protected. The key words “protected”, “safe space”, “not holding anything against you”, “share ideas” and “respect” derived from the responses of the participants correlates with the National Education Policy Act. The participants have a clear understanding that the creation of a safe space is a method that could be used to protect learners’ freedom of expression.

5.5.2 Classroom/school management

The participants underlined the importance of classroom and school management as an important factor in the protection of learners’ right to freedom of expression. The keywords “classroom management”, “orderly manner”, “avoiding victimisation”, “control”, “rules”, “boundaries”, “authoritative and non-authoritative” and “balanced class” derived from the responses of the participants correlates with the Employment of Educators Act. The participants understand that freedom of expression can be protected through effective classroom management.

5.5.3 Laws, codes of conduct and policies

The participants are aware that a school’s code of conduct, rules and policies, as well as South Africa’s existing laws/legislation, must be used as tools to limit



learners' right to freedom of expression. I must reiterate that the participants were merely "aware" of these laws and policies. The fact that I did not get a single response that lead to a meaningful dialog of these laws and policies can also be an indicator that the participants do not have sufficient knowledge about these laws and policies. The responses correlates with the literatures in section 2.2. According to Alston, van Staden and Pretorius (2005), research showed that only 3% of school governors had actually read the Bill of Rights. In another study conducted by Duma, the study revealed that 80% of the respondents' knowledge of section 16, which talks to the "right to freedom of expression", was poor (Duma, 2010).

5.5.4 Duties/roles of educators

The participants viewed their duties or roles as an important factor in the protection of learners' right to freedom of expression. The keywords "guardian", "mother and father figures", "in loco parentis", "facilitator", "guide", "referee", "nurturer" and "educator" derived from the responses of the participants all correlate with section 17 of the Employment of Educators Act 76 of 1998. The participants understand that they play a pivotal role in protecting learners' right to freedom of expression.

5.5.5 Generational gap

Some participants stated that they noticed the older educators have more difficulties managing learners' right to freedom of expression. They tend to disallow the right and they tend to evade situations where learners express themselves. Mokhele (2006) indicated that a sizeable majority of the educators currently teaching received their training before 1994, a time when corporal punishment was still allowed. Educators recurrently saw power and authority as mechanisms to control and discipline learners. As such, the classroom environment was formal and tense, and the learners had no input in school matters. According to Mazibuko (2002), educators were the product of an education system that did not place a high emphasis on learner rights. It is clear that the participants understand that the generational gap can be a factor that stifles the protection of learners' freedom of expression.



5.6 What do educators regard as the promotion of learners’ “right to freedom of expression”?

The following main theme emerged: Managing the promotion of learners’ rights to freedom of expression came to front. The following subthemes support the main theme:

5.6.1 Classroom management

The participants indicated that classroom management is an important tool to promote learners’ right to freedom of expression. The keywords “classroom management”, “orderly manner”, “avoiding victimisation”, “control”, “rules”, “boundaries”, “authoritative and non-authoritative” and “balanced class” derived from the responses of the participants correlate with The Guidelines for Safe and Caring Child Friendly Schools in South Africa (Department of Education & [United Nations Children’s Fund] UNICEF South Africa, 2008). Therefore, appropriate classroom management can be seen as a way to promote learners’ right to freedom of expression.

5.6.2 Platforms/opportunities for learners to express themselves

The participants viewed the provision of opportunities on different platforms in the school environment as an important aspect to promote learners’ right to freedom of expression. van Vollenhoven and Glen (2004) suggested that expression can take many forms, including art activities such as painting and sculpting, the designing of posters, dancing and the printing of photographs. Expression can also be linked to symbolic acts, such as hairstyles and the wearing of certain clothes. These activities mentioned in the literature can take place in a formal or informal setting in a school. The participants have a clear understanding that by providing learners with opportunities or platforms to express themselves on they are in fact promoting the learners’ freedom of expression.

5.6.3 Barriers educators have to overcome regarding the promotion of freedom of expression

The participants highlighted certain barriers that educators have to overcome in order to promote learners’ right to freedom of expression in the school environment. These barriers refer to the negative perceptions and preconceived notions that some educators have regarding learners’ right to freedom of expression. According to



Mazibuko (2002), educators are the product of the education system in which they were trained. Educators recurrently saw power and authority as mechanisms to control and discipline learners. The classroom environment was formal and tense, and the learners had no input in school matters. It is clear the participants are aware of the barriers that could have an influence on the promotion of learners' right to freedom of expression.

5.7 How do educators limit learners' right to freedom of expression?

The following main theme came to light: Managing the limitation of learners' rights to freedom of expression. The following subthemes support the main theme:

5.7.1 Inappropriate limitation of learners' right to freedom of expression

The participants emphasised that learners' right to freedom of expression must be limited in an appropriate way or else the school can find itself in an ungovernable position. The keywords "negative impact", "breakdown", "dominating", "over-discipline", "corporal punishment", "intimidation" or "instilling fear" correlate with the provisions in section 17 of the Employment of Educators Act 76 of 1998. The participants have a clear understanding of what behaviour can lead to problems in the school environment.

5.7.2 Appropriate limitation of learners' right to freedom of expression

The participants of the study see restorative justice as the appropriate manner in which to limit learners' right to freedom of expression. The keywords "maximum positive impact", "intervention approach", "regulation of discussions", "being proactive", "being fair" and "immediate corrective action" correlates with section 17 of the Employment of Educators Act 76 of 1998. The responses indicate that the participants understand what the appropriate approaches should be when limiting learners' "right to freedom of expression".

5.8 THE IMPORTANCE OF DIGNITY IN FREEDOM OF EXPRESSION

This study is based on the conceptual framework of section 7 the Bill of Rights (Act No. 108 of 1996) which clearly states in section 7(1) that the Bill of Rights is the cornerstone of democracy in South Africa. Dignity is mentioned as one of the key values in the Bill of Rights, and hence, it was important to probe the participants to establish what they understood by "dignity".



In the interviews, the following important main theme appeared: Educators' understanding and interpretation of the term dignity. The main theme was supported by the following sub-themes:

5.8.1 Frame of reference

The participants were of the opinion that a learner's frame of reference had an influence on a right like freedom of expression. The keywords "restricted background", "unrestricted background", "households", "morality" and "moral values" correlate with the statement of Mazibuko (2002), who said that educators are a product of the education system in which they were trained. This statement is also applicable to learners. Learners are the products of their upbringing, including their home and social environment.

5.8.2 Dignity vis-à-vis respect

The participants linked dignity to respect. The keywords "self-respect", "not infringing on rights", "inherent stature", "not made vulnerable" and "honourable" correlate with section 10 in the Constitution. The participants have a clear understanding of the concepts of dignity and respect.

5.8.3 Human rights

The participants identified the link between dignity and human rights. The keywords "human rights", "dignity" and "being human" derived from the responses of the participants correlate with "section 10 in the Constitution, which states that everyone has inherent dignity and the right to have their dignity respected and protected".

5.8.4 Educators as advocates of learners' right to freedom of expression

The participants recognised their responsibility to be advocates for the promotion of learners' dignity and rights. The keywords "build-up", "promote", "opportunities", "fill the gaps", "liberal approach", "talking in a softer tone" and "teaching is a calling" derived from the replies of the participants correlates with section 17 of the Employment of Educators Act. The keywords can all be linked to a person that acts as an advocate for something they believe in. It is clear that the participants understand that they are the advocates of the learners' rights.



5.9 CONCLUSION

This study on educators' understandings on learners' right to freedom of expression revealed that the participants see freedom of expression as an "umbrella concept". Most of the participants perceived the right to freedom of expression as a basic human right or a birth right that enable them to freely voice their opinions. The participants shared with me that freedom of expression can occur in different forms and on different platforms in the school environment. The research findings confirmed that "the participants have a clear understanding" of managing the promotion, protection and the limitation of learners' "right to freedom of expression" in the school environment. The study revealed that the participants saw the importance of appropriately engaging learners regarding their expressions and the positive effects it will have on the schools' culture, climate and achievements.

The research findings confirmed what the literature review in Chapter 2 found regarding educators' lack of knowledge of education law. The participants were, in a very general sense, aware that relevant laws, policies and documents could greatly assist them to promote, protect and to limit learners' "right to freedom of expression". However, the fact that I did not get a single response that went into these laws and policies in depth can also be an indicator that the participants do not have sufficient knowledge about these laws and policies. The research also brought forth the belief that the older generation educator is experiencing greater difficulty in managing the promotion, protection and the limitation of learners' right to freedom of expression. The fact that they received their training in an era where not a lot of emphasis was placed on learners' rights seems to be a significant contributing factor to incidents where learners' rights are violated. I could not find any programmes initiated by the Department of Education or any other role player in the education sector that assisted these category of educators in realigning themselves to the challenges of the democratic education system.

5.10 LIMITATIONS OF THE RESEARCH

My inexperience as a researcher could have influenced the data I collected during my interviews. There is always the risk that I did not probe the participants enough to get sufficient or valid data. My personal experiences as head of discipline at my school could have potentially limited my objectivity during the process of my study or influenced my understanding of the conceptual and theoretical framework of this



research field. I overcame this limiting factor by ensuring member checking by each participant and by recording my interviews in order to code only what the participants have said. Another limitation would be participants not having been truthful in their answers because they didn't want to seem incompetent.

5.11 SIGNIFICANCE OF MY STUDY

The research concluded that schools should actively create different platforms for learners to express themselves. The participants indicated that freedom of expression can take place on both informal and formal platforms. The keywords "opportunities", "talk", "assembly", "LO", "grade periods", "orators", "council days", "learner representative on the SGB", "art festivals" and "school newspaper" are some examples derived from the responses of the participants that indicates they understand the importance of providing opportunities for learners to express themselves. By making these platforms available, the school is in actual fact protecting and promoting the learners' right to freedom of expression.

The data retrieved from my interviews also indicated that the learners' right to freedom of expression can be restricted in a fair and transparent way. By establishing fair boundaries in which learners are able to express themselves, learners' freedom of expression will be easier to manage. A school environment with *no* boundaries will lead to an undesirable teaching and learning environment. The participants believed that learners must express themselves within defined parameters; if not, the whole process will fail. The participants pointed out that the type of classroom management an educator implements can either promote and protect or inhibit learners' freedom of expression. The keywords "classroom management", "orderly manner", "avoiding victimisation", "control", "rules", "boundaries", "authoritative and non-authoritative" and "balanced class" derived from the responses of the participants are some of the responses derived from the participants that could have an effect on learners' freedom of expression. The participants related the protection of learners' right to freedom of expression to specific laws, policies and a school's code of conduct – all of which can be used as tools to protect and promote freedom of expression. The participants did not engage with me on this issue. This can be an indicator that the participants do not have sufficient knowledge about these laws and policies to actually have a discussion about it, thereby confirming what the existing literature stated.



The data collected from the interviews pointed out that schools can be a space where human rights are respected and promoted. Participants saw themselves as advocates for learners' dignity and rights. The participants shared with me that educators generally build up and promote the learners' dignity. The keywords "build up", "promote", "opportunities", "fill the gaps", "liberal approach", "talking in a softer tone" and "teaching is a calling" derived from the responses of the participants are a clear indication that a school can be a safe space that respects human rights.

The data retrieved from the interviews indicated that different generations of teachers react differently to learners exercising their "right to freedom of expression". Some participants felt that older educators have more difficulties in managing learners' "right to freedom of expression". They tend to disallow the right and will evade situations where learners express themselves. One of the possible reasons for this is the manner in which older educators were raised. People are the products of their upbringing, and many current educators come from a generation where parents were strict and children were told that they should be seen and not heard. They also received their formal training in an education system that was very autocratic, and likely spent their early years of teaching working within that same environment. Then the system changed to a democratic one in which learners are now allowed to voice their opinions, even assisting in making classroom rules. It is a complete paradigm shift, and one should bear in mind that change doesn't happen overnight – it is a long and often challenging process for them. The keywords "older", "conservative", "talk and chalk mould", "older generation" and "autocratic system" derived from the participants are all indicators of the fact that the older generation of educator has difficulties in managing learners' freedom of expression.

The data retrieved also revealed that by respecting this right, educational experiences can be enriched. The participants mentioned that some factors could lead to positive engagements between educators and learners. The participants focused my attention on the importance of establishing a safe environment in which the educators can engage with learners. Educators that develop good relationships with learners will lead to positive outcomes. An educators' emotional intelligence influences the manner in which they engage learners to a great extent. As one participant put it: *"An educator's level of emotional intelligence has a big influence in the manner how the educator engages the learner regarding the learner's expression [sic]."* The importance of understanding the learners' needs and to refer



to the schools' norms and values when you engage them in the classroom situation will also lead to positive educational experiences. During the interviews, some of the participants highlighted certain barriers that educators have to overcome in order to promote learners' "right to freedom of expression" in the school environment. These barriers refer to the negative perceptions and preconceived notions some educators have regarding learners' right to freedom of expression. The participants highlighted the fact that when an educator is limiting a learners' right to freedom of expression and it doesn't have any maximum positive impact on the learner, the educator must be more cautious about the method he or she is using. The keywords "old-school", "narrow minded", "mould", "stifle", "shoot down", "conservative", "authoritative", "negative impact", "breakdown", "dominating", "corporal punishment", "intimidation", "instilling fear" or "over-discipline" are factors that disrespect the learners' freedom of expression.

5.12 RECOMMENDATIONS

5.12.1 Recommendations for improvement of practice

In reflecting on the knowledge I gained from my data analysis, the following recommendations are made to help improve practice:

- Studies about educators' lack of education law knowledge are abound. It seems that current practices don't improve this situation. I would recommend a more practical approach instead of the normal theoretical approach when it comes to workshops.
- The Department of Basic Education together with other role players in education can do much more to support educators that received their training under the old education system. To my knowledge I could not find any support or "bridging" program for this category of educators. I would recommend that schools implement an internal mentorship programme for the educators that received their training before 1994.

5.12.2 Recommendations for further research

The purpose of this study was to find new solutions to lessen the amount of incidents where learners' rights are violated. Therefore, I propose the following for further research prospects:



- Exploring the possibility of developing formal support/bridging programmes to assist the educators that received their training under the old education regime to better manage learners' right to freedom of expression.
- The research conducted for this study, which explored educators' understandings of learners' right to freedom of expression, concentrated on four schools with a Christian ethos. As much as this study focuses on the fact that the participants' knowledge is basically a declaration of their understandings that they derived from previous research, life experiences or exposure to other sources of data, their multifaceted secret understandings (implicit knowledge) could not be analysed to the extent that it would offer us with these deep-rooted understandings. There is a need for further research to be conducted amongst non-Christian educators in non-Christian schools in order to fully explore how educators from the non-Christian religions understand learners' right to freedom of expression.
- South Africa is a country with many inequalities due to its apartheid past. Although, I interviewed teachers from different racial groups, there needs to be more specific research in the different racial groups. The educators who were negatively affected by the apartheid system will have a different understanding of freedom of expression compared to those who benefitted from it.
- Another area that needs to be investigated is the approach/manner/ways in which freedom of expression is conveyed to the learners. I believe that human rights are taught in a concrete manner and what requires investigation is the concept of belief versus pragmatism/realism.

5.13 CONCLUDING REMARKS

Meaningful discovery for a researcher is to view and understand how different people experience the world. This journey I undertook was to get a better insight of educators': understanding of learners' right to freedom of expression. During the collection of data, I experienced many significant moments in the interviews I conducted with the participants. It was clear from the interviews that the participants had a good understanding of freedom of expression. I discovered that the participants see laws, policies and guidelines as "tools" that should be used to protect and limit learners' right to freedom of expression. However, it is important to state that the participants just referred to laws, policy and guidelines. I did not get a



single response that revealed a deep insight of what specific laws, policies and guidelines contained and how exactly they could assist educators. The participants saw classroom management, laws/policy/guidelines, roles or duties of educators and the creation of safe spaces as “tools” to protect learners’ right to freedom of expression. The participants indicated that they promote learners’ freedom of expression through their classroom management style; by providing platforms or opportunities for learners to express themselves; by carrying out their duty of being advocates for learners’ rights; and by identifying the barriers regarding the “promotion of learners’ right to freedom of expression”. The participants shared with me that they will limit “learners’ right to freedom of expression” through the duties or roles they fulfil as educators. An interesting phenomenon that I labelled as the “generational gap” also appeared in my research. The participants were of the opinion that the older educators who received their training in the old education system appeared to have more difficulties in managing the learners’ right to freedom of expression. This is where I identified a gap in the research. I could not find research on any support or bridging programmes for these educators that could assist them in realigning themselves professionally to meet the challenges of a democratic education system. At one of the schools where I conducted my interviews, some of the educators informed me that they are implementing a values programme at the school. They mentioned that they establish a safe space in the classrooms for learners to share their opinions and feelings without fear of being judged. This is an innovative strategy that allows learners to freely express themselves, but in a positive and controlled way. This is where I identified another gap in the research. I believe that there is a genuine need for more fresh and innovative strategies such as the “safe space” concept. This needs to be researched in order to limit the incidents of violations of learners’ right to freedom of expression at schools.



5.14 REFERENCES

Alexander, K. and Alexander, M., 1998. Teacher rights and freedoms. *American Public School Law (4th ed., pp. 632-645)*. Belmont, CA: Wadsworth. *Educational Organization and Leadership*, 350.

Alshenqeeti, H., 2014. Interviewing as a data collection method: A critical review. *English Linguistics Research*, 3(1), p.39.

Alston, K., van Staden, J. & Pretorius, L. 2005. The Bill of Rights: implications for South African schools ten years into democracy. *Acta Academia*, 37(2), 143-158.

Anney, V.N., 2014. Ensuring the quality of the findings of qualitative research: Looking at trustworthiness criteria.

Arvan, M. 2014. A Better, Dual Theory of Human Rights. In *The Philosophical Forum*, 45(1), 17-47.

Baker, J.D., 2016. The purpose, process, and methods of writing a literature review. *AORN journal*, 103(3), pp.265-269.

Beitz, C.R., 2013. Human Dignity in the Theory of Human Rights: Nothing but a Phrase? *Philosophy & Public Affairs* 41, 259–290.

Bengtsson, M., 2016. How to plan and perform a qualitative study using content analysis. *NursingPlus Open*, 2, pp.8-14.

Boote, D.N. and Beile, P., 2005. Scholars before researchers: On the centrality of the dissertation literature review in research preparation. *Educational researcher*, 34(6), pp.3-15.

Buller, T.J., 2013. The State Response to Hazelwood v. Kuhlmeier. *Me. L. Rev.*, 66, p.89.

Burns, N. & Grové, S.K. 2001. *The practice of nursing research: Conduct, critique & utilization*, (4th ed.). 366. Philadelphia: Saunders.

Covell, K., Howe, R.B. & McNeil, J.K. 2010. Implementing children's human rights education in schools. *Improving Schools*, 13(2), 117-132.

Creswell, J. W. & Poth, C. N (2017) *Qualitative inquiry and research design: choosing among five approaches*. 4th ed. International Student edition. Los Angeles: SAGE Publications.

Creswell, J.W., Plano Clark, V.L., Gutmann, M.L. & Hanson, W.E. (2003). Advanced mixed methods research designs. In A. Tashakkori and C. Teddlie (Eds), *Handbook on mixed methods in the behavioral and social sciences* (pp. 209 – 240). Thousand Oaks, CA: Sage Publications

Crotty, M. 1998. *The foundations of social research: Meaning a perspective in the research process*. Place of publication: Sage.

Davis, J.P. and Rosenberg, J.D., 2008. The Immanent Structure of Free Speech Doctrine: Bong Hits, Jesus, and the Role of the Public Schools in Controlling Student Speech.

De Waal, J., Currie, I. & Erasmus, G. 2001. *The Bill of Rights handbook*. 4th ed. Landsdowne: Juta

De Waal, E. & Serfontein, E. 2014. Towards successful UK: the role of courts and schools in protecting conflicting individual educator and learner rights. *Southern African Public Law*, 29, 65–89.

Dieronitou, I., 2014. The ontological and epistemological foundations of qualitative and quantitative approaches to research. *International Journal of Economics*, 2(10), pp.1-17.

Du Bois, F., 2008. Freedom and the Dignity of Citizens. *Acta Juridica*, 2008(1), pp.112-148.



- Duma, M. 2010. An investigation into rural school parent governors' understanding of the legislations that impact on school governance. *International Journal for Cross-Disciplinary Subjects in Education (IJCDSE)*, 1(1), 183-198.
- Grant, C. & Osaloon, A. 2014. Understanding, selecting, and integrating a theoretical framework in dissertation research: Creating the blueprint for your "house". *Administrative Issues Journal: Education, Practice, and Research*, 4(2), 12-26.
- Hancock, D.R. and Algozzine, B., 2016. *Doing case study research: A practical guide for beginning researchers*. Teachers College Press.
- Hennette-Vauchez, S., 2011. A human dignitas? Remnants of the ancient legal concept in contemporary dignity jurisprudence. *International journal of constitutional law*, 9(1), pp.32-57.
- Joubert, R. & Prinsloo, S. 2009. *The Law of Education in South Africa*.
van Schaik, Pretoria. Karns, JE. 1990. *Negligence on the playing field*.
- Kasozi, G.W. (ed.), 1999. *Introduction to the law of Lesotho: a basic text on law and aspects of judicial conduct and practice* (vol. 1). Ministry of Justice, Human Rights, and Rehabilitation.
- Korstjens, I. and Moser, A., 2018. Series: Practical guidance to qualitative research. Part 4: Trustworthiness and publishing. *European Journal of General Practice*, 24(1), pp.120-124.
- Littleton, M. 2008. Teachers' knowledge of education law. *Action in Teacher Education*, 30(2), 71-78.
- Le Grange, C., 2012. *The Limitation of the Educator's Right to Strike by the Child's Right to Basic Education* (Doctoral dissertation, North-West University, Potchefstroom Campus).
- Maphosa, C. & Shumba, A. 2010. Educators' disciplinary capabilities after the banning of corporal punishment in South African schools. *South African Journal of Education*, 30, 387–399.
- Mayan, M.J., 2016. *Essentials of qualitative inquiry*. Routledge.

Mazibuko, L., 2002. Give children freedom to speak out.

Mcmillan, J., & Schumacher, S. 2014. *Research in education: evidence based enquiry*, (7th ed.). Harlow: Pearson.

Militello, M., Schimmel, D. & Eberwein, H.J. 2009. If they knew, they would change: How legal knowledge impacts principals' practice. *NASSP Bulletin* 93, 27-52.

Mkhize, D.E. 2008. *Perceptions and practices of learner rights in South African black schools* (Doctoral dissertation).

Mohammed, M.O.B., Gbenu, J.P. and Lawal, R.O., 2014. Planning the teacher as in Loco parentis for an effective school system. *Mediterranean Journal of Social Sciences*, 5(16), p.318.

Mokhele, P.R. 2006. The teacher-learner relationship in the management of discipline in public high schools: Research article. *Africa Education Review* 3, 148–159.

Morga, E. and Saylor, C., 2017. Supplying Justice: Unethical Practices in State Supreme Courts. *Brigham Young University Prelaw Review*, 31(1), p.9.

Moswela, B. 2008. Knowledge of educational law: An imperative to the teacher's practice. *International Journal of Lifelong Education*, 27(1), 93-105.

Neal, M., 2014. Respect for human dignity as 'substantive basic norm'. *International Journal of Law in Context*, 10(1), pp.26-46.

Netshitahame, N.E. 2008. *An analysis of learners' knowledge and understanding of human rights in South Africa* (Doctoral dissertation).

O'Neil, S. and Koekemoer, E., 2016. Two decades of qualitative research in Psychology, Industrial and Organisational Psychology and Human Resource Management within South Africa: A critical review. *SA Journal of Industrial Psychology*, 42(1), pp.1-16.

O'Leary, Z., 2017. *The essential guide to doing your research project*. Sage.

Petrova, E., Dewing, J. and Camilleri, M., 2016. Confidentiality in participatory research: Challenges from one study. *Nursing Ethics*, 23(4), pp.442-454.

Ramey, J.D., 2013. *A Case Study: Achievement Studies of Persistent, Transitional, and Transient Populations within the Blitz Program Model at a Large Midwestern Elementary School* (Doctoral dissertation, Lindenwood University).

Rautenbach, I.M., 2014. Proportionality and the limitation clauses of the South African Bill of Rights. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 17(6), pp.2229-2267.

Ratcliff, D. 2011. *Qualitative Research Part Three: Researcher Roles*. The Qualitative Research Web Page. <http://qualitativeresearch.ratcliffs.net/index.htm>. Cited 21 May 2017.

Reglin, G.L. 1990. Public School Educators' Knowledge of School Law. *Illinois Schools Journal*, 69(2), 36-39.

Reyneke, M., 2011. The right to dignity and restorative justice in schools. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 14(6), pp.129-171.

Salkind, N.J. ed., 2010. *Encyclopedia of research design* (Vol. 1). Sage.

Schimmel, D. & Militello, M. 2007. Legal literacy for teachers: A neglected responsibility. *Harvard Educational Review*, 77, 257–284.

Speech as a Tool for the Prevention of School Violence. *BYU L. Rev.*, p.1633.

Schraw, G., 2013. Conceptual integration and measurement of epistemological and ontological beliefs in educational research. *ISRN Education*, 2013.

Snyman, C. R. (1999) *Strafreg. 4*. Uitg. Durban: Butterworths.



- Starr, K.W., 2008. From Fraser to Frederick: Bong Hits and the Decline of Civic Culture. *UC Davis L. Rev.*, 42, p.661.
- Sutherland, S., 2016. Outcomes Research. *Burns and Grove's The Practice of Nursing Research-E-Book: Appraisal, Synthesis, and Generation of Evidence*, p.284.
- Thanh, N.C. and Thanh, T.T., 2015. The interconnection between interpretivist paradigm and qualitative methods in education. *American Journal of Educational Science*, 1(2), pp.24-27.
- Taylor, P.C. and Medina, M.N.D., 2013. Educational research paradigms: From positivism to multiparadigmatic. *The Journal of Meaning-Centered Education*, 1(2), pp.1-13.
- Teddlie, C. & Yu, F. 2007. Mixed methods sampling: A typology with examples. *Journal of Mixed Methods Research*, 1, 77–100.
- Van Vollenhoven, W.J. & Glenn, C.I. 2004. Learners' right to freedom of written expression. *South African Journal of Education*, 24, 148–152.
- Van Vollenhoven, W.J., Beckmann, J.L. & Blignaut, A.S. 2006. Freedom of expression and the survival of democracy: has the death knell sounded for democracy in South African Schools? *Journal of Education*, 40, 120-143.
- Van Vollenhoven, W.J. 2007. *Learners' understanding of their right to freedom of expression in South Africa* (Doctoral dissertation, University of Pretoria).
- Virginia Commonwealth University 2012. www.people.vcu.edu/ Accessed 19 April 2017.
- Webster, J. & Watson, R.T. 2002. Analyzing the past to prepare for the future: Writing a literature review. *MIS quarterly*, xiii-xxiii.
- Woolman and Botha "Limitations" Woolman S and Botha H "Limitations" in Woolman S, Roux T and Bishop M (eds) *Constitutional Law of South Africa* 2nd ed (Juta Cape Town 2006) ch 34

Court cases

Le Roux v Dey 2011 (3) SA 274 (CC)

Legislation

South Africa (Republic). 1996. The Constitution of the Republic of South Africa. No 108 of 1996. Pretoria: Government.

Republic of South Africa. 1998. *Guidelines for the Consideration of Governing Bodies in adopting a code of Conduct for Learners* (Promulgated in terms of the South African Schools Act, 1996). Pretoria. Government Printers.

South Africa (Republic).1996. The South African Schools Act. No 84 of 1996. (SASA) Pretoria: Government.

South Africa (Republic). 1996. National Education Policy Act, No 27 of 1996 (NEPA) Pretoria: Government.

Newspaper articles

Pather, R. (2016) 'Pretoria Girls High School Pupil: I was Instructed to fix myself as if I was broken', *EWN*, 29 August. Available at: <https://mg.co.za/article/2016-08-29-pretoria-girls-high-school-pupil-i-was-instructed-to-fix-myself-as-if-i-was-broken> (Accessed: 14 April 2017)

Magwedze, H. (2017) 'Kempton Park school hair incident a Human Rights issue, says Lesufi"', *EWN*, 25 July. Available at: <https://ewn.co.za/2017/07/25/kempton-park-school-hair-incident-a-human-rights-issue-says-lesufi> (Accesses: 4 August 2017)

Magwedze, H. (2017) 'Maritzburg students' support for EFF creates controversy', *eNCA*, 14 October. Available at: <https://www.enca.com/south-africa/maritzburg-students-support-for-eff-creates-controversy> (Assessed: 17 October 2017)



8/4/1/12

GDE RESEARCH APPROVAL LETTER

Date:	20 March 2018
Validity of Research Approval:	05 February 2018 – 28 September 2018 2017/401
Name of Researcher:	Kruger J.H.C
Address of Researcher:	48 Poplar Drive Clubview X 2 Centurion 0157
Telephone Number:	082 472 7964
Email address:	jhckruger@gmail.com
Research Topic:	Exploring educators' understandings of learners' right to freedom of expression
Type of Degree:	Med (Educational Leadership)
Number and type of schools:	Four Secondary Schools
Districts/HO	Johannesburg East and Tshwane South

Re: Approval in Respect of Request to Conduct Research

This letter serves to indicate that approval is hereby granted to the above mentioned researcher to proceed with research in respect of the study indicated above. The onus rests with the researcher to negotiate appropriate and relevant time schedules with the school/s and/or offices involved to conduct the research. A separate copy of this letter must be presented to both the School (both Principal and SGB) and the District/Head Office Senior Manager confirming that permission has been granted for the research to be conducted.

Final 22/03/2018

The following conditions apply to GDE research. The researcher may proceed with the above study subject to the conditions listed below being met. Approval may be withdrawn should any of the conditions listed below be flouted:

1

Making education a societal priority

Office of the Director: Education Research and Knowledge Management

7th Floor, 17 Blimminck Street, Johannesburg, 2001

Tel: (011) 250 0456

Email: Faith.Tshabalala@gauteng.gov.za

Website: www.education.gpp.gov.za

Annexure A: GDE research approval letter



ANNEXURE B: PERMISSION LETTER TO PUBLIC SCHOOL PRINCIPAL

Tshwane South (District D 4)

Dear Principal

RE: REQUEST FOR PERMISSION TO DO RESEARCH IN YOUR SCHOOL.

I am registered for a Master's degree in education in educational leadership (MEd) in the Department of Education Management and Policy Studies in the Faculty of Education of the University of Pretoria. I must complete a research module for the masters' programme and one of the requirements is to conduct research and write a report about my work. I hereby request your permission to conduct a part of my research at your school. The title of my research is: **Exploring educators' understanding of learners' right to freedom of expression.** Schools in South Africa must find appropriate ways of dealing with learner rights, which they must protect, promote, limit and fulfil as organs of state in terms of the Constitution of the Republic of South of 1996. Unfortunately, schools and educators have received a great deal of media attention because of learner rights violations. Although many studies have examined issues of learner rights there has to my knowledge not been a strong enough focus on educators' understanding of learners' rights to freedom of expression. These understandings determine to a large extent the way in which educators will respond to the demand to treat learners' rights in an acceptable manner. The research will include interviews with educators in management positions (Principals, Deputy – Principals, HODs) and more experienced and some less-experienced educators. I will also analyse literature and documents (case law) regarding this topic. All the data I collect will only be used for academic purposes. I hope to obtain better insight into the way educators understand human rights and, in particular, learners' right to freedom of expression. This could assist in making sure that learners have access to education that complies with the requirements of human rights. It would then also enable learners to make better use of their opportunities.

The interviews will be conducted after teaching hours at a suitable venue. The duration of each interview will be approximately 30 to 35 minutes. Each interview



will be recorded and transcribed. Only my supervisor and I will have access to the information. Participation in the research will be voluntary and participants will be able to withdraw from the research at any time. The identities of the participants and schools will be strictly kept confidential. I will be making use of false names.

If you agree for this research to take place, please complete this consent form provided below. If there are any queries regarding my research, please contact me or my supervisor.

Yours faithfully

J.H.C Kruger

J.H.C Kruger (Student)

jhckruger@gmail.com

Cell: 082 47 27 964

Prof. J.L Beckmann

Prof. J.L Beckmann

johan.beckmann21@gmail.com

Cell: 0825701825

Annexure B: Permission letter to the public school principal



ANNEXURE C:

PERMISSION LETTER TO PARTICIPANT.

Dear educator

(Name of school): _____

Name and Surname: _____

RE: Invitation to educators of school to participate in my research.

I am registered for a Master's degree in education in educational leadership (MEd) in the Department of Education Management and Policy Studies in the Faculty of Education of the University of Pretoria. I must complete a research module for the masters' programme and one of the requirements is to conduct research and write a report about my work. The title of my research is: **Exploring educators' understanding of learners' right to freedom of expression.** Schools in South Africa must find appropriate ways of dealing with learner rights, which they must protect, promote, limit and fulfil as organs of state in terms of the Constitution of the Republic of South of 1996. Unfortunately, schools and educators have received a great deal of media attention because of learner rights violations. Although many studies have examined issues of learner rights there has to my knowledge not been a strong enough focus on educators' understanding of learners' rights to freedom of expression. These understandings determine to a large extent the way in which educators will respond to the demand to treat learners' rights in an acceptable manner. The research will include interviews with educators in management positions (Principals, Deputy – Principals, HODs) and more experienced and some less-experienced educators. I will also analyse literature and documents (case law) regarding this topic. All the data I collect will only be used for academic purposes. I hope to obtain better insight into the way educators understand human rights and, in particular, learners' right to freedom of expression. This could assist in making sure that learners have access to education that complies with the requirements of human rights. It would then also enable learners to make better use of their opportunities. The interviews will be conducted after teaching hours at a suitable venue. The duration of each interview will be approximately 30 to 35 minutes. Each



interview will be recorded and transcribed. Only my supervisor and I will have access to the information. Participation in the research will be voluntary and participants will be able to withdraw from the research at any time. The identities of the participants and schools will be strictly kept confidential. I will be making use of false names. If you agree to participate in my research, please complete this consent form provided below. If there are any queries regarding my research, please contact me or my supervisor.

Yours faithfully

J.H.C Kruger

J.H.C Kruger (Student)

0824727964

jhckruger@gmail.com

Prof. J.L Beckmann

Prof. J.L Beckmann

johan.beckmann21@gmail.com

Cell: 0825701825

Annexure C: Permission letter to participant



ANNEXURE D: PERMISSION LETTER TO OWNERS/DIRECTORS OF INDEPENDENT SCHOOL GROUP

Dear Owners/Directors

RE: REQUEST FOR PERMISSION TO DO RESEARCH IN PRIMARY/HIGH SCHOOL.

I am registered for a Master's degree in education in educational leadership (MEd) in the Department of Education Management and Policy Studies in the Faculty of Education of the University of Pretoria. I must complete a research module for the masters' programme and one of the requirements is to conduct research and write a report about my work. I hereby request your permission to conduct a part of my research at your school. The title of my research is: **Exploring educators' understanding of learners' right to freedom of expression.** Schools in South Africa must find appropriate ways of dealing with learner rights, which they must protect, promote, limit and fulfil as organs of state in terms of the Constitution of the Republic of South of 1996. Unfortunately, schools and educators have received a great deal of media attention because of learner rights violations. Although many studies have examined issues of learner rights there has to my knowledge not been a strong enough focus on educators' understanding of learners' rights to freedom of expression. These understandings determine to a large extent the way in which educators will respond to the demand to treat learners' rights in an acceptable manner. The research will include interviews with educators in management positions (Principals, Deputy – Principals, HODs) and more experienced and some less-experienced educators. I will also analyse literature and documents (case law) regarding this topic. All the data I collect will only be used for academic purposes. I hope to obtain better insight into the way educators understand human rights and, in particular, learners' right to freedom of expression. This could assist in making sure that learners have access to education that complies with the requirements of human rights. It would then also enable learners to make better use of their



opportunities. The interviews will be conducted after teaching hours at a suitable venue. The duration of each interview will be approximately 30 to 35 minutes. Each interview will be recorded and transcribed. Only my supervisor and I will have access to the information. Participation in the research will be voluntary and participants will be able to withdraw from the research at any time. The identities of the participants and schools will be strictly kept confidential. I will be making use of false names. If you agree for this research to take place, please complete this consent form provided below. If there are any queries regarding my research, please contact me or my supervisor.

Yours faithfully

J.H.C Kruger

J.H.C Kruger (Student)

jhckruger@gmail.com

Cell: 082 47 27 964

Prof. J.L Beckmann

Prof. J.L Beckmann

johan.beckmann21@gmail.com

Cell: 0825701825

Annexure D: Permission letter to owners/directors of independent school group



ANNEXURE E: PERMISSION LETTER TO PRINCIPAL OF INDEPENDENT SCHOOL.

Dear Principal

RE: REQUEST FOR PERMISSION TO DO RESEARCH IN SCHOOL.

I am registered for a Master's degree in education in educational leadership (MEd) in the Department of Education Management and Policy Studies in the Faculty of Education of the University of Pretoria. I must complete a research module for the masters' programme and one of the requirements is to conduct research and write a report about my work. I hereby request your permission me to conduct a part of my research at your school. The title of my research is: **Exploring educators' understanding of learners' right to freedom of expression.** Schools in South Africa must find appropriate ways of dealing with learner rights, which they must protect, promote, limit and fulfil as organs of state in terms of the Constitution of the Republic of South of 1996. Unfortunately, schools and educators have received a great deal of media attention because of learner rights violations. Although many studies have examined issues of learner rights there has to my knowledge not been a strong enough focus on educators' understanding of learners' rights to freedom of expression. These understandings determine to a large extent the way in which educators will respond to the demand to treat learners' rights in an acceptable manner. The research will include interviews with educators in management positions (Principals, Deputy – Principals, HODs) and more experienced and some less-experienced educators. I will also analyse literature and documents (case law) regarding this topic. All the data I collect will only be used for academic purposes. I hope to obtain better insight into the way educators understand human rights and, in particular, learners' right to freedom of expression. This could assist in making sure that learners have access to education that complies with the requirements of human rights. It would then also enable learners to make better use of their opportunities. The interviews will be conducted after teaching hours at a suitable venue. The duration of each interview will be approximately 30 to 35 minutes. Each



interview will be recorded and transcribed. Only my supervisor and I will have access to the information. Participation in the research will be voluntary and participants will be able to withdraw from the research at any time. The identities of the participants and schools will be strictly kept confidential. I will be making use of false names. If you agree for this research to take place, please complete this consent form provided below. If there are any queries regarding my research, please contact me or my supervisor.

Yours faithfully

J.H.C Kruger

J.H.C Kruger (Student)

jhckruger@gmail.com

Cell: 082 47 27 964

Prof. J.L Beckmann

Prof. J.L Beckmann

johan.beckmann21@gmail.com

Cell: 0825701825

Annexure E: Permission letter to principal of independent school



ANNEXURE F: GENERAL SAMPLING CRITERIA

RESEARCH TITLE: EXPLORING EDUCATORS' UNDERSTANDINGS OF LEARNERS' RIGHT TO FREEDOM OF EXPRESSION.

Student information:

Name: Johan Kruger

Cell: 082 4727 964

E-mail: jhckruger@gmail.com

Supervisor information:

Name: Prof. J.L Beckmann

Cell: 0825701825

E-mail: johan.beckmann21@gmail.com

For my study, the sampling criteria will be:

Criteria 1:

1.1 I plan to interview educators at schools in different positions:

- Principals
- Deputy Principals
- HOD's
- Post level 1 educators

1.2 Specific selection criteria for educators in management positions:

- Principal and deputy principals that have been heads of schools or in deputy principal posts for at least 10 years will be selected.
- Educators that have been heads of department for at least 3 years will also be included in the sample.
- It is important to determine the understanding of these educators in management positions as it is one of their main functions to lead and train subordinates. They also must deal with, and resolve possible disputes that may arise between educators and learners.

1.3 Specific selection criteria for Post Level 1 educators:



- Educators that recently started to teach will be selected. By 'recently' I am referring to educators who have been teaching between 1 to 5 years. If they only recently started to teach, the education law part of their studies must still be relatively fresh in their memories and they should have a better idea of learner rights issues.
- I will also select educators that have been teaching at post level 1 for at least 10 years and who have had some in-service training on education law matters. The reason for this selection criterion is that one tends to forget the content of studies. It would also indicate whether their understanding of learner rights differs after this number of years of teaching experience and some in-service training.

Criteria 2:

2.1 Educators of different age groups will be interviewed:

- I want to determine if and how the younger educators' understanding varies from the older educators' understanding regarding learner rights. With age and experience people's understanding and perceptions change. It is understandable that the older generation that grew up in an era when fundamental human rights were not acknowledged in South Africa may have perceptions different to those of the younger generation which grew up with the knowledge that they have fundamental human rights which have been entrenched in the Bill of Rights.

Annexure F: General sampling criteria



INTERVIEW SCHEDULE

TITLE: EXPLORING EDUCATORS' UNDERSTANDING OF LEARNERS' RIGHT TO FREEDOM OF EXPRESSION.

Introduction to interview

First and foremost, I would like to thank you for your participation in my research. Before we begin with the interview I just want to refresh your memory about the purpose of my research. With this study, I hope to contribute to educators' understanding of learners' right to freedom of expression regarding the protection, promotion, limitation and the fulfilment of these rights in order to reduce the incidents of learner rights violations in schools. By participating in my research, you will assist me to make a valuable contribution to the field of education law. For purposes of trustworthiness and credibility I am going to record and transcribe the interview. A copy of the transcribed interview will be send to you to make sure that the transcript reflects exactly what you wanted to say. I want to emphasise that whatever you're going to say during this interview is going to be treated confidentially. No names are going to be used not even the name of your school is going to appear in my research findings. All the data that I am going to collect here is going to be kept by the University of Pretoria. Only me and my Supervisor know the names of our participants and the schools I have visited. I would also like to stress that your participation is entirely voluntary. If anything arises during the interview which makes you uncomfortable you are welcome to withdraw your participation with no further repercussions at all.



1. What do you understand by ‘freedom of expression’?

1.1 How do learners in the school express their right to freedom of expression?

1.2 Do you agree with the way in which they express themselves? And why?

1.3 What do you think learners understand by their right to freedom of expression?

1.4 What do you think learners believe about their right to express their right to freedom of expression?

2. What do you regard as the protection of learners’ right to freedom of expression?

2.1 How do you protect learners right to freedom of expression in the classroom?

2.2 What else can be done to protect learners’ right to freedom of expression?

2.3 What do you regard as educators’ role regarding the protection of learners’ right to freedom of expression?

2.4 What is your opinion of the way other educators play their role regarding the protection of learners right to freedom of expression?

3. What do you regard as the promotion of learners’ right to freedom of expression?

3.1 How do you promote learners right to freedom of expression in the classroom?

3.2 What else can be done to promote learners’ right to freedom of expression?

3.3 What do you regard as educators’ role regarding the promotion of learners’ right to freedom of expression?

3.4 What is your opinion of the way other educators play their role regarding the promotion of learners right to freedom of expression?

4. How do you limit learners’ right to freedom of expression?

4.1 How do you limit learners’ right to freedom of expression in the classroom?

4.2 What else can be done to limit learners’ right to freedom of expression?

4.3 What do you regard as educators’ role regarding the limitation of learners’ rights to freedom of expression?

4.4 What is your opinion of the way other educators play their role regarding the limitation of learners’ right to freedom of expression?

5. What is your understanding of the term dignity?

5.1 What is the relationship between learners’ right to freedom of expression and their dignity?



5.2 Do you believe that educators generally promote learners' dignity through the way in which they treat learners' right to freedom of expression? Could you explain why you say so?

5.3 Do you believe that learners generally respect educators' dignity through the Way in which they express their right to freedom of expression?
Could you explain why you say so?

Thank you for making your precious time available to me and sharing your insights and experiences regarding learners' right to freedom of expression with me. Your contributions will certainly enrich my research findings.

Annexure G: Interview Schedule