



**Applying the duty of care outside the formal school day at primary schools.**

**by  
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# ETHICAL CLEARANCE



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Signed:



Teresa MacKay

Signed on the 28<sup>th</sup> day of October 2024 at Port Edward, KwaZulu Natal, South Africa.

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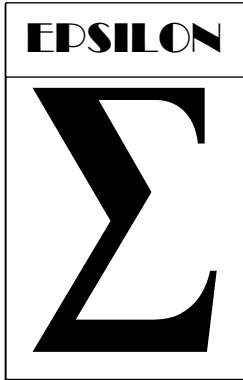
Without the support and encouragement, I have received in this journey, this thesis would not have been achievable.

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*“Be strong and let your heart take courage,  
All you who hope in the Lord.”  
Psalm 31:24*

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Yours faithfully

A handwritten signature in black ink, appearing to read "isobet oberholzer", with a large, stylized flourish at the end.

Isobet Oberholzer

29 November 2024

## **ABSTRACT**

Underpinned by the Contextual Safeguarding Theory, this study investigated how primary schools apply their duty of care before and after the formal school day. A qualitative approach using the interpretivist paradigm was adopted to better understand the experiences of the participants in their application of duty of care. Twenty-four participants from six primary schools participated in the study. Data was collected through semi-structured interviews and the analysis of documents provided by the participating schools. The findings suggest that contextual factors play an important role in how schools apply their duty of care before and after form school hours. The participating schools acknowledged that safety of learners is compromised when learners are dropped off early at school or learners are left waiting after school to be collected. As a result, all the participating schools have institute pro-active and reactive measures to mitigate the safety threats to their learners during these times when they are most vulnerable. In addition, this study proposes a Contextual Safeguarding Framework for South African Schools.

Key words: duty of care, formal school day, safety measures, protection and care of learners

## **ABBREVIATIONS**

CBD	Central Business District
DBE	Department of Basic Education
NSSF	National School Safety Framework
PAM	Personnel Administration Measures
QLTC	Quality Learning and Teaching Campaign
SACE	South African Council of Educators
SAPS	South African Police Services
SASA	South African Schools Act

## **List of tables**

Table 1.1: Structure of the thesis .....	15
Table 5.1: Profiles of participating schools .....	82
Table 5.2: Profiles of individual participants .....	83
Table 5.4: Most notable comments .....	143

## **List of figures**

Figure 3.1: The domains of Contextual Safeguarding Theory .....	54
Figure 3.2: The values underpinning Contextual Safeguarding Theory .....	57
Figure 5.1: Letter sent to parents by School 5 .....	132
Figure 5.2: Letter sent to parents by School 6 .....	133
Figure 5.3: School 6 Acknowledgement of notice pertaining to late collection of learners .....	134
5.4 School 3: Extracts from Code of Conduct for Learners .....	135
5.5 School 4: Letter to parents regarding school times .....	137
5.6 Letter sent to parents by School 1 .....	138
7.1 Proposed Contextual Safeguarding Framework for South African schools .	189

## TABLE OF CONTENTS

ETHICAL CLEARANCE .....	i
DECLARATION OF ORIGINALITY .....	ii
ACKNOWLEDGEMENTS .....	iii
LANGUAGE EDITOR .....	iv
ABSTRACT .....	v
ABBREVIATIONS .....	vi
LIST OF TABLES .....	vii
LIST OF FIGURES .....	viii
TABLE OF CONTENTS .....	ix
<b>CHAPTER 1: INTRODUCTION</b>	
1.1 INTRODUCTION AND BACKGROUND OF THE STUDY .....	1
1.2 PROBLEM STATEMENT .....	5
1.3 RATIONALE OF THE STUDY .....	7
1.4 AIM AND PURPOSE OF STUDY .....	10
1.5 RESEARCH QUESTIONS .....	10
1.6 METHODOLOGICAL PARADIGM .....	11
1.7 RESEARCH METHODOLOGY .....	12
1.7.1 Research approach .....	12
1.7.2 Research design .....	12
1.7.3 Sampling .....	13
1.7.4 Data collection .....	13
1.7.5 Data analysis .....	14
1.8 STRUCTURE OF THE THESIS .....	14
1.9 CONCLUDING REMARKS .....	16
<b>CHAPTER 2: THE LITERATURE REVIEW</b>	
2.1 INTRODUCTION .....	17
2.2 LEGISLATION GOVERNING DUTY OF CARE .....	17
2.3 THE IMPORTANCE OF DUTY OF CARE .....	21
2.4 WHAT IS DUTY OF CARE? .....	22
2.5 <i>IN LOCO PARENTIS</i> .....	24
2.6 ACCIDENTS AND INJURIES .....	26
2.7 RESPONSIBILITY, ACCOUNTABILITY AND LIABILITY .....	27

2.8 DELICT .....	29
2.9 NEGLIGENCE .....	31
2.10 BULLYING .....	34
2.11 PARENTAL ACCOUNTABILITY .....	38
2.12 DUTY OF CARE: HOW FAR DOES IT EXTEND? .....	39
2.13 LEARNER SAFETY .....	43
2.14 SCHOOL SAFETY .....	46
2.15 OUTSIDE FORMAL SCHOOL HOURS .....	49
2.16 CONCLUDING REMARKS .....	51
<b>CHAPTER 3: THEORETICAL FRAMEWORK</b>	
3.1 INTRODUCTION .....	53
3.2 CONTEXTUAL SAFEGUARDING THEORY .....	53
3.3 THE DOMAINS OF CONTEXTUAL SAFEGUARDING THEORY .....	54
3.3.1 Domain 1: Targeting the social conditions where harm occurred or may occur ..	55
3.3.2 Domain 2: Legislative framework .....	55
3.3.3 Domain 3: Partnerships to deal with the context where hard occurred or may occur .....	56
3.3.4 Domain 4: Measuring success and outcomes contextually .....	56
3.4 THE VALUES UNDERPINNING CONTEXTUAL SAFEGUARDING THEORY .....	56
3.5 THE APPLICATION OF CONTEXTUAL SAFEGUARDING THEORY .....	58
3.6 CONCLUDING REMARKS .....	59
<b>CHAPTER 4: METHODOLOGY AND RESEARCH DESIGN</b>	
4.1 INTRODUCTION .....	61
4.2 RESEARCH PARADIGM .....	61
4.3 RESEARCH METHODOLOGY .....	63
4.4 RESEARCH DESIGN .....	64
4.5 SAMPLING .....	65
4.5.1 Selection of participating schools .....	65
4.5.2 Sampling of individual participants .....	66
4.6 DATA COLLECTION STRATEGIES .....	68
4.6.1 Semi-structured interviews .....	68
4.6.2 Document analysis .....	70
4.7 DATA ANALYSIS .....	72
4.7.1 Analysis of interview data .....	72

4.7.2 Analysis of selected documents .....	73
4.8 QUALITY MEASURES .....	74
4.8.1 Trustworthiness .....	74
4.8.2 Dependability .....	74
4.8.3 Confirmability .....	74
4.8.4 Credibility .....	75
4.8.5 Transferability .....	75
4.9 ETHICAL CONSIDERATIONS .....	75
4.9.1 Ethics approval and permission to conduct research .....	77
4.9.2 Gaining access to selected schools and individual participants .....	77
4.9.3 Informed consent .....	77
4.9.4 Anonymity and confidentiality .....	78
4.9.5 Voluntary participation .....	78
4.10 CONCLUDING REMARKS .....	78
<b>CHAPTER 5: DATA PRESENTATION AND ANALYSIS</b>	
5.1 INTRODUCTION .....	79
5.2 PROFILES OF PARTICIPATING SCHOOLS .....	80
5.3 PROFILES OF INDIVIDUAL PARTICIPANTS .....	82
5.4 PRESENTATION OF DATA .....	85
5.4.1 Theme 1: Participants' understanding of duty of care .....	85
5.4.2 Theme 2: Where does 'duty of care' begin? .....	90
5.4.3 Theme 3: Learners who arrive at school very early and procedures for these learners .....	93
5.4.4 Theme 4: End of formal school day procedures .....	100
5.4.5 Theme 5: Procedures for learners who are not collected within allocated time frame .....	104
5.4.6 Theme 6: Procedures for return of learners after attending afternoon sport fixtures .....	106
5.4.7 Theme 7: Reasons for early drop off and late collection of learners .....	109
5.4.8 Theme 8: Educators who have had to wait for learners to be collected .....	114
5.4.9 Theme 9: Parental accountability .....	117
5.4.10 Theme 10: Perceived boundaries of 'duty of care' for educators .....	121
5.4.11 Theme 11: Incidents outside formal school hours .....	126
5.4.12 Theme 12: School policies to mitigate early drop off and late collections .....	129
5.4.13 Theme 13: Solutions – what more can be done to mitigate risks to learners ...	139

5.4.14 Most notable comments on each theme .....	143
5.5 CONCLUDING REMARKS .....	148
<b>CHAPTER 6: DISCUSSION OF FINDINGS</b>	
6.1 INTRODUCTION .....	149
6.2 DISCUSSION OF FINDINGS .....	150
6.2.1 Theme 1: Participants' understanding of 'duty of care' .....	150
6.2.2 Theme 2: Where does 'duty of care' begin? .....	152
6.2.3 Theme 3: Learners who arrive at school very early and procedures for these learners .....	153
6.2.4 Theme 4: End of formal school day procedures .....	155
6.2.5 Theme 5: Procedures for learners who are not collected within allocated time frame .....	157
6.2.6 Theme 6: Procedures for return of learners after attending afternoon sport fixtures .....	158
6.2.7 Theme 7: Reasons for early drop off and late collection of learners .....	161
6.2.8 Theme 8: Educators who have had to wait for learners to be collected .....	163
6.2.9 Theme 9: Parental accountability .....	164
6.2.10 Theme 10: Perceived boundaries of 'duty of care' for educators .....	166
6.2.11 Theme 11: Incidents outside formal school hours .....	168
6.2.12 Theme 12: School policies to mitigate early drop off and late collections .....	170
6.2.13 Theme 13: Solutions – what more can be done to mitigate risks to learners? ..	171
6.3 CONCLUDING REMARKS .....	172
<b>CHAPTER 7: CONCLUSION AND RECOMMENDATIONS</b>	
7.1 INTRODUCTION .....	173
7.2 ANSWERING THE SECONDARY RESEARCH QUESTIONS .....	176
7.2.1 How is duty of care perceived by educators at selected primary schools? .....	176
7.2.2 How does duty of care affect educators before and after formal school hours? ..	177
7.2.3 How do the socio-economic contexts of schools influence the application of duty of care before and after formal school hours? .....	178
7.2.4 What policies and procedures are in place at the participating schools to ensure the safety of learners before and after school at selected primary schools? .....	179
7.2.5 How do the policies affect the expectation, experience and practice of duty of care? .....	181
7.3 ANSWERING THE PRIMARY RESEARCH QUESTION: HOW IS DUTY OF CARE APPLIED BEFORE AND AFTER THE FORMAL SCHOOL DAY AT PRIMARY SCHOOLS IN KWAZULU-NATAL? .....	182

7.3.1 Contextual matters .....	182
7.3.2 Proactive measures .....	184
7.3.2.1 Regular communication with parents .....	184
7.3.2.2 Aftercare centres .....	184
7.3.2.3 Creation of safe spaces .....	185
7.3.2.4 Security guards and general assistants .....	185
7.3.3 Early interventions .....	186
7.3.3.1 Grace period .....	186
7.3.3.2 Educators waiting for parents .....	187
7.3.3.3 Telephonic reminders .....	187
7.3.4 Reactive measures .....	187
7.3.4.1 Contacting Sthe South African Police Service (SAPS).....	188
7.3.4.2 Counselling the parents .....	188
7.4 RECOMMENDATIONS .....	188
7.5 SUGGESTIONS FOR FURTHER RESEARCH .....	192
7.6 SIGNIFICANCE OF THE STUDY .....	192
7.7 LIMITATIONS OF THE STUDY .....	193
7.8 CONCLUDING REMARKS .....	193
<b>REFERENCES</b> .....	195
<b>LIST OF CASES</b> .....	206
<b>ADDENDA</b>	
A: Ethics approval University of Pretoria .....	207
B: Letter of permission to conduct research from KZN DoE .....	208
C: Letter of informed consent to SGB chairperson .....	209
D: Letter of informed consent to principal .....	213
E: Letter to informed consent participants .....	217
F: Consent form .....	221
G: Interview protocols .....	223
H: Semi-structured interview questions .....	224

## CHAPTER 1

### INTRODUCTION

#### 1. INTRODUCTION AND BACKGROUND

“To care for others, this is called humanity.” Dada Bhagwan

Duty as a standalone concept can be traced back to the 17th century, when the concept of negligence began to take hold and could then be identified as being a shortcoming which could cause harm to others (Plunkett, 2015:718). By the end of the 17th century, negligence was beginning to be seen as a basis for an “independent wrong” based on the idea that a person had failed to take reasonable care. Ironically a ‘duty’ emerged, not to limit negligence, but to expand on it by allowing claims to be made in a court (Plunkett, 2015:718).

The idea of duty of care emerges through an examination of the history of cases where a duty has been cited. The start of the 19th century saw more cases being brought before judges, where a breach of duty was cited. In 1837 defendants and judges adopted the language of duty in terms of people having a duty to deal with property so as not to injure others. In 1883 Lord Esher in a ruling declared “a duty arises to use ordinary care and skill to avoid damage” (Murphy, 1980:148). However, it was in a landmark case in 1932 where a duty of care was noted, when a judge ruled that a duty of care was owed to a customer, who had drunk ginger beer and found a dead snail in her bottle. The plaintiff argued that the manufacturer of the ginger beer should have ensured that the bottles were clean, and the drink did not contain any creatures (Plunkett, 2015:741). Thus emerges the notion of ‘duty of care’ in English law.

Through the centuries, and many court cases, an understanding of owing a duty to others first referred to as “the neighbour principle” (Murphy, 1980:151), even though no contract existed between them, began to solidify. Closely linked to this duty was negligence or the neglect of the duty. During the middle of the 19th century the idea that a harm could possibly be foreseeable emerged as a question to damage caused to others and it was formally adopted by courts in the late 1850’s (Plunkett, 2015:733). Our modern-day version of duty of care has developed out of the judicial notions that

a failure to act or failure to prevent foreseeable harm is actionable, and a person must be held accountable for not fulfilling that duty.

Oliver Wendell Holmes Jr. (McBride, 2004) suggested that having a contract to do x, does not legally require someone to do x. However, should the person not do x, then the other party of the contract is to be paid damages, due to failure to carry out the duty to complete the contract (McBride, 2004). When entering the teaching profession, educators take on the responsibility for learners in their care. This is the contract entered into by educators, parents and the learners in the classroom and is guided by legislation in the country in which one resides and teaches.

The duty of care is a legal requirement for all educators in South Africa and is stipulated in the Bill of Rights in the Constitution of the Republic of South Africa, (1996a) (hereafter referred to as the Constitution), the Code of Professional Ethics of the South African Council for Educators (SACE 2018)), the Employment of Educators Act 76 of 1998 (RSA: 1998b) and the South African Schools Act 84 of 1996 (hereafter referred to as the Schools Act, RSA:1996b).

Legislation governs the duty and the responsibilities expected of educators, requiring schools to be a safe space for learners. Research shows that safety and security in schools is a global challenge and that schools, educators, and principals, are required to comply with learner safety as directed by various departments of education (Mabasa & Mafumo, 2017). While Mabasa and Mafumo (2017) researched a variety of aspects pertaining to school safety, they concluded that school safety was generally dealt with according to strategies to improve learner safety. One aspect of safety to investigate is duty of care, as this is an encompassing duty of educators daily and should be carried out to the best of their ability.

Section 24 in the Bill of Rights (Chapter 2 of the Constitution of 1996) stipulates that every learner has the right to a safe and secure environment at school. Subsection 10A(3)(a) of the Schools Act provides that no learner should be exposed to practices that endanger their mental or physical health or safety. Section 4.6 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (RSA, 1998a) stipulates that every learner has the right to a clean and safe environment that is conducive to education. While these Guidelines prescribe a safe

school environment, the Code of Professional Ethics of the South African Council for Educators (SACE, 2018) lists an educator's duty as:

- respecting the dignity and constitutional rights of learners;
- avoiding any form of humiliation, abuse - either physical or psychological;
- taking reasonable steps to ensure the safety of learners; and
- not being negligent in the performance of their duties.

This legal doctrine dictates that while a learner is at school, or at a school sanctioned activity, the educator is required to take the duty of the parent to care for the child. However, what is unclear is whether or not the school or educator is responsible to provide a duty of care to learners who arrive at school before the opening of school gates, or who are left outside school waiting for parents to collect them (Mampane, 2018, Prinsloo, 2005). This imprecise situation opens educators up to liability should the learner sustain an injury (Dussault & Zahir PC, 2016). However, by virtue of their education and training, educators are expected to fulfil the role of *in loco parentis* with knowledge of their subject area as well as being regarded as a trained professional with the experience of dealing with several learners in their care at any given time (Barnes, 2009; D'Cruz, 2019; Prinsloo, 2005).

Educators must therefore be aware of their legal duties to learners, as well as the potential risks to them should they be exposed for not meeting these legal duties. This means that educators should be kept abreast of current legal developments (Botha, Smit & Oosthuizen, 2018). By taking on the role of the parent, educators take on a role that places them in a position that requires that they will answer to a case of negligence should a learner be injured on the school property (Soliven, 2016), even if such an injury occurs before or after the formal school day.

While in the school environment educators are relatively consistent in terms of carrying out this duty of care. Educators are expected to be on duty before school and at break times, afternoon sport must be supervised and controlled, extra-curricular activities must be planned, and risks must be minimised through careful planning and control by educators to mitigate any risks involved. However, as argued by Barnes (2009),

educators are responsible for learners at school at all times, whether inside or outside formal school hours, due to the nature of the relationship which exists between learners and educators. Barnes (2009) concedes that where learners are injured in the periphery of the school (for example the journey to or from school), application of duty of care is problematic.

Case law on negligence confirms that learners should always be protected (Mampane, 2018), which makes it clear that once the school takes over custody of the learner the school - and by implication the educators - is responsible for the learner. Mampane (2018) argues that *in loco parentis* should fundamentally transform educators' understanding and practice of their rights and responsibilities, but also states that the government and educational institutions should emphasise the joint responsibility between parents and educators in minimising risks to learners.

Examining the legal implications of duty of care by analysing Nigerian court cases, Nwabachili (2017:10) found that a duty of care is linked to foreseeability of risks involved, and that legislation is needed to guide this duty as "there is no day that passes without the existence of a duty of care". Newnham (2000:50) examined cases in Australia and concluded that educators have legal responsibilities towards their learners and must act with "caution, sensible leadership and wise guidance" to assess foreseeable risks and act against them to prevent injury.

According to Barnes (2009:1), the nature of an educator's duty is to take "reasonable care for the health and safety" of learners in their care. Examining cases in England and Scotland she observed that educators are judged by the standard of the "competent professional". Educators rather than just being *in loco parentis* (or in the place of the parent) are professionally trained to deal with children, therefore, they should be expected to provide a higher level of care than a parent (Barnes, 2009:9). When the idea of *in loco parentis* was first introduced in 1753 it was stated that the educator, or "schoolmaster", was delegated the same authority of "restraint and correction" (including the right to administer corporal punishment) that a father had over his children (Goodman, 2021:408). While the notion of *in loco parentis* has changed over the centuries, the duty of educators to care for the learners while they are in their care remains.

Macfarlane (2015:441) studied injuries to young children in schools and in public areas in Scotland and concluded that negligence is an “antiquated and problematic concept with young children” and that children are entitled to a “special protection”. Studying various cases in the United States of America, Diamantes and Roby (2000) found that educators have the duty to protect learners from injury but did not always do so and that in certain cases, the educator should have foreseen the connection between the injury and the action. They concluded by arguing that educators can protect themselves from liability of injury to learners through preventative measures and reviewing expectations of their duty of care (Diamantes & Roby, 2000).

In South Africa a duty of care can be summarised as ensuring a learner’s health and well-being by taking all reasonable steps to protect the learner from harm. To carry out this duty of care, the safety of the environment – building, premises and equipment - are deemed safe and adequate, and supervision is provided (Magolego, 2003). Parents delegate educators with the duty to care for their children with the understanding that the learners will be kept safe while they are at school (Joubert, 2016a). This duty can also be described as more than just protecting learners but also to prevent any foreseeable harm coming to the learners (Joubert, 2016a).

Educators have a very specific duty of care towards learners daily. This duty takes the form of being *in loco parentis*, as the educator takes the place of; but does not replace; the parent while the learner is at school. As such educators are required to accept responsibility for the learners for the time they are in their care (Joubert, 201a). It is in this role that educators must act in the best interests of the learners to ensure their well-being while at school, or when conducting school sanctioned activities. It is with this in mind that this study aimed to understand the practice of duty of care expected of educators before and after formal school hours, from the time the school gates have opened until the end of the last school activity for the day, and the requirements which govern this duty, as well as the shortcomings or problems faced when carrying out this duty.

## **1.1 PROBLEM STATEMENT**

While it is clearly laid out in legislation as well as literature that learners are owed a duty of care during the time they are under the educator’s supervision, there is no clear

outline in the literature or legislation as to where exactly this duty begins or ends. Reading about various cases where learners have been abducted outside schools or injured before school gates opened and after activities have ended indicated that there may well be a situation where learners are owed a duty of care, but that educators may possibly not be aware of this. Mampane (2018) claims that the duty owed to learners should include travelling to and from school, “or arriving at or waiting outside the school grounds”. Mampane (2018) argues that educators have an obligation to learners but that there is no clear-cut definition of when the duty ends. Barnes (2009) contends that incidents which happen shortly before or after school hours outside school gates and between home and school are incidents which cannot fall under the educator’s duty of care.

Newspaper reports of incidents which occurred while learners were waiting for parents or for transport indicate that this is a cause for concern and an issue which should be investigated. In February 2018 a 15-year-old girl was raped by a security guard at school while waiting for her transport. She was ordered by the guard to go to a classroom where he raped her (Damba, 2018). In March 2022 an 8-year-old child was lured away from the front of the school by a man who convinced the security guard and the child that her grandmother had sent him to fetch her. He took her to a nearby field where he raped her (Thwala, 2018). In November 2022 a 5-year-old child was kidnapped from the vehicle transporting her to school (Francke, 2022a). In this report, the school appealed to parents to please collect children timeously and to ensure they are dropped off and collected at a specific point outside the school, highlighting the danger of children left unattended or waiting in unprotected areas. In 2021 an 11-year-old girl was abducted from the front of her school while waiting to be screened. This incident took place outside the school gates (McCain, 2021).

Literature has outlined the role and the responsibility of duty of care and what it entails for educators, but as evidenced from articles read insufficient attention has been paid to the challenges faced by educators and schools, nor has it examined where a school may draw the line in terms of the end of their duty when the school day is over. Therefore, this study sought to examine where the liability or duty lay to protect learners from potential harm while they were outside the physical terrain of the school and outside of official school hours.

## 1.2 RATIONALE OF THE STUDY

As a school principal in a small town I regularly arrive at school at least an hour before the first school bell rings. I have observed that by the time I arrive at school learners have already been dropped off at school waiting for the gates to open.

After school activities end parents are expected to collect their children within thirty minutes. However, we frequently have learners who have not been collected by either their parents or the transport which is paid to collect them. Educators are required to wait outside the school grounds with learners for ten minutes after the end of school activities. Thereafter, the learners must stay close to the school gate with the security guard who watches them and calls parents who do not collect their children. We are fortunate to have a security guard, who is diligent and knows the learners and their parents' vehicles and can identify strangers very quickly. Although many schools have had a security officer sent to the school by the Department of Education, many are not trained and may not be very vigilant. The concern remains that it is unclear as to exactly who is responsible for these learners during this time when educators have left the school premises and parents have not yet arrived to collect their children. Section (2)(a) and Section (18)(2) of the Children's Act (Act No 38 of 2005) require that parents take responsibility for their children and act in the best interests of the child. One of these responsibilities should be ensuring learners are collected on time.

The result of learners left waiting is a concern and we have set up a system to call parents to find out what the delay is in collecting learners. Our security officer has a cell phone with which he can call parents. All details of late collections are recorded to safeguard the school. Educators are required to wait until the last learner has been collected should they return to school after an excursion or sport fixture and the parents have not yet arrived to collect the learners. We have had to create a pick-up policy and put measures into place at our school to do all we can to mitigate risks to learners not being collected timeously, as well as to protect the school should an incident occur.

Barnes (2009) states that while educators are responsible for learners who are under their control there remains a problematic scenario for learners who are injured on the 'educational periphery', e.g., learners waiting at the school gate or journeying to and

from school, as they are not directly under educator supervision during this time. As seen in news reports in 2021 and 2022 children have been kidnapped from their schools or have been raped while waiting to be fetched. In Scotland it is stated that “a child’s right to life, survival and development is an extraneous consideration” (Macfarlane, 2015:441), implying that every child has the right to be properly supervised at all times to protect them from possible injury.

All schools have a moral and legal obligation to ensure the safety and well-being of every child and adult when they are on the premises or participating in activities sanctioned by the school (Educare Learning, 2018, Mampane, 2018). Referring to Section 28(1)(b) of the Constitution Fortuin and Petersen (2020:1) explain that “children have the right to be cared for by their parents and family and that when removed from their family environment they have the right to appropriate alternate care” which requires educators to take care of these learners.

Schools have the responsibility to ensure that educators carry out their duty of care, through their role of *in loco parentis*, and take the necessary precautions to identify risks and act proactively to mitigate these potential risks while maintaining a learning environment (Oslich, 2017). Without doubt educators owe learners a duty of care. The question of when the duty starts and ends precisely has no simple answer as this duty applies while learners are on school premises during and outside of official school hours, as long as the school has agreed to have the learners on the school grounds. The difficulty herein lies in the determining of when this duty ends (Joubert, 2016a; Barnes, 2018; Oslich, 2017; D’Cruz, 2021). Mabasa and Mafumo (2017) suggest that to provide safety to learners, schools must involve all stakeholders, even members of the school community. However, it is important to state that the first stakeholders to get onboard in ensuring learners are collected on time would be the parents or their designated drivers.

Schools must ensure a reasonable level of care when learners are involved in activities on or off school premises or when learners are in “the proximity of the school premises” (D’Cruz, 2019; Mampane, 2019). Legislation and literature are clear on this duty. However, the timeframes that constitute this duty is not clearly laid out (Oslich, 2017; D’Cruz, 2016).

An educator's duty of care and the role of *in loco parentis* cannot be separated. These concepts are inextricably linked as it is difficult to separate the role and duty. By taking on the role of *in loco parentis*, the educator is obliged to safeguard and protect the learner (Magolego, 2003). The duty to protect a learner arises from the delegation of the role of *in loco parentis* and one cannot simply absolve themselves from the duty to care for a learner (Magolego, 2003).

Court cases in South Africa based on the duty owed to learners attest to the importance of the duty to protect and or prevent learners from being injured while on school grounds. In the case of *Lusakhanya Gora and Kingswood College*, where the learner sustained a serious injury to his eye and was left with permanent impairment to his vision, it was conceded by Kingswood College that learners are owed a duty to be protected from physical harm while on school property (*Gora vs Kingswood College*, 2019, EC 5517/2015). In the case of *Alvin Jeremy Mageni and the Minister of Education of the Western Cape Education Department*, (WCD 16843/15), it was argued that the learner was owed a duty of care when involved in an educational activity. In this case, the plaintiff argued that the defendants failed to foresee a possibility of harm and that learners were left unsupervised on school premises. In this case, the defendant (the Minister of Education for the Western Cape) denied that a duty was owed to the learners, as he stated the injury happened before the school day started. The court ruled that as learners had been granted access to the school premises this would be regarded as school hours, and as such educators and administrative staff are responsible for the learners' well-being. This duty is extended to extra-curricular activities and school excursions, which is seen in the case of *Hawekwa Youth Camp and the Minister of Education for the Western Cape and Gary Michael Byrne*. Mr Byrne's son fell off a bunk bed during the night while on a school camp and suffered permanent brain damage due to his skull being fractured. It was found that the educators should have taken reasonable steps to ensure the safety of the learners while they were in their care (*Hawekwa Youth Camp v Byrne* 615/2008 [2009] ZASCA 156 (25 November 2009)).

The negligence of duty of care results in an added burden on educators and the principals as parents are quick to listen to perceived wrongs and will question the actions taken by the school to protect learners or assist them should an injury occur.

This then creates a scenario where educators are no longer willing to take learners out of school on excursions or tours and are hesitant to administer first aid should a child be injured. From a professional perspective, learners are the ones who lose out on very valuable learning experiences outside of the classroom.

The findings of this study have created a clearer understanding of where the school's responsibility ends. The study may also guide schools in creating policies which will give parents a better understanding of what is expected of both the school and the parents in terms of children who are not collected within a reasonable time at the end of the school day.

The conclusion is that the strength of this study lay in identifying the shortcomings such as the need for a more clearly structured outline on the responsibility for learners outside of formal school hours. The findings have been helpful to identify areas which may assist with the creation of policies which would ensure all learners are safeguarded, regardless of whether it is within the school day or after hours. The research may have been of benefit to the participating schools and educators through creating awareness of clearer guidelines for dealing with learners left at school without supervision to safeguard both the learner and the school.

### **1.3 AIM AND PURPOSE OF THE STUDY**

The aim of the study is to investigate educators' knowledge and understanding of their duty of care and how it applies to time frames outside of formal school hours. Therefore, the purpose of the study was to investigate, analyse, and interpret educators' interpretation of their duty of care to learners, how it is applied at the end of the formal school day, what procedures are in place for outside of the formal school day at their schools, and how these procedures are guided by policies and action taken by schools when learners are left waiting for parents or transport to collect them from school.

### **1.4 RESEARCH QUESTIONS**

The primary research question that guided this study is as follows:

How is duty of care applied before and after the formal school day at primary schools in KwaZulu-Natal?

The following secondary questions were formulated to support the primary research question:

- What is the understanding of duty of care by educators at selected primary schools?
- How does duty of care affect educators after formal school hours?
- How do the socio-economic contexts of schools influence the application of duty of care before and after formal school hours?
- What policies are in place to ensure the safety of the learners before and after school at selected primary schools?
- What procedures and support structures are in place to ensure the safety of learners before and after formal school hours at the selected primary schools?
- What actions are taken by educators when parents are tardy in the collection of their children?

## **1.5 METHODOLOGICAL PARADIGM**

This research is based on a qualitative design making use of a constructivist/interpretivist paradigm. A constructivist paradigm focuses on the reality as being a construct of the mind, which means that it is a very subjective approach. Constructivists state that knowledge comes from lived experiences and the reflections of the person to these experiences and oppose the idea that there may be only one way to generate knowledge (Nickerson, 2024). The interpretivist believes that different people will experience a situation according to their social context or their own view of the world. Therefore, they understand that people will have varying points of view of the same experience; the focus here is on the context and that there is no one right way to gain knowledge. However, this knowledge is more objective, and that the truth is a result of the perspective of the person who has experienced a situation (Schwandt, 1998). Through combining the constructivist and interpretivist paradigms, one may

recognise that although all educators would experience a duty of care, their prior understanding and knowledge of this duty would differ according to their individual experiences.

Both the constructivist and interpretivist paradigms aligned with qualitative research in that they rely on the lived experiences of the participants to make sense of their experiences through the telling of “stories” (Creswell, 2003). Therefore, this study will make use of the constructivist/interpretivist approach considering that all participants will have their own subjective views of the study and their experiences of duty of care. I can take these subjective views and through a lens of objectivity interpret the responses given to the questions.

## **1.6 RESEARCH METHODOLOGY**

### **1.6.1 Research approach**

A qualitative approach has been used for this study. Qualitative research looks at the words rather than the numbers and is used to gain an in-depth understanding of the experiences of the participants (McMillan & Schumacher, 2014). By focusing on the words or the stories of the participants, I was able to interpret these words into their view of their experiences. Humans, as social beings, use words to express themselves and how they see their experiences. It is through verbalising these experiences that we can understand how others may view a similar situation, but through a different lens illustrating the varied perspectives of the participants.

Nieuwenhuis (2016) emphasises that we only make meaning of a phenomena through analysis of the perceptions, attitudes, understanding, knowledge, values and experiences. Through discussions and semi-structured interviews, I was able to probe more deeply into the responses of the participants to gain a deeper understanding of their viewpoints and experiences of carrying out the duty of care.

### **1.6.2 Research design**

A phenomenological design was used for this study. The aim of this design is to understand a phenomenon, reflect and analyse the experiences of participants with

an aspect of the phenomenon and transform that experience into a description or understanding thereof (McMillan & Schumacher, 2014).

The phenomenon of the study is the application of duty of care outside of formal school hours. It is, therefore, specific to a particular group of individuals who would be expected to carry out this duty of care. The responses given by the participants were transcribed and analysed to better understand their perceptions of the performance of this duty.

### **1.6.3 Sampling**

This study adopted a multi-level, purposeful sampling strategy to determine the participants as they all conform to a certain specified set of criteria (McMillan & Schumacher, 2014). A multi-level strategy requires that not all participants fall within the same level in a school system. For example, there are Post Level 1 educators, departmental heads are Post Level 2 educators, deputy heads are Post Level 3 and principals are Post Level 4 educators. Although all levels are expected to know and perform their duty of care, there is usually a different expectation from educators in management positions.

Purposeful sampling requires that specific staff members may be requested to participate. In this study, it was essential to get feedback from principals, deputy principals, departmental heads and educators. As each school only has one principal, it therefore stands to reason that the sampling must purposefully include that participant. Purposeful sampling also allows for the set criteria to be given to schools prior to the commencement of the study and for volunteers to put their names forward to contribute towards the study. In total, twenty-four participants took part in the study. There were six schools participating with four participants from each school.

### **1.6.4 Data collection**

For this study, I chose to collect data through semi-structured interviews. A semi-structured interview allows for the interviewer/researcher to probe deeper into responses from the participants to gain a clearer understanding of their viewpoint (Adams, 2015). Semi-structured interviews have open-ended questions so there are no “yes or no” answers given. This allows for interaction and further questions to be

asked to clarify certain aspects of the responses given. The interview schedule had 14 predetermined questions which were asked of all the participants. To delve deeper into some responses, further questions were added to the interview schedule.

Furthermore, I requested specific documentation from each participating school to investigate whether they had specific written policies in place which dealt with the topic under investigation. The schools supplied letters and other written documents which were then analysed for their benefit to the study. Document analysis allows for corroboration of the phenomenon being studied (Bowen, 2009).

### **1.6.5 Data analysis**

There are a few steps related to data analysis (Creswell, 2003). Firstly, data from the semi-structured interviews needed to be transcribed. To transcribe the vast amount of information I made use of Turboscribe, a program that transcribes audio files to text, for ease of referral back to the responses from participants. Once all interviews had been transcribed I coded the data to create themes. As all participants were asked the same basic questions, the questions were used as the basis for the emerging themes (Bowen, 2009). Multiple participants were used to provide data for each theme (Carter et al., 2019).

Document analysis was conducted as a means of triangulation of the data to ensure the trustworthiness of the study (Bowen, 2019). Only documents relevant to the study were analysed.

## **1.7 STRUCTURE OF THE THESIS**

This study has seven chapters providing the details of the research, the purpose of the study, how the study was conducted, the literature reviewed, methodology used, discussions and findings of the data gathered, and the benefit this study will have to the field of education. The structure of this thesis is presented in Table 1.1.

**Table 1.1: Structure of the thesis**

<b>Chapter</b>	<b>Title</b>	<b>Description</b>
1	Introduction	An overview of the study is presented in this chapter and gives the reader a guideline of what to expect in the following chapters. This chapter provides an introduction and background to the study, the problem statement, rationale, purpose and a brief overview of the methodology of the study.
2	Literature review	In this chapter, I have interrogated the literature related to this study. Literature used is from both national and international sources.
3	Theoretical framework	This chapter contains the theoretical framework used to frame the study.
4	Research design and methodology	Chapter 4 focuses on the research design and the methodology used to gather data. Also how data is recorded, decoded and analysed to produce this thesis.
5	Presentation of data	This chapter details the responses of the participants to the questions presented in the semi-structured interviews as well as presenting excerpts from documents provided by the participating schools.
6	Discussion of findings	The discussion of the findings is contained within this chapter.

7	Findings, recommendations and conclusions.	The final chapter presents a summary of the findings, the limitations of the study, recommendations for further study and the conclusion of the study. There is also an overview of the study provided in this chapter.
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## 1.8 CONCLUDING REMARKS

This chapter forms the foundation of this study, which is a report on how duty of care is applied outside of formal school hours at primary schools in KwaZulu Natal. It focused on the understanding and knowledge of the participants and how they apply their duty of care to learners, before and after the formal school day. As no study is valid without a rationale to base it on, the rationale, purpose and research questions and an overview of the methodology used for the study were presented.

Chapter 2 provides the literature review on which this study is based. The following aspects are covered: the legal requirements for duty of care; the importance of duty of care; what duty of care entails; *in loco parentis*; accidents and injuries; responsibility, accountability and liability; delict; negligence; bullying; parental accountability; how far the duty of care extends; learner safety; school safety and duty outside of formal school hours.

## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 INTRODUCTION**

A literature review is designed to review academic literature about the topic under investigation and place the research into context, to show understanding and knowledge of the topic to be researched (Institute for Academic Excellence, 2021). Therefore, studies of articles and academic reports about previous research is necessary to fundamental themes which are relevant to the research to be conducted. The purpose of this literature review is therefore to provide an overview of the knowledge of the topic under investigation as well as to identify areas which could potentially require more research (Snyder, 2019).

This literature review focuses on the legislation governing the duty of care for learners in schools. Duty of care as a legal construct and the consequences of a failure to carry out that duty is examined. Furthermore, the expectations of a school and parental accountability in relation to the duty of care is interrogated. Finally, as accidents inevitably happen, it is pertinent to examine cases and the case law which guides action required of schools to prevent negligence including aspects related to learner safety such as bullying as well as school safety policies and regulations.

#### **2.2 LEGISLATION GOVERNING DUTY OF CARE**

Children have the right to be kept safe from harm and to be looked after in a manner that will allow them to grow up in an environment in which they are taken care of. To ensure that all children are offered the same rights, legislation is put into place which governs these rights. Every country has its own set of laws and decrees which determine the rights of its citizens but in general, the rights of the child will follow similar principles.

Section 28(3) of the Bill of Rights (Chapter of the Constitution) (RSA, 1996a) determines that a child is a person under the age of 18. Section 28(1) stipulates that every child has the right to

- Family or parental care. If a child is removed from the family environment due to various reasons, such a child has the right to appropriate alternative care (Sub-section 28(1)(b));
- Basic nutrition, shelter, healthcare services (Sub-section 28(1)(c)); and
- To be protected from maltreatment, neglect, abuse, or degradation (Sub-section 28(1)(c)).

Services provided for a child should therefore not put their well-being, education, physical or mental health, or their social, moral, and spiritual development at risk.

Section 28(2) of the Constitution further stipulates that “[a] child’s best interests are of paramount importance in every matter concerning the child”. Section 28(2) is reinforced by Section 9 of the Children’s Act 38 of 2005 which stipulates that:

“In all matters concerning the care, protection and well-being of a child the standard that the child’s best interest is of paramount importance, must be applied” (RSA, 2005).

Section 29 of the Constitution also provides that every child has the right to basic education. Sub-section 7(1) of the Children’s Act further prescribes that when applying the best interests of the child standard, the following factors, among others, must be taken into consideration where relevant:

- “The need to protect the child from any physical or psychological harm that may be caused by
- subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
- exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- the child’s age, maturity and stage of development, gender, background; and any other relevant characteristics of the child;

- the child's physical and emotional security and his or her intellectual, emotional, social and cultural development; any disability that a child may have; and
- any chronic illness from which a child may suffer.”

The South African Schools Act, 84 of 1996 (hereafter referred to as the Schools Act) provides for a uniform system for the organisation, governance and funding of schools (RSA, 1996b). Chapter 2 of the Schools Act stipulates matters regarding learners. Pertinent sections are:

- Section 3 of the Schools Act makes it compulsory for every parent to ensure that every learner he or she is responsible for to attend a school from the first school day of the year in which such a learner reaches the age of seven years until the last school day of the year in which the learner reaches the age of 15 years. Significantly, the Basic Education Laws Amendment Bill (RSA, 2021) proposes that this stipulation be amended so that it is compulsory that parents ensure that their children attend school starting from Grade R on the first school day of the year in which such learner reaches the age of six years.
- Section 5 of the Schools Act regulates the admission of learners to public schools.
- Section 8 of the Schools Act stipulates that a governing body (SGB) of a public school must adopt a code of conduct for learners. Also, in terms of Sub-section 8(3), the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners was published in the Government Gazette No. 18900 (RSA, 1998a).

The Schools Act lays out regulations for the rights of learners and states in Section 4(7) of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (RSA, 1998a) that all learners have the right to a clean, safe environment which is conducive to education. School facilities, (including equipment and furniture) should be well maintained, secure and clean and should be devoid of harassment.

In the Regulations for Safety Measures at Public Schools (RSA, 2001), Section 4(2) stipulates that all schools are declared as drug and dangerous object free zones. This means that no person may:

- Enter school premises with drugs, alcohol, or dangerous objects.
- Cause any disturbances or acts of violence which may negatively impact education.
- Directly or indirectly cause harm to anyone.

Furthermore, Section 9(6) states that all schools must ensure the safety of all learners, staff members, and parents during school activities.

With regard to educators and the expectations of ensuring that teaching and learning is conducted in an environment conducive to educating learners, the Employment of Educators Act (Act No. 76 of 1998) stipulates that:

- While on duty, educators must conduct themselves in a proper manner;
- They may not incite others to unprocedural or unlawful conduct;
- Must display respect towards others; and
- May not intimidate or victimise fellow employees or learners.

The South African Council for Educators Act 31 of 2000 provides for the establishment of the South African Council of Educators (hereafter referred to as SACE). In their Code of Professional Ethics (2018), SACE defines educator conduct towards learners as:

- Acknowledging the uniqueness and individuality of all learners;
- Striving to enable learners to develop values consistent with their fundamental rights;
- Avoiding any form of humiliation and refraining from any form of abuse, be it physical or psychological;

- Taking reasonable steps to ensure the safety of learners; and
- Doing what is practically possible to inform parents of learner's well-being.

In line with the above legislation, schools are expected to have effective safety policies. Principals and educators must work together to create and maintain schools which are safe and risk-free and promote teaching and learning. Educators should as far as reasonably possible take care of their own safety, as well as that of the learners in their care (Joubert, 2016a).

It is with this in mind that the Department of Basic Education has implemented the National School Safety Framework (hereafter referred to as NSSF) (DBE, 2016) in order to have standard guidelines and policies for all schools to ensure learner safety at schools. The broad objectives of this framework are to ensure that schools identify and understand all threats and risks to learners, give guidance on how to respond to these threats and create reporting systems to manage the recording of threats or incidents which may have occurred (SaferSpaces, 2021).

In addition to the NSSF the Quality Teaching and Learning Campaign (hereafter referred to as QLTC) (DBE, 2008) was introduced to involve communities in education and create a societal view that school safety is not solely the responsibility of the school. It should be a combined effort of different groups in society such as the South African Police, local security companies, parents, churches, ward councillors and the general community to develop and protect schools and learners (DBE, 2008).

The implication of this legislation and policies on schools is that in all matters concerning the child the care, protection, and well-being are of paramount importance at all times. While parents have the legal duty to protect their children, educators are required to take over this obligation in the schools. To this end educators have a legal duty (the duty of care) to protect learners from harm that may be foreseeable, and which may arise during the school day (Joubert, 2016).

### **2.3 THE IMPORTANCE OF DUTY OF CARE**

Sub-section 28(1)(b) of the Constitution (RSA, 1996a) stipulates that children have the right to be cared for by their parents and families or, when removed from their home

environment, by appropriate alternative care. This means that when the child is at school, the educators are expected to protect and safeguard them. A principal's duty is to implement policies which adhere to legislation to protect learners from all foreseeable harm. Educators take the role of the parent for the duration of the school day, which makes them liable for preventing foreseeable danger (Fortuin & Petersen, 2020). While it may be impossible to prevent all injuries, the key to duty of care is to ensure that as much as reasonably possible is done to protect learners and to create an environment where the school and educators do not act negligently.

Duty of care as a principle is underpinned by both common law and case law. Schools and the staff owe a duty of care towards all learners within the school, while they are involved in activities. This extends to include school sanctioned activities after hours or off the school premises (D'Cruz, 2019). A duty owed to learners is not one where there is an absolute certainty that no harm is likely to come to the learners, but rather to ensure that all reasonable care is taken to avoid harm from occurring (D'Cruz, 2019).

## **2.4 WHAT IS DUTY OF CARE?**

Duty of care is essentially about caring for another's well-being and welfare (Educare Learning, 2018). It is important to note that this duty is not a general obligation, but rather a specific obligation towards a particular group of learners under the care of the educator (SAOU, 2020).

An educator owes a very specific duty towards learners to take reasonable care of them and to create an environment that is safe and conducive to teaching and learning. Educators need to take into consideration the age, experience, and behaviour of the learners when planning activities prior to the commencement of the activities, especially those that may have high risks involved. They also need to ensure that they have considered all possible risks and taken steps to mitigate these risks, rather than to expose learners to avoidable harm (Barnes, 2009; Du Plessis, 2010; Fowler, 2018).

As educators are regarded as trained professionals who perform the task of teaching professionally for financial gain, the level of the duty expected of them is higher than that which would be expected from parents (Barnes, 2009; Prinsloo, 2005; De Waal,

2004; D'Cruz, 2019). Simply by having studied to fulfil the role, educators should have the specialist training required to manage the behaviour of learners and to put strategies into place that do not overshadow the activity that is planned. Learners may often behave unpredictably, either due to age, carelessness, or mischievousness (Fowler, 2018). However, educators must always do what they can to protect learners from risks, which may be regarded as being reasonably foreseeable (Barnes, 2009; Osbich, 2017; Fowler, 2018). It is also important to note that this duty cannot be delegated to a third party, as it has been given to the educator upon the learner entering school grounds (Fowler, 2018; Prinsloo, 2005; De Waal, 2000).

The requirements of duty of care depend upon the circumstances. Adequate supervision of learners is vital, and they need to be supervised at all times. This also includes learners playing on the playground or inside the classroom. The supervision of learners is needed to prevent injuries and must be done by a responsible person. Adequate supervision also depends on the level of the risk learners are exposed to within their environment (Magolego, 2003). The safety of the premises, which includes the buildings, and the equipment (including sport equipment), playground equipment, science lab equipment, or other teaching resources fall within this scope of duty of care (Magolego, 2003).

However, it must also be noted that in the ruling of the case of *Rusere v The Jesuit Fathers* (SA, 1970) where an 8-year-old child sustained an eye injury while playing a game on school premises, the court noted that although a duty of care and adequate supervision is owed to learners, it is undesirable to subject learners to direct supervision every moment of their lives. Therefore, adequate supervision will depend on the particular environment and the activity in which learners are engaged at the time, as well as the time learners are unsupervised (Magolego, 2003). While educators may not necessarily be able to supervise every movement made by learners during the school day, they are required to know where a learner is, for example, going to the bathroom, going on an errand, taking a letter to another staff member or the office, as well as ensure the learner has returned to class. Taking on this duty involves the educator acting in the role of *in loco parentis*, for the duration of the formal school day. This includes the time the learner is supervised during an extra-mural activity.

## 2.5 IN LOCO PARENTIS

Translated literally *in loco parentis* means to take the place of the parent or to act in the place of the parent (Roos, Oosthuizen & Smit, 2018:147). It can also refer to a person putting him/herself in the role of the parent, assuming the obligations of a parent without the formality of a legal adoption. Essentially this embodies the acceptance of “assuming parental status and discharging of parental duties” (Magolego, 2003:65). This concept does not mean that the parents are replaced by an educator or caregiver, but rather that educators act as secondary caregivers to the parents and derive their authority partially from the parents and partially from the law (Roos et al., 2018:148). The parent remains the primary caregiver and delegates this duty to the school and educators for the purpose of educating the child in a specialised manner (Oosthuizen, 1992:123). A parent delegates most of his/her duties as a parent to the educator *in loco parentis*. This role requires that the educator takes care of the child as a good caring parent (as so-called *bonus paterfamilias*) would, and should maintain discipline of the child, while in his/her care. The educator has an obligation to the child to ensure that the child is kept safe while at the same time providing for the intellectual development of the child (Oosthuizen, 1992:127). By being entrusted to care for a learner, the parent enhances the educator’s duties and powers, but it must be very clear that the parent cannot absolve the educator from carrying out their duty (Magolego, 2003).

The common law principle of *in loco parentis* in a school environment requires that educators take on the responsibility for disciplining learners, taking care of their physical and mental well-being, and organising and managing parent-teacher relationships. However, it must be stated and understood that they do not replace parents (Oosthuizen & Van der Walt, 1998:94).

The general principle governing *in loco parentis* is that the educators and school authorities take all reasonable steps to prevent accidents or injuries as any prudent and caring parent would (Magolego, 2003). Therefore, duty of care is closely associated with the role of *in loco parentis*, or the role of taking the place of the parent, during the time that the learner is in the care of the educator. However, it must be made clear that because a learner has the right to a safe and secure environment as

stipulated in Section 24 of the Constitution (RSA, 1996) this does not constitute a choice for the educator, but rather an obligation imposed on the educator with the responsibility to fulfil this duty (Mampane, 2018; Barnes, 2009; Prinsloo, 2005; Mohammed, Gbenu & Lawal, 2014).

Roos et al. (2018), Oosthuizen and Van der Walt (1998) and Carlisle (2017) explain that the parent role is not being substituted by the educator. Rather the educator is acting in a secondary role to the parents. However, through their education and in the capacity of a professional, the educator has the expertise to take over this role during the time that the learner is in the educator's care. Roos et al. (2018) and Oosthuizen and Van der Walt (1998) further explain that this role is delegated to the educator by the parent and therefore gives the educator the obligation to take care of the learner's physical, psychological, and emotional welfare for the duration of the time that the learner is in the care of the educator.

*In loco parentis* allows schools to act in the best interests of the child, having not only an educational duty to the learner, but also a moral responsibility (Mohammed et al., 2014). Nakpodia (2012) states that educators acting *in loco parentis* have the right to mould the learners' moral character, assist their mental and physical development and foster a spirit of national consciousness; in other words, they have the duty to discipline learners.

By taking on the role of *in loco parentis*, an educator fulfils two roles. Firstly, as trained professionals they are not only there to teach learners, but also to manage the educational environment in which the activity is taking place. They do this by exercising this delegated authority over the learners, who are entrusted into their care (D'Cruz, 2019). Secondly, *in loco parentis* exists because learners need supervision which parents are not always able to provide. Therefore, this duty is transferred, not abdicated, from the parent to the educator with the expectation that the educator will take all necessary steps to protect the well-being of the learner (Barnes, 2009; Goodman, 2021; Prinsloo, 2005).

Taking on the role of *in loco parentis* also creates a special relationship between the educator and the learner. As such, educators must be observant and are required to act should they see learners are in danger. This is explained in the case of *Minister of*

*Education and Another v Wynkwart* (2004) in which a learner sustained serious permanent injuries when he climbed over a school gate, which the learners had been told was locked and was out of bounds. The court held that the supervision required was dependent on a variety of circumstances and that educators have to do more than simply warn learners of potential dangers and have a duty to take steps to ensure that no harm should occur while learners were on the school premises. In this case, although the learners were regularly informed that the gate was out of bounds, it is implied that a mere warning was not necessarily sufficient and that educators should have been allocated a duty to ensure that learners did not attempt to climb over the gate.

*In loco parentis* fundamentally transforms an educator's rights and responsibility towards learners. It must also be noted that this is a joint responsibility between educators and parents and that both educators and parents should cooperate to ensure the safety of learners while they are at school (Mampane, 2018).

## **2.6 ACCIDENTS AND INJURIES**

Regardless of how carefully one plans an activity, checks the environment for possible risks, carries out tasks, and provides supervision, there is always a chance that accidents and incidents may occur. Injuries may vary; some may be very minor while others could be more serious. When a serious injury occurs it is inevitable that parents will question the role of the educator and school and demand to know what supervision was taking place and what was done to prevent the injury. It is, therefore, vital to ensure that the school and educator has taken all reasonable steps to ensure the safety of learners and prevent harm from arising while the educator is supervising the learners (Barnes, 2009). When an injury falls within the scope of the educator's duty of care, courts will ascertain the standard of the duty performed and whether the educator breached that duty (Barnes, 2009). Should an injury occur, it is important to conduct the 'reasonable man' test, to prove negligence. Oosthuizen, Rossouw and Smit (2018) stipulate that specific procedures are followed to determine negligence. The question of what a reasonable man would do in similar situations is likely to be asked (Oosthuizen et. al., 2018). In other words, would someone with similar characteristics, age, experience, and training have acted as the educator had done

under similar circumstances? Should it be determined that the 'reasonable man' would act in a similar manner, it may well be found that there was no negligence in the cause of the injury on the part of the educator. However, should it be found that there were marked differences, the educator may well be held liable to answer to a charge of negligence (Oosthuizen et.al., 2018; Beyers, 2023).

However, while schools are required to ensure that they put measures in place to curb threats to learners, this does not guarantee that incidents or injuries will not occur (Xaba, 2014). In 2020 when a learner from Parktown Boys High School drowned on a school sanctioned trip, questions were immediately raised as to who was responsible for the learner at the time. Under the circumstances it was deemed that the educators and school should have taken reasonable measures to ensure that learners were protected from harm in all activities learners participated in. This was undoubtedly a tragic accident, and the onus was on the educators and the supervising staff to make sure that all learners were given adequate safety equipment for the activity (Engelbrecht, 2020).

## **2.7 RESPONSIBILITY, ACCOUNTABILITY AND LIABILITY**

Responsibility refers to the obligations of a person to carry out a specific task. Should a task be delegated to a person, that person is expected to carry out the task due to the authority given with the delegation of the task (Joubert, 2014a).

Educators are accountable to the learners, parents and to the principal of the school for carrying out duties required of their profession. Therefore, they are delegated with the responsibility of extending a duty to care for the learners in their classes. Being accountable means that these educators must then be able to account for their actions during the time they are supervising the learners regardless of whether it is in the classroom, on playground duty before or during the school day, or coaching sports in the afternoons. This accountability legally means that an educator must have the ability to distinguish between right and wrong. Accountability therefore forms the basis for finding fault (Joubert, 2014a).

When an injury occurs, an investigation is required to prove the causes and to determine whether there is a case to be answered in terms of negligence. Should it be

found to have been caused by an unlawful or negligent act, the duty to bear the damages is referred to as liability (Joubert, 2014a). In South Africa damage lies where it falls. In other words, should a person be injured, that person should bear their own damages, unless the damage is caused by an unlawful and negligent act or the intentional act of another to commit damage. In that case the liability then falls on the person responsible for the damage and they are required to pay compensation (Botha et al., 2018). When examining liability an educator's failure to take precautionary measures when conducting potentially harmful activities can result in the educator being found guilty of negligence (Botha et al., 2018). Determining liability is not a simple black and white issue and there are several factors which are taken into consideration. However, as educated professionals educators are held to a higher standard than the average citizen (Botha et al., 2018). Therefore, educators and schools should be aware of their legal duty to the learners in their care.

As educators work with children, a greater degree of care is expected of them as they are trained to understand the ways of learners. Therefore, they should be equipped to anticipate dangers. Learners are not always predictable; they can be impulsive and curious and will often not be aware of dangers in their surroundings. This requires that educators are vigilant and take precautions by not allowing learners to climb trees or play games which are potentially harmful to themselves or others. Educators must also, for example, prevent learners from leaving school grounds with strangers or on their own, and should remove dangerous objects (stones, sharp objects) and make sure that deep holes are covered (Joubert, 2014a). The case of *Pro Tempo Akademie CC v Van Der Merwe* (2016) is an example of dangers not being removed or adequately cordoned off. In this case, a learner was seriously injured when he was impaled on a steel dropper planted alongside a sapling when he climbed over a fence to fetch a ball during a cricket game. It was stated in the ruling that the school should have taken precautions to ensure learners' safety and that they should have been extra vigilant due to the learners' disabilities and ages. In the Parktown Boys High case failure of educators and supervising staff to ensure that all learners wore adequate safety devices for an activity in a river, such as life jackets, constituted gross negligence and a dereliction of moral and legal duty (Engelbrecht, 2020).

In the performance of their duties, educators act as an extension of their employers. As such this creates the scenario of the employer being held liable for damages which may have occurred or harm suffered by a learner. Liability exists where the following requirements are met:

- an employee-employer relationship exists;
- an educator is guilty of negligence;
- the negligence committed fell within the scope of the educator's duty;
- the educator acted within the course of his/her employment (Botha et al., 2018).

Under these circumstances the employer can be held vicariously liable for the injury or damage which has occurred.

With the increase in awareness of legal rights of learners due to media coverage, educators must be aware of their legal obligations and duties towards learners in their care. In addition, educators must understand the legal implications should they not carry out the required duty and they are found liable of a dereliction of duty (Botha et al., 2018).

## **2.8 DELICT**

Delict, as defined in the Concise Oxford English Dictionary (2008), is being in violation of the law or something showing fault. It is therefore simply explained as one party committing a wrong against another party.

Investigations into possible delict consider the circumstances around an incident. It would be prudent to look at the requirements for this delictual liability. To ascertain whether there are grounds for delictual liability, there must have been a fault in the conduct of the person being investigated. This would refer to the state of mind of the educator when the accident happened and to determine whether the educator has acted with intent or not. Should there have been an intention of causing harm, the finding of delictual liability would be proven (Botha et.al., 2018). However, intent is not necessarily simply the act of intentionally causing harm to another but may also be

seen where there was a failure to act when another has been harmed in any way (Nel, 2021).

It is clear that in the duty of care, the law requires that educators act *in loco parentis* as a reasonable and competent professional at all times. Working with children requires a higher degree of care than that of working with adults and as educators are regarded as professionals, they are subject to stricter tests in the execution of their duty. Therefore, it would be prudent for all educators to ensure that they keep abreast of the legal requirements to execute their duties with care and forethought (De Waal, Theron & Robinson, 2001).

In South African law, five elements must be met to prove delictual liability: an act; wrongfulness; fault; harm; and causation (Knoetze, 2012). These elements can be explained as follows:

- The act: This looks at the facts of the case. What action took place in order for harm to be inflicted upon one party? The person who is accused of causing the harm must also be able to prove whether he/she was aware of his/her actions at the time of the incident (Nel, 2021).
- Wrongfulness: Was the person who caused the harm able to distinguish between right and wrong and able to act accordingly? (Nel, 2021)
- Fault: Fault is the accountability of the persons involved in the incident. As with wrongfulness the person must know the difference between right and wrong and have acted accordingly. This refers to overt, or seen, behaviour and must have committed an act which caused the harm to the injured person (Nel, 2021).
- Harm: The harm is the injury sustained by the person and is determined. Once the harm is identified the elements leading up to the cause of the harm are then investigated (Nel, 2021).
- Causation: Causation can be divided into two sections - factual causation and legal causation. Factual causation asks if the injury would have occurred without the negligence of the person who had caused the injury and uses the

'but for'-test. Would the injury have occurred without the negligence of the persons involved? This will also consider the balance of probability of the injury having happened under similar circumstances with other parties involved. Legal causation focuses on the foreseeability of the incident (Nel, 2021).

It is important to remember that an employer is held vicariously liable - even though there may be no fault on their part - should an employee be found to be in delict of their duty through the scope of their employment. The employer is, therefore, jointly liable and responsible for compensation to someone who suffers an injury or harm due to the employee's delict. However, it must be noted that this is only the case if the delict was proven to have been caused within the scope of the employee's employment or work environment (Knoetze, 2012).

## **2.9 NEGLIGENCE**

Negligence falls under the Law of Delict and deals specifically with grievances, frequently where one party has suffered an injury or damage due to something done or not done (a duty omitted) by another party (Nel, 2018). The reason for proving negligence is to receive compensation for the injury sustained (Nwabachili, 2017). For an educator to be accused of negligence it must be proven that a duty of care exists, and that the educator is either in breach of this duty through a deliberate act or through omission, and that through this action a learner suffered an injury.

To find for a case of negligence, the 'reasonable person' test must be applied. It would be asked how a reasonable person would have acted under similar circumstances. This will be extended by asking if the reasonable person would have been able to foresee the incident occurring; and if so, would they have taken reasonable steps to prevent the incident. Negligence here can only be proven if the incident was reasonably foreseeable and preventable (Botha et al., 2018).

To have a valid claim of negligence, there are four prerequisites to be proven: "Was there a duty to protect others? Was there a failure to exercise the appropriate standard of care through the commission or omission of an act (wrongful act)? Was there a logical connection between the act or omission and the injury or damage? Did an

injury, damage or loss occur?” (Joubert, 2007:116) Added to this is the foreseeability of an injury occurring.

Two different standards emerge in case law regarding educators’ duty of care: the first may be considered as the “parent-substitute standard”, while the second is the “ordinarily competent professional” standard (Barnes, 2009:9). The parent-substitute is a reference to the educator standing *in loco parentis* which allows for the educator to fulfil the role of the parent during the school day. The “ordinarily competent professional” standard is concerned specifically with negligence (Barnes, 2009:11). It is used expressly to show that in a given situation, other professionals in the same field would have behaved differently and may have prevented an injury from occurring (Barnes, 2009).

Mampane (2018) advises that schools should effectively take on the role of parents as soon as they take physical custody of the learner. This denotes a responsibility on educators to ensure the learner is in safe hands. She also states that although educators and schools are aware and have a basic knowledge of negligence, most are not aware of how the law sees the liability of educators.

As educators are specifically trained for their roles, they perform this role professionally and for gain. The law therefore often expects more from educators - “ordinarily competent professionals” - than it would from parents (De Waal, 2000). De Waal (2000) also states that educators are expected to offer a higher level of care to learners because of their professional relationship with the learners and that the educator is expected to foresee any reasonable possibility of injury and thereby act to prevent such possibility from happening.

The question to ask would be: What the degree of probability was of the injury occurring? Should it be noted that there was a substantial probability that an injury could occur, a reasonable person would have recognised this and taken the necessary action to prevent it (Botha et al., 2018). Reasonable preventability will look at the nature and extent of the conduct of the person. Should an activity be deemed to have negligible risk, preventative action would not be required. Should an activity not pose grave or extensive danger, once again the reasonable person would not take preventative steps. The importance and object of the action, for example, an educator

damaging a learner's uniform in the action of saving the learner's life, would have to take into consideration whether the act in protecting the learner should be worth more than damage to the uniform. When determining the cost and difficulty of preventing damage or harm from occurring, one must weigh up the cost or the difficulty of preventing the harm and consider whether it would be worth the risk of participating in the activity (Botha et al., 2018).

In the case of *Peet Gouws v Laerskool Lynwood & MEC for Education Gauteng* a claim for delictual negligence was argued when a Grade 1 learner lost part of a finger after learners slammed a door and her hand was caught between the door and the door frame as she was exiting the classroom to line up when the bell rang for the start of school. The learners had been in the classroom without an educator present when the bell rang, and they ran out to line up. The judgment stated that the school was negligent in its duty of care for the learners in that an educator was not in the classroom at the time and that the school should have foreseen an incident like this occurring. Although it was argued that there was no intent to cause harm, the court stated that because there are learners on the school premises, it is reasonable to foresee that injuries may occur (Potgieter, 2015).

In this case, it would be difficult to ascertain exactly what the probability of it happening again would be. Doors to classrooms are left open when learners and educators are in the classrooms. The chances of a door being slammed and then for a learner to have fingers caught between the door and frame are relatively low and would generally not be regarded as a hazard. However, accidents do happen. How they are managed will depend on the outcome. In this instance asking what the reasonable person would do, or the reasonable educator, it must be noted that due to there being no educator on duty or in the classroom when the incident occurred, a degree of negligence is found (Potgieter, 2015).

Unlike this case where it is difficult to foresee and incidents like this happening, the Parktown Boys High case is decidedly different. In this case learners were participating in an activity which involved the building of rafts and floating them down a river. The risks involved were far greater than an activity not involving open water. Educators or supervising staff should have taken all prudent steps to provide adequate materials

with which to build the raft and to ensure that all learners wore life jackets throughout the activity. Being able to swim in a swimming pool and being able to swim in a river with currents and rapids requires different skills and safety measures. Therefore, the failure to provide safety equipment constitutes gross negligence (Engelbrecht, 2020).

It must also be noted that when assessing a case for negligence, an educator's expertise and proficiency will be scrutinised. Educators are regarded as professionals and are therefore expected to act with a higher degree of care and skill. In cases of injury an educator may not be held to the reasonable man test, but rather to that of the reasonable educator and will have to answer the question of whether a reasonable educator would have acted in a similar manner in similar circumstances (Botha et al., 2018). It is also clear from the cases mentioned above that foreseeability of harm is an important element of preventing injuries to learners and that an act such as a door being slammed could potentially lead to delictual negligence against an educator or school. In this case the court stated that having learners on the school premises meant that injuries should be foreseeable and that the school should take reasonable precautions to prevent such occurrences (Potgieter, 2015).

## **2.10 BULLYING**

A bully is described in the Concise Oxford English Dictionary (2008) as “a person who deliberately intimidates or persecutes those who are weaker”. Bullying is a scourge that is plaguing all schools not in only in South Africa but worldwide. The increase in bullying over the last few decades raises the question as to what can be done about bullying in schools and how the educators and schools can carry out their duty of care under these circumstances. While bullying may well take place during the school day, it is most likely to happen when there are no adults present. Therefore, it is important to look at bullying taking place before and after the formal school day, when it is less likely to have an educator available to assist.

Bullying is a global phenomenon that impacts on children physically and psychologically. It may cause learners to drop out of school, commit suicide or resort to taking drugs (Laas & Boezaart, 2014). There have been reported cases of learners being killed or dying due to injuries sustained by bullies. At a Krugersdorp school a Grade 8 learner suffered concussion after he was pushed, punched in the head and

kicked in the ribs by fellow Grade 8 learners (Chulu, 2022). In the Western Cape a Grade 3 learner was injured just below her eye when another learner scratched her in the face with a pencil (Francke, 2022b). In 2021 a learner at Bhisho High School committed suicide after being bullied about her ancestral calling (Ngcukana, 2021). A Grade 5 learner from a school in Paarl tried to commit suicide by swallowing tablets following incidents of bullying at his school (Mthethwa, 2021).

Bullying occurs both in school and outside of school. It takes many forms: physical, verbal, or emotional, and occurs repeatedly over a period of time (DBE, 2021). Bullying has far reaching effects on the lives of not only the learners being bullied, but on other role-players as well (Laas & Boezaart, 2014).

When bullying occurs within the school grounds, it will frequently take the form of a group of learners who isolate one learner and harassment will take place. Many learners may know about what is going on but fear becoming a target and will therefore avoid intervening (DBE, 2021). Bullying is a form of aggression and encompasses acts where learners behave negatively towards others. Behavioural patterns form over time and are usually a result of a power imbalance. Bullying is essentially an intentional, repeated act performed by either individuals or groups of people. Bullying is far more than simple arguments and competition between learners (Laas & Boezaart, 2014).

The Constitution (RSA, 1996a) and the Schools Act (RSA, 1996b) both emphasise the learners' right to education in a safe and secure environment. However, bullying tends to take place both within the school environment and outside of it through various forms of social media. Schools are required to have a learner code of conduct (SASA, 1996b) which should emphasise positive learner behaviour and encourage self-discipline and respect for others.

When bullying takes place during school hours it falls directly within the educator's scope of duty of care to deal with the situation and rectify it to ensure that all learners feel safe at school. However, in many cases of learners being bullied they are afraid to involve educators for the fear that either nothing will be done about it or that the bullying behaviour will only become worse (Childline South Africa, 2019).

In the ever-changing world we live in bullying is no longer limited to physical bullying during school hours. Children are aware of social media and in many cases have their own Tik-Tok, WhatsApp, Facebook, Snapchat, and other social media accounts. Cyber-bullying occurs through electronic technology and many children have access to electronic technology on their cell phones. The law in this area is in early stages of development but does recognise that this form of bullying is taking place and that action must be taken against the aggressor (Butler, n.d.).

Regardless of what form it takes bullying is behaviour which negatively impacts on the lives of all who are affected by it. This behaviour creates an environment which is harmful to learners and must be addressed by those in authority whether it be the school management teams or involving social workers and the South African Police. One cannot simply say that their duty to care for learners does not include the duty to protect them from bullying, even when it is taking place outside of the school grounds and after formal school hours through social media or cyber-bullying (Butler, n.d.).

The laws that protect learners against being bullied are The Schools Act (1996b), The Children's Act (Act No. 38 of 2005), The Child Justice Act (Act No 75 of 2008) and the Protection from Harassment Act (Act No. 17 of 2011). Section 8 of the Schools Act stipulates specific procedures are put in place through the development of the learner code of conduct and that action is taken against bullies (RSA, 1996b).

The Children's Act (RSA, 2005) is designed to protect children from abuse and neglect, which includes bullying in schools. However, this act is aimed at restorative justice and not at punitive action taken against the perpetrators of bullying. Although this act allows for bullies to be held accountable for their actions, it advocates for rehabilitation rather than punishment (Harrington-Johnson, 2024). Bullying may contain a criminal element; therefore, the law requires a separate justice system for children. Children younger than 10 years of age are regarded as not having criminal capacity and will not be charged or prosecuted. Children between the ages of 10 and 18 years of age may be found guilty of having criminal capacity but are charged and treated as minors. As bullies generally fall within these age categories, authorities will consider restorative justice under the Child Justice Act (RSA, 2008); Law for all, 2023).

The Protection from Harassment Act (RSA, 2011) supplements the legal frameworks designed to protect learners from bullies. It allows for learners to apply for protection orders against perpetrators. This can be done without the assistance of parents. If such an order is granted and the bully continues to harass the victim, the bully can be ordered through the court to attend therapy in order to rehabilitate the offender and attempt to prevent the offender from becoming a repeat offender (Harrington-Johnson, 2024).

The above addresses bullying but does not give a clear indication of bullying taking place outside of formal school hours and who is responsible for the learner during this time. None of the above legislation gives specific guidelines on bullying behaviour after formal school hours. This makes it difficult to say definitively whether it falls under a school's duty of care for the learner. However, Butler (n.d.) states that a school cannot say that it cannot do anything about bullying which happens off school property or cyber-bullying taking place outside of formal school hours.

Schools have a duty to protect the learners and must have guidelines on how to prevent bullying. Schools must implement policies and monitor that they are adhered to. Duty of care and how it relates to bullying is being scrutinised. Bullying undoubtedly happens at school and not dealing with it effectively is in breach of duty of care (Kohn, 2011).

With the increase of cyber-bullying, the duty of care against cyber-bullying may be questionable because it is the parents who provide learners with cell phones or other electronic devices not the school. It is easy to say that if two learners attend the same school surely a duty is owed to a learner being bullied by a peer. However, the practicalities of this are not as straightforward as they may seem. Schools cannot check on learners' use of technology outside of school so this must fall on the parents to monitor (Kohn, 2011). While it may be easier to detect physical altercations happening on the school grounds, cyber-bullying taking place outside of formal school hours are far more difficult to identify. Establishing a reasonable amount of foreseeability is difficult and will depend on the nature of the relationship between the learners in question (Kohn, 2011).

## 2.11 PARENTAL ACCOUNTABILITY

In his State of the Nation address in 2009 President Jacob Zuma said: “We want our teachers, learners and parents to work with government to turn our schools into thriving centres of excellence”. For this to happen parents need to be accountable for their role in their children’s education. This requires that parents work with the schools to ensure their children’s safety, and that quality teaching and learning is taking place. Parents are the primary caregivers of their children (De Waal & Serfontein, 2015). As such they are required to ensure that their children attend school regularly and that they are punctual for school as determined by Section 3 of the Schools Act (RSA, 1996b). As the primary caregivers of children, parents’ involvement in schooling demonstrates their love for their children (Oosthuizen et al., 2018). Oosthuizen et al. (2018) argue that although educators have a supervisory duty during the school day, it does not relieve parents of their duty to be aware of their children’s physical safety. This is important to note when parents drop learners off prior to school opening and that after activities have ended parents are required to collect their children within a reasonable amount of time.

Kiral (2019) argues that parents have several rights with regard to the education of their children. Among these rights are those associated with taking part in the educational and administrative roles of a school. However, every right has an associated responsibility, and the responsibilities listed include:

- ensuring children have a proper education, ensuring children are adequately protected from harm;
- meeting their children’s emotional and physical needs; and
- promoting social behaviours and respecting individuality.

Another responsibility that should be added to this is to ensure that children are dropped off and collected from school at appropriate times. It seems that this should be among the most important of these responsibilities as it involves the safety of their own children when left outside a school before gates open or after activities end. The Bill of Rights in the Constitution (1996a) stipulates that children have the right to a safe

environment but does not dictate whose responsibility it is to provide that safe environment outside of school hours, and within close proximity to the school gates.

Legally speaking a parent is required to ensure that their children are cared for and that they are protected from danger. We seldom see court cases where children sue their parents for not upholding this duty. While parents are required to take precautions to protect their children and take all necessary measures to ensure their safety (Oosthuizen et al., 2018) there seems to be little regard to this matter when it comes to children being left outside school gates either before schools open or after the official school day has ended.

## **2.12 DUTY OF CARE – HOW FAR DOES IT EXTEND?**

The question of when the duty of care begins and ends seem to have no definitive answer. Literature offers various ideals of when the duty begins. The consensus on this is that when the school opens the gates to admit learners a duty is owed to the learners (Mampane, 2018, De Waal, 2000). Therefore, it would seem that it is reasonable enough to state that this duty ends when the parents once again take over the physical custody of their children. While it may be agreed that the learner is essentially physically on the school property there is a very clear duty of care involved, but one must question too what the definition of the school property is. A duty of care is owed to any learner who is on the school premises. This means that the when the learners enter the school gates, the duty begins (De Waal, 2000). There remains a question of a learner who is injured prior to entering the school gates but within proximity of the school, such as the pavement or the road leading to the school property.

Duty of care extends beyond the normal school hours to include extra-mural or extra-curricular activities whether they take place on the school property or at another venue. It is also extended to any school excursion, tour or sporting event taking place over weekends and during school holidays (De Waal, 2000; De Waal et al., 2001). According to Barnes (2009:2) “it can be said that the educational environment extends to whenever, and wherever, the relationship of teacher and pupil [learner] exists”, which means that this duty includes all school-based activities, regardless of where they take place.

Should an educator also be the sport coach, there is an extra burden of care required to protect learners from the potential harm which may occur during a practice or the playing of a match. The reasoning for this is that as a sport coach an educator should also have the extra knowledge of the sport, the rules, as well as the potential risks involved in the sport for learners. A coach's responsibility varies according to the type of sport, the level of participation and the age, skill, and experience of the participants. The more potential for harm, the higher the level of supervision required. It can be stated that the educator, who acts as a sport coach, should also know the potential dangers better than the average person, due to their qualifications and experience (Rossouw, 2004; Prinsloo, 2005).

Adding to this burden an additional duty is the duty to report incidents of bullying or abuse should they take place after school hours. This includes the learner waiting for a school bus, the learner who is being taunted via social media or the learner who is being physically abused at home. In Australia it is stipulated that the duty of care is extended beyond school hours and premises due to the relationship between the learner and the school or educator should the learner require it in special circumstances (D'Cruz, 2019). Fowler (2018:11) explains it as follows: "...that relationship does not simply start and end when the pupil enters and leaves the school gate". The United Kingdom's view of the end of the duty of care states that an educator's duty ends "at the gate" unless there are exceptional circumstances, such as an educator witnessing a learner being injured outside the gates (Fowler, 2018:11). In New Zealand there are instances where the duty is seen to end "at the school gates" and others where "in proximate locations" or "sufficiently close connection" to the school is seen as being covered by the school's duty of care (Fowler, 2018:11).

In South Africa educators are required to report incidents or suspected incidents of abuse taking place. With the increase of violence in schools, which affects learners both physically and psychologically, educators are required to act in the best interests of the child. As the educator is taking the role of the parent during the school day as well as the special relationship between educator and learner, the educator must take on the role of protecting the learner's well-being (RSA, 1983; Mampane, 2018; Fowler, 2018). The Children's Act (RSA 2005) stipulates that an educator is required to report any suspicion of child abuse when that suspicion is formed with reasonable grounds

to suspect abuse is taking place (Hendricks, 2014). It must be noted here that reporting of the suspicion of abuse is done in 'good faith', which is recognised in common law as acting with honesty and conscientious impartiality (Hendricks, 2014). An educator reporting such abuse would be deemed to be acting in the best interests of the child and not acting with malicious intent. Should abuse not be proven, the educator will not be held liable for the reporting of this suspicion of abuse (Hendricks, 2014). However, failure to report suspicion of abuse may result in the educator being guilty of an offence and subject to a fine or imprisonment (Hendricks, 2014).

Mampane, (2018:185) goes on to argue that this duty falls on the educator when the child is "under the care and control of the school". She adds that acting *in loco parentis* not only includes activities within the school, but that it is extended to include activities that are associated with school and can include travelling to and from school or waiting outside of the school. Xaba (2014:1582) goes further by defining the school environment as the "sum total of all features of a school that create the learning environment... (which include) vehicular drop-off and pick-up points". As these points of drop-off or collection are frequently outside of the school gates this would imply that they are indeed a part of the school property.

There is no doubt that educators must take responsibility for learners while they are on the school grounds during school hours as well as participating in extra-mural activities (Oslich, 2017). However, it remains unclear whether educators are responsible for learners outside of formal school hours. In the case of *Alvin Jeremy Mageni vs Minister of Education Western Cape Education Department* (2021), a Grade 1 learner punched another learner in the face during a game of tag rugby prior to the start of the school day and the injured learner lost an eye. This incident took place when learners were given access to the school grounds before the start of the school day but were unsupervised by educators. During the court case, the Western Cape Education Department argued that the learners were at school early and that no duty of care was owed to learners who arrived early as the game they were playing was not a specific school activity (*Mageni v MEC Education WC*, 2021). This is contrary to opinions that if learners have been given access to the school, the school knowingly allowed them onto the property in the morning, therefore they are owed a duty of care (Joubert, 2016a).

The kidnapping of a learner from the front of the school while waiting to undergo COVID-19 screening during 2021 again raised the question: who is responsible for the learners? They have not yet entered the school property. Does this constitute negligence on the part of the school and educators? Or should parents also take responsibility for their children while waiting for the school gates to open? Should parents take responsibility for their children after the end of the formal school day when they are late in collecting learners from school? In *Accountability in respect of learner supervision outside school hours* (Du Toit, 2009) FEDSAS expresses the opinion that once the learner has been given access to the school, at a reasonable time, the school's duty of care begins. Du Toit (2009) argues that this 'reasonable time' could be half an hour prior to the first bell ringing for the day and after the last bell or when extra-mural activity has ended. In general, schools determine as part of their rules the time parents should collect their children at the end of the day. Once again, a reasonable time of half an hour is generally given for parents who are late in collecting their children. Du Toit (2009) goes on to state that it may be regarded as harsh, but lines must be drawn and parents must take responsibility for collecting their children on time thereby relieving the school of the duty of care should they decide to simply close the gates and leave learners outside if parents are tardy, as it is unreasonable to expect the educator to simply wait until the last child has been collected. As for the early dropping off of learners at schools Du Toit (2009) argues that schools cannot be expected to allow learners to enter the school or to have educators at school to supervise learners who are dropped off long before the gates open.

Despite the degree of consensus that duty of care begins when learners are given access to the school property and ends when learners are physically returned to their parents, it still remains unclear as to whose responsibility it is to ensure the safety of learners when parents drop children off before gates open or are late in collecting their children after school activities have ended, as they are within proximity of the school premises. The added burden of having to report incidents of abuse which happen outside of school hours further blurs the lines of a set time frame for the educator's role by virtue of the special relationship they have with learners (D'Cruz, 2019).

## 2.13 LEARNER SAFETY

Since this research aimed to determine when and where the duty of care can safely be handed back to parents, it would be pertinent to look at cases and news reports where learners have been harmed during the time under question. Literature is clear that there is no doubt an educator has a duty towards learners in their care, but it is unclear of the duty before and after formal school hours and formal school activities. According to Joubert (2007) it is difficult to determine the extent of this duty.

In the case of *Hawekwa Youth Camp and another v Byrne* (2009) a 9-year-old boy sustained permanent brain damage when he fell off a bunk bed during the night. The father claimed damages caused by negligent and wrongful omissions against the teachers stating that educators had the duty to ensure that the bunk beds were safe and secure. The court found that the harm could be reasonably foreseeable and that the educators had acted negligently in failing to take the necessary precautions to protect the learners sleeping on the bunk beds which did not have adequate railings to prevent them from rolling off during the night (Fortuin & Petersen, 2022).

In the case of *C N v Member of Executive Council for Education Gauteng* a 5-year-old learner left his classroom without the knowledge of the educator and went to play on a jungle gym in the school playground. He injured himself by breaking his leg which resulted in surgery and hospitalisation for the injuries. It was found that the school had been negligent in ensuring learner safety as the gate to the jungle gym was not adequate to prevent a learner of this age from getting into the jungle gym area and that simply warning learners against going into the area unsupervised was inadequate protection from foreseeable harm occurring.

It is interesting to note that in the case of *Thoko Dlamini v Member of the Executive for the Department of Education Mpumalanga Provincial Government* that while learners had been injured at school by the collapse of a water tank on rusted metal struts, there is no simple answer as to whether the school may be liable. The ruling goes on to state that while there is a duty of care towards learners, when it starts and where it ends is not clear cut.

The case of *Rusere v The Jesuit Fathers* has been previously mentioned, but it is pertinent to add further details regarding this case in this section. The young boy in question was injured on a Saturday afternoon after the boys at a boarding school had finished playing soccer and they had free time before supper. They were playing a game of cowboys and Indians when the arrow of one of the boys hit the child in the eye causing an injury and resulting in the loss of sight in the eye. The judge stated that he felt it would not be possible to keep children under constant supervision, nor would it be fair on the children.

In another previously mentioned case where a learner was injured and lost his eye due to being punched in the eye twice by another learner while playing tag rugby on school premises before the start of the school day, the argument is that school had not yet started and therefore no duty of care was owed to the learners. It was argued in *Mageni v MEC Western Cape* (2021), that the game was not a school activity and therefore no duty was owed to the learners. The school policy was that duty and supervision was owed from 07:30 until 14:00. The judge in his ruling stated that while this may not have been a school activity, the learners and staff were on the school grounds and that learners were given access due to safety concerns. They were therefore owed a duty of care as this time could be regarded as part of the school hours. The judge went on to state that a duty of care was owed due to the nature of the relationship between the school and learners. He added that it is irrational to believe that schools cannot take responsibility for learners who are on the school premises and if the learners had not been told not to play the game, it was regarded as a school sanctioned activity. He argued that in terms of the Regulations for Safety Measures at Public Schools (RSA, 2001) which was published in terms of the Schools Act (RSA, 1996b) a school activity is an official activity within or outside the school premises. Therefore, a duty of care is owed to learners when they enter the school premises and not only after the bell has rung.

While all these cases deal with injuries sustained during the school day, during school activities or when learners were on the school grounds, we have yet to find cases that involve the school's duty of care before the gates open and after the formal school hours. It would be naïve to think that learners cannot be injured while they are waiting

for the gates to open or for parents to collect them after the formal school day is over. By the fact that children will play it is inevitable that at some point an injury may occur.

In recent years we have seen several news reports reporting on incidents that have occurred either prior to the school gates opening or after formal school hours while learners were waiting for parents. In 2018 a 15-year-old girl was waiting outside the school for her transport to collect her. During this time a security guard approached the girl and ordered her to return to a classroom where she was raped. He gave her R2 and threatened her should she report the matter. This was not the first time she was raped by this man at this school (Damba, 2018).

In 2021, in a spate of reports of kidnappings of children on their way to school, the report of a Grade 5 learner being kidnapped while outside the school gate waiting to be sanitised surfaced. There is no indication in this report that there were other learners or educators present while the learner was outside (McCain, 2021).

In March 2022 an 8-year-old learner was waiting inside the school premises for her transport. A man approached the security guard and convinced him that he had been sent by her grandmother to collect the learner. When they left the school grounds they walked in the wrong direction. When she questioned him he took her into bushes, threatened her to be quiet and raped her. The mother in this case felt the school should have done more to protect her child (Thwala, 2022).

In November 2022 a 5-year-old learner was kidnapped on her way to school. She was snatched from the vehicle transporting her. After this incident the school sent out a letter to parents pleading with them to be vigilant when dropping their children off and picking them up and urged them to pick their children up from school timeously. They also requested parents not to leave children unattended in their vehicles (Francke, 2022a).

While there does not appear to be a plethora of cases where injuries occur outside formal school hours it may well be that some of these cases are simply not reported, especially when they involve the rape of a child. However, one cannot ignore the fact that these incidents do occur. What must be questioned is who is responsible for these learners. In the case of the 8-year-old the mother felt the school was responsible for

taking care of her child. How does a school prevent incidents like this taking place, especially when a stranger approaches the security guard and convinces him he has been sent to fetch the child by a family member? There can be no question of foreseeable harm in these incidents; how does one simply look at a person and decide they pose a danger to a learner? What lengths are schools expected to go to ensure that all learners are collected by the people they should be collected by? It is known that events happen during a day and a parent may well not make it on time to collect his or her child. The parent will likely contact either a friend or another family member to collect the child. Or perhaps the usual driver of a transport vehicle has asked someone else to collect the children for him? In many of these incidents, the school may not be informed of the change of person collecting the child.

## **2.14 SCHOOL SAFETY**

The Department of Basic Education has put measures in place to try to ensure that schools are safe environments for learners. They acknowledge that there is violence, drug abuse, bullying, intimidation and sexual harassment taking place in schools and have created a National School Safety Framework (2016) to endeavour to combat these ills in our schools. Once again the focus remains on what is taking place in schools during the formal school hours and there is little being done to combat problems outside of the formal school hours.

In a study conducted on learners' perspectives on school safety in Johannesburg, Hochfeld, Schmid, Errington and Omar (2022) noted that learners were concerned about their safety while at schools. They also stated that learners felt frustrated about a lack of accountability by responsible adults to take control and ensure their safety. While this is directly related to incidents that may take place in secondary schools in urban areas, it may be important to note that once the learners leave school there is no guidance on who is responsible for ensuring safety during the time they are waiting to be collected from school.

To combat violence and bullying in schools, the Department of Basic Education has implemented a Quality Learning and Teaching Campaign (QLTC) (2008), in which they aim to address school violence. Their strategies to address violence include:

- training educators to identify aggressive learners;
- building relationships with communities;
- involving the local community within defined roles and responsibilities; and
- building transparency and trust among staff, learners, and staff, and among the community and school.

It is important to note that there is an emphasis placed on community involvement and ensuring parental and community support in this campaign. Partnership, participation, and collaboration are regarded as being pillars of community mobilisation in addressing the safety of learners (Parliamentary Monitoring Group, 2015).

A report presented to the Parliamentary Monitoring Group on the implementation of the NSSF and the QLTC mentions factors outside schools - having a restricted zone for taverns near schools and regulating vendors within and around school premises - these refer specifically to the sale of drugs and alcohol which are regarded as among the leading causes of violence in schools. However, the focus again is on what is happening during school hours and the potential dangers faced by learners after the formal hours appears to be neglected.

The Western Cape Government has noted that there is a need to ensure learner safety before and after school hours and has created initiatives that aim to protect learners during these times. One of these initiatives is called the Walking Bus, aimed to create safe and supervised routes for learners walking to and from schools. They have enlisted the support of local law enforcement, South African Police Service, school principals and support staff. This initiative sees parents volunteering to walk groups of children to and from schools, while also checking the perimeters of the schools to ensure the safety of the learners (Western Cape Government, 2019).

Considering the kidnapping incidents in 2022, Slater (2023) published an article in the Germiston City Times reminding parents how to keep learners safe when schools reopened for the 2023 academic year. Among her suggestions were:

- that children wait inside school grounds for their lifts;

- remind children that strangers would not be sent to collect them from school and not to get into stranger's vehicles;
- parents should notify schools should there be a change in transport arrangements;
- tell children not to talk to strangers, even if they seem friendly;
- children should not walk home from school alone;
- create 'walking buses' for groups of learners who walk, having parent volunteers to walk to and from school with learners; and
- children must not take short cuts through quiet streets.

While it is essential to remind learners not to speak to strangers, as seen in articles previously mentioned, it is the very security guards at the schools who at times perpetrate the crimes themselves. This seems to go against everything they should stand for in terms of protecting the learners from harm. Combating these types of crimes against learners then take on a different perspective, as the schools may rely on these security guards to look after the learners after formal hours and the educators are no longer in attendance for supervision of the learners during this time.

Invariably it remains a struggle for schools to adequately determine where their duty of care ends. It is noted that a school's duty begins when access is given to learners at the beginning of the school day and there is no dispute regarding this starting time (D'Cruz, 2016). However, it is at the end of the day when all formal activities have ended and learners have been dismissed for the day that this duty remains unclear. The obligation of duty of care requires that learners are protected from any foreseeable harm. With reports of learners being abused by the security personnel on school premises, albeit after formal school hours, can this be taken as a foreseeable situation? Security personnel are people we entrust to protect, not to cause harm themselves.

For schools to protect themselves against liability, it is vital that they:

- regularly remind parents of the school's hours of operation and supervision, by publishing it in newsletters and other forms of communication with parents;
- create a safe waiting area for learners who are waiting for parents to collect them;
- require that parents collect learners from the waiting area; and
- have policies and insurance in place to ensure that should an injury occur; they have the necessary public liability cover in place.

School safety has become an important and integral part of our everyday school life. It is vital that measures are put in place to not only protect the learners, but also the wider school community through policies and procedures which are designed to guard against potential threats posed to learners who are waiting outside formal school hours.

## **2.15 OUTSIDE FORMAL SCHOOL HOURS**

It has been determined that during formal school hours, once a learner is given access to the school grounds, the school's duty of care begins. While a school can have clearly demarcated times for the opening of gates and the pickup times at the end of the formal school day, not all parents adhere to these times. Parents and schools are still obligated to live up to the responsibility of duty of care during these times where learners may be unattended.

Sub-sections 18(1) and (2)(a) of the Children's Act (2005) stipulate that a parent has specific responsibilities in respect of the child. One of the foremost responsibilities is to take care of the child. According to the Act, 'care' is defined as (among others):

- Providing the child with a safe place to live that is conducive to the child's health and well-being;
- Safeguarding and promoting the well-being of the child;

- Protecting the child from abuse, neglect, discrimination and other physical, emotional, or moral harm;
- Guiding, directing, and securing the child's education and upbringing; and
- Generally ensuring the best interests of the child is of paramount importance in all matters concerning the child.

Therefore, it can be said that the parent must safeguard and protect the child from abuse, neglect, and other physical or emotional harm, while at the same time ensuring the best interests of the child are kept as a matter of paramount importance (Mellet, 2013). It must be reiterated that in all matters concerning the child, the parent is the primary caregiver (Mellet, 2013).

In *Hawekwa Youth Camp and Another v Byrne* (2009) the court stated that the educator took on the role of *in loco parentis* for the duration of the school camp. However, the court went on to state that the educator was required to act as a reasonably careful parent would act toward his/her own children, stating that it was unreasonable to expect schools or educators to have a greater duty than that expected of parents. Therefore, educators are not absolved from taking extra precautions while learners are on overnight excursions or tours. Arguing that it is 'unreasonable to expect schools or educators to have a greater duty than that expected of parents', implies that after the formal school hours, a school or the educators may not necessarily be expected to fulfil this duty while waiting for parents to arrive (Mellet, 2013).

However, we cannot forget that in terms of sub-section 28(2) of the Constitution, "a child's best interests are of paramount importance in every matter concerning the child". Saying that schools have drawn the line and they are not responsible for the learners while they are outside the school grounds waiting for parents does not serve the best interests of the child. Therefore, it would seem that in this situation an impasse must be declared. Schools are reluctant to extend duty times for educators to look after learners who are waiting for parents to collect them as it is extending the school day for the educators on duty. A child sitting on the pavement outside the school is still within the periphery of the school and according to Mampane (2018) should then remain under the school's care to best serve the best interests of the child. Until the

child has been physically handed back to the parents the school cannot abdicate its duty to care for the learners as there remains a moral duty to ensure the child's best interests are not compromised (Mellet, 2013).

## **2.16 CONCLUDING REMARKS**

What has emerged from the literature review is that educators have clearly defined responsibilities towards learners while engaged in school-sanctioned activities. These responsibilities are laid out and the expectations are well articulated. There can be no argument that educators are expected to foresee potential harms when planning activities, to take all reasonable precautions to prevent injuries from occurring, and to mitigate dangers by careful planning by putting the necessary measures in place and by actually implementing these measures. By the opening of the school gates and allowing learners onto the premises, a duty of care begins.

Yet we understand parents are expected to be at work at specific times and will therefore drop learners off before the school gates open. It is stated repeatedly that once a learner has gained access to the school premises, the school is responsible for providing a duty to care for these learners. Literature does not state who is responsible for these learners prior to the opening of these gates. As schools may well be aware of learners waiting for gates to open, it would imply that they are obligated to provide a duty to these learners. However, there is no definite answer provided to this question.

It must also be noted that what does not emerge from the literature is a determined time when educators hand over responsibility for learners back to their parents should the parents not arrive at school on time to collect the learners and they are left waiting outside the school without supervision. We have seen reports of learners who have been harmed during this time, but as yet there is no indication of who is liable for these learners.

At present, despite the reports and the literature giving information on the expectations of duty of care for educators and schools and knowing what is reasonably required and the obligation to care for learners and using a reasonable man test should something go wrong, there is still no defined answer to the question of where schools

can draw the line in their duty to learners. We have yet to see a legal precedent which would guide us and answer this question satisfactorily. The only thing we are certain of is that a child's best interests must be paramount in all decisions regarding the child, which indicates that this study is of importance to all educators and schools facing similar problems.

In the next chapter (Chapter 3) I discuss the theoretical framework which framed the study. Thereafter, in Chapter 4, I present and motivate my choice of research methodology and my research design.

## **CHAPTER 3**

### **THEORETICAL FRAMEWORK**

#### **3.1 INTRODUCTION**

Education in its broadest terms can be seen as a concept which is designed to foster and support a child's well-being and development (Moss & Haydon, 2008). In light of educators' responsibility to protect learners in their care, and to put their best interests first (Du Plessis & Kung, 2019), this study was conducted through the lens of the Contextual Safeguarding Theory. Contextual Safeguarding is a relatively new approach which directs attention to the contexts outside the control of the caregivers, which offers new insights to improve the practice of caregiving and has been developed by social workers to gain deeper understanding of situations and to better plan interventions (Nyathi, 2022). Contextual Safeguarding is an approach which aims to understand and respond to young people's experiences of harm or potential harm, outside of the family setting. This approach has been in development since 2011 and supports the development of practice frameworks developed to improve child protection (Featherstone et al., 2020).

#### **3.2 CONTEXTUAL SAFEGUARDING THEORY**

Contextual Safeguarding is underpinned by eclectic theories which draw from sociology, criminology, social work, and public health (Orr, 2021). Contextual Safeguarding Theory can be seen to correlate with the Social Model of child protection in that it merges the ideas to create better child protection practices (Featherstone et al., 2020).

The Social Model of child protection focuses on the economic, social and cultural barriers to child safety and how these may be overcome. It focuses specifically on the inequalities in children's chances of growing up safely in their communities, poverty through inadequate or insecure work, the link between psychological harm and social conditions and the importance of social connections to family well-being (Featherstone et al., 2020).

Children require supportive community-based services. The Social Model is reliant on professional-led approaches to protecting children which rely on community services

to assist (Featherstone et al., 2020). Many children come from homes where both parents work. In many of these situations, parents are not given the freedom to have flexible work hours and will frequently have to drop their children off very early and collect them from school well after the formal school day has ended (Durisic & Bunijevac, 2017).

While it may be argued that Contextual Safeguarding applies mainly to the area of social welfare or social work, it must be noted that educators must be cognisant of learners' best interests and put into practice similar considerations. Therefore, as Contextual Safeguarding focuses on children who have been exposed or potentially may be exposed to harm, abuse or neglect (Nyathi, 2022), it is appropriate to frame this study using this theory particularly because unsupervised learners left outside a school are vulnerable to harm.

### 3.3 THE DOMAINS OF CONTEXTUAL SAFEGUARDING THEORY

Contextual Safeguarding Theory specifically provides a framework to better understand and respond to children's potential experiences of harm outside their family homes (Wilson, Diaz & Usubillaga, 2022:221) and has four distinct domains (Orr, 2012:6). The four domains are illustrated in Figure 3.1.



**Figure 3.1: The domains of Contextual Safeguarding Theory (Source: Featherstone et al., 2020)**

### **3.3.1 Domain 1: Targeting the social conditions where the harm occurred or may occur**

Domain 1 aims to create partnerships which seek to identify social contexts leading to danger and/or harm. This is followed by an assessment of these conditions and interventions to remove or protect the child from dangerous and/or harmful conditions (Wilson et al, 2022:222). It must be noted that these contexts range from neighbourhoods to schools and may include social media or online environments (Firmin, 2017:1). This domain of the Contextual Safeguarding Theory targets the nature of the contexts and not the individual affected by it (Featherstone, et al., 2020).

### **3.3.2 Domain 2: Legislative framework**

Domain 2 makes use of the legislative frameworks to incorporate the 'extra-familial' contexts outside the family home into child protection laws and frameworks (Wilson et al, 2022:222). In other words, this domain of the Contextual Safeguarding Theory relates to ensuring that child protection systems are working and able to protect learners from harm or potential harm (Firmin, 2017:6) rather than purely looking at community safety and policing (Featherstone et al., 2020).

South African legislation provides for the safety of learners at school through Section 28(3) of the Bill of Rights found in the Constitution (RSA, 1996a) which directs that children have the right to be protected from neglect, abuse and maltreatment (Sub-section 28(1)(c)). Section 9 of the Children's Act (RSA, 2005) further stipulates that matters pertaining to a child's care, protection and well-being are of paramount importance. The South African Schools Act adds to this by stating that every child has the right to be educated in a clean and safe environment (RSA, 1996b). The Regulations for Safety Measures at Public Schools (RSA, 2001) also states that schools must be declared as drug and dangerous object free zones.

Contextual Safeguarding principles can work hand in hand with the legislation in place in South Africa to create schools that are regarded as safe zones for all learners.

### **3.3.3 Domain 3: Partnerships to deal with the context where the harm occurred or may occur**

Parents and immediate caregivers may have limited scope of influence in extra-familial contexts. Therefore, safeguarding partnerships need to incorporate agents in the local communities who are able to assist with the protection of children where they may be vulnerable to harm (Wilson et al., 2022:222). This may involve a multi-agency approach depending on the context and the geographical area where the harm may have occurred or may potentially occur (Firmin, 2017:4).

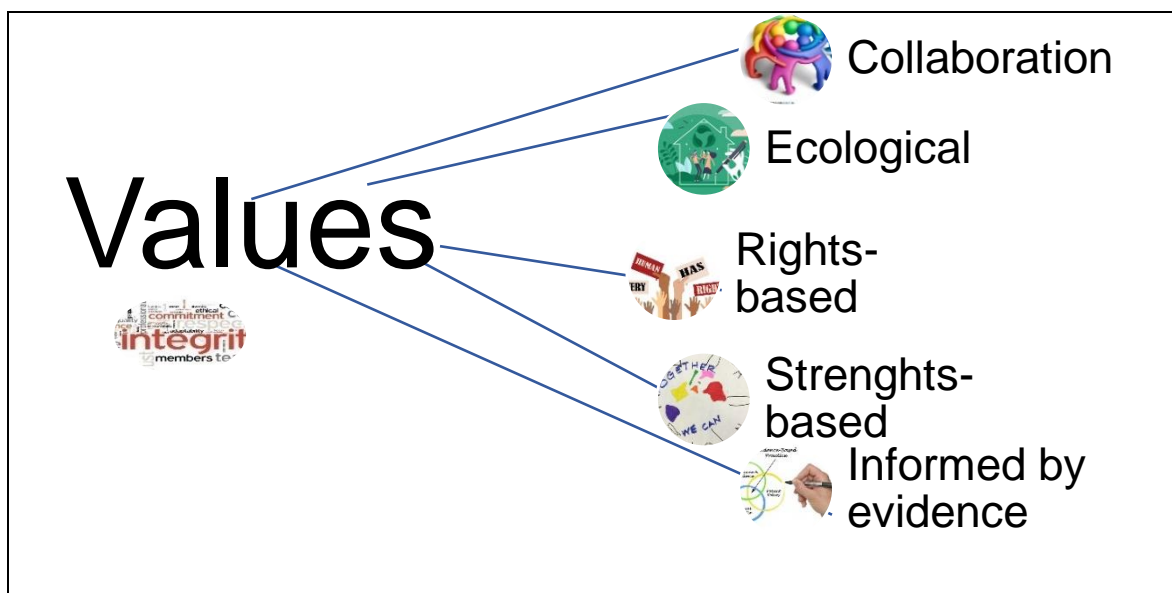
The National School Safety Framework (NSSF) (DBE, 2016) requires that all schools are linked with their local South African Police Services (SAPS) to ensure that there is a close working relationship between the school and SAPS. It is also advised in the NSSF that schools engage with their communities to involve community leaders and gain their support to ensure that schools are not easy targets from criminals. Ideally, each SAPS office should have a social worker based at the station, who can also assist and intervene if suspected abuse or threats against a child are reported.

### **3.3.4 Domain 4: Measuring success and outcomes contextually**

This domain relates to determining the impact of Contextual Safeguarding through the measuring of the impact on the contexts where young people may be vulnerable to harm rather than simply focusing on the change in behaviour of individuals who spend time in harmful places (Featherstone et al., 2020).

## **3.4 THE VALUES UNDERPINNING CONTEXTUAL SAFEGUARDING THEORY**

Integral to the Contextual Safeguarding Theory is the values which underpins it. These values are illustrated in Figure 3.2.



**Figure 3.2: The values underpinning the Contextual Safeguarding Theory (Featherstone et al., 2020)**

The values underpinning the Contextual Safeguarding Theory are:

- **Collaboration** between professionals, children, families, and communities to inform decisions on the safety of children - getting the local SAPS, churches, community leaders, libraries, and sport clubs - to create specific afternoon programmes for children whose parents have not yet arrived to collect them from school. Meetings with all stakeholders mentioned to suggest ideas on how best to protect children or keep them in a safe environment for the duration of the time they are waiting to be collected from school.
- **Ecological values** linking the spaces where children may come to harm and spaces of safety – finding safe environments for children to wait, for example a public library near the school, after school sport programmes which will allow children to wait and be kept active during this time, homework centres which provide safe and secure environments for children to complete their homework in a supervised environment.
- **Rights-based values** which are rooted in children’s rights – centres which provide for clean, safe and secure environments for children.

- **Strengths-based values** which builds on the strengths of individuals and communities to create change – this requires that members of the community, whether it be the school community or the community at large, use their strengths or what they can provide towards a safer environment for children whether it be funds to build a facility or to upgrade a facility, to pay for supervisors to watch the children, or to provide coaches who will take the children and work with them on sporting skills.
- **Evidence-based values** which proposes solutions that are informed by the actual experiences of children and communities – looking at what is happening and how solutions can be found through input gained from the learned and lived experiences of children, communities and the authorities involved (Featherstone et al., 2020). Have programmes been put into place successfully in other environments or schools? Take the experiences and build on to them to formulate a plan that may work in another environment.

### **3.5 THE APPLICATION OF CONTEXTUAL SAFEGUARDING THEORY**

Practitioners whether it be educators, parents or members of the community can work together to promote and provide safe environments outside of school using the Contextual Safeguarding Theory and its values (Featherstone et al., 2020). Contextual Safeguarding is an approach used to understand and respond to children's experiences of harm and recognises their relationships formed in schools and neighbourhoods. As parents have little influence over these contexts, safeguarding practices are critical to ensuring the safety of children when they are outside of the family home (Firmin, 2017).

It is important to ascertain what it is that we are looking at when considering Contextual Safeguarding. Questions which must be asked are:

- What could happen to a child while he/she is waiting outside a school for his/her parents?
- What are the strengths and weaknesses (threats) in that situation?
- What measures can be put in place to make sure the child is safe?

By having a participatory approach, families and the community can consider various options to ensure the safety of their children. Collaboration between schools, parents and members of the community can result in the development of a network which can facilitate the best solutions for these issues (Firmin et al., 2021).

The Contextual Safeguarding Theory further allows for a framework which focuses not only on the child, but also on the context in which the children find themselves while they are waiting outside the school. This allows for management of the potential risks that could face children who are left unattended after formal school hours and the finding of workable solutions that could be implemented to ensure the safety of these children (Orr, 2021).

Proponents for the Contextual Safeguarding Theory argue that understanding the risks faced by children determines the interventions required to keep them safe (Nyathi, 2022). Contextual Safeguarding as a theory therefore allowed me to examine the safeguarding or protection of learners in situations where they may be exposed to harm and to determine the interventions required to mitigate any threat to them (Nyathi, 2022:177). It must also be noted that parents' economic, social, and cultural contexts may impact the safety of their children (Nyathi, 2022:185) as they may be forced to drop learners at school early or arrive late to collect them. The Theory of Contextual Safeguarding focuses on how best to protect these learners when they are outside the family environment through a collaborative and holistic approach between the school and the parents (Nyathi, 2022:186).

Ultimately this approach attempts to demonstrate that child protection cannot simply remain stagnant and that it is important to use all existing approaches to develop a solution which will work best in each individual environment or circumstance. It mitigates the potential risks through collaboration with multiple parties and starts a conversation about where changes may be useful due to inadequate systems currently in place (Orr, 2021).

### **3.6 CONCLUDING REMARKS**

In this chapter I have investigated the Contextual Safeguarding Theory and how the values of this approach can provide for a safer environment for learners who are waiting for parents to collect them from school.

It has been discussed that through the collaboration of outside groups such as SAPS, community leaders, church leaders, social workers, and parents within the community children can be provided with safe and secure places in which they can wait for their parents should they not arrive timeously after the end of the formal school day.

As seen in the news reports referred to in Chapter 2 children waiting outside schools may still be vulnerable to harm, even when there are security guards who are there to look after them. In one instance it was the security guard who caused the harm to the child. Through Contextual Safeguarding and the assistance of SAPS and the Justice Department by obtaining police clearances for all employees who work in a school events like these should not take place. However, there is a reliance on effective and timeous turnaround of documentation when applying for these clearances, which would protect the school and perhaps prevent such adults from being employed by either the school or the security company who provides the security guards for the school.

The Contextual Safeguarding Theory links with SASA (RSA, 1996b), the Children's Act (RSA, 2005), Regulations for Safety Measures at Public Schools (RSA, 2001), the Constitution (RSA, 1996a) and the NSSF (DBE, 2016) which all place emphasis on providing environments for children which are safe and secure, and which should protect children from coming to harm.

The next chapter presents the research methodology and design for this study. I will also elaborate on the data collection and analysis methods used in the research study.

## **CHAPTER 4**

### **METHODOLOGY AND RESEARCH DESIGN**

#### **4.1 INTRODUCTION**

Research methods are the purposeful and systematic ways in which the data is collected and analysed (McMillan & Schumacher, 2014). Qualitative, quantitative or mixed method approaches to research can be used. This study made of use a qualitative approach to gain a better understanding of the duty of care at primary school educators before and after the formal school day.

In this chapter the choice of research paradigm, research methodology research design, sampling and data collection and analysis is presented and motivated. In addition I explain how I enhanced the rigour of the study by explaining the quality measures I implemented. The chapter is concluded with an explanation of how I addressed the ethical issues pertaining to the study.

#### **4.2 RESEARCH PARADIGM**

Research is conducted to develop knowledge. The purpose of conducting research is to gather knowledge, inform actions and gain evidence for theories and contributing towards the general field of knowledge (Zarah, 2024). Research is used as a tool to gain knowledge and facilitate learning, as well as being used as a means to understand issues and to inform other people of these issues and possible solutions (Zarah, 2024).

Research paradigms form the basis of the way we think about the world and is based on a system of ideas, beliefs, values and habits. A research paradigm can therefore be described as a worldview or philosophical framework to guide research (Ulz, 2023). The research paradigm will structure the foundation of the research, will guide the knowledge sought and how to collect the data required to answer the questions raised in terms of the knowledge to be attained. During this process the researcher must also understand that their own biases, assumptions and beliefs may affect the research process (Ulz, 2023).

Positivist researchers believe that there is one single worldview which can be measured and understood. Researchers who use this paradigm believe that results of one study may be generalised to other similar situations. Interpretivists believe that there are multiple realities due to the complex nature of human behaviour. Knowledge is based on the study and interpretation of the meaning created by this behaviour or responses of people to events being studied. These studies tend to be subjective and can be affected by the researchers own opinions (Ulz, 2023).

This study is founded in interpretivism. The word 'interpretive' is defined in the Concise Oxford English Dictionary (2008:742) as "relating to or providing and interpretation". Interpretivists hold that in order to fully understand human actions we need to reach a state of empathetic understanding (Thompson, 2024). Human beings are not merely puppets who respond in a pre-conditioned manner, they will respond to different stimuli in a way that defines their understanding of a situation or an incident. They make meaning of the incident through interpreting it according to their life view (Thompson, 2024). Therefore, interpretivist research is delving into an experience and trying to make sense of it from the point of view of the participant.

Educators have a wealth of personal experience in dealing with children and have developed good common sense and strong beliefs of what is right and wrong. These beliefs are frequently based on lived experiences and situations they have dealt with in their teaching. This allows for a good basis for qualitative research as the chosen method for this study.

This research is based on a qualitative design using a constructivist/interpretivist paradigm. A constructivist/interpretivist paradigm relies on the participation of others and their view of the situation being studied, at the same time recognising that there may be an impact on the study resulting from their own experiences and background and recognises that researchers interpret these experiences to gain a deeper understanding of the event being studied (Pervin & Mokhtar, 2022). A constructivist/interpretivist paradigm understands that reality is socially constructed, and we make meaning of the world through the human experience (Creswell, 2003). To understand what is observed one must interpret it; to construct the meaning, one is interpreting the "constructions of the actors" involved (Schwandt, 1998:222). The constructivist/interpretivist is specifically concerned with knowing and being and

understanding the details of situations in the everyday world. This can be achieved through a variety of methods: watching, listening, interviewing, recording, and examining depending on the purpose of the inquiry (Schwandt, 1998). As educators we naturally watch and listen to people and examine behaviours and reactions to behaviours. This study makes use of this paradigm as it endeavours to take the words and interpret the experiences of the participants to form an understanding of their knowledge of the topic of the study.

I focused on the 'words' of the participants and made use of these words to understand their experiences and interpreting these experiences to form an understanding of the study. Humans tend to be social creatures and through actively talking about experiences we learn how others 'see' their experiences.

#### **4.3 RESEARCH METHODOLOGY**

Research can be conducted through a qualitative or quantitative approach. A quantitative approach tends to focus on statistics and numbers, whereas qualitative research looks at non-numerical data and focus on the understanding of individuals' understanding, beliefs and motivation. Qualitative research explores the deeper understanding of peoples' perspectives of a particular phenomenon (Hassan, 2024).

Qualitative research focuses on words rather than on numbers and is used to gain a deeper understanding of the area being researched. The researcher using qualitative methods of research will delve deeper into the participants lived experiences to gain meaning of a situation or the phenomenon being studied. The questions used in qualitative research are typically designed to be exploratory and focused on understanding the participants understanding and perspective of the experiences. To gain this understanding interviews may be conducted. The interviews may take the form of structured or semi-structured interviews. These interviews are used as they may probe deeper into the issue by asking open ended questions which allow for follow-on questions to take place without disrupting the interview process.

Data gathering for qualitative research is not limited to interviews but may take the form of observations and analysis of texts or other printed media. One of the strengths of qualitative research is that it provides rich, detailed information which may help to understand complex phenomena being studied. However, they may also be very

subjective and may not necessarily be easily generalised to similar situations. This research method also tends to be time consuming in that the researcher sits with each participant and interviews them and then has to transcribe the data prior to analysing the data collected (Hassan, 2024). As the research focus of this study is on the lived experiences of the participants and their day-to-day duty of care of learners to develop a better understanding of the phenomenon, a qualitative approach was the approach of choice for this phenomenon.

This approach to the study relied on how the participants viewed the situation being studied. As this approach relied on how the participants made meaning of the phenomenon through analysis of their perceptions, understanding, knowledge, feelings, attitudes, values and experiences (Nieuwenhuis, 2016), it required my interaction with participants to gain a better understanding of their knowledge and experiences. Interaction through interviews and discussions are vital to creating a greater understanding of the experiences of the participants. It is through discussion that we can develop this understanding and make meaningful interpretations of the responses.

#### **4.4 RESEARCH DESIGN**

There are various research designs that could be used for qualitative research. As my study was specifically designed to investigate how duty of care is perceived outside of formal school hours, a phenomenological design was the selected design.

Phenomenological research seeks to study a phenomenon and then make meaning of that phenomenon as seen and experienced by the participants and the nature of their experience with the phenomenon (Good, 2023). This research design allows for the researcher to record and analyse the feelings or perceptions of the participants. It is their [participants] view that matters and it is their view that the researcher is aiming to use, to analyse, to gain understanding, and reach an outcome to the research questions. The assumptions of the researcher should be irrelevant to the outcomes of the research (Good, 2023).

Phenomenological research is a broadly sociological approach as it aims to understand the experiences of the participants. The research report can be very

detailed as the researcher may be able to capture the phenomenon through the lens of the participants quite comprehensively.

The disadvantages of this design are:

- The participant base is usually small, resulting in a smaller data set which can make it difficult to draw wider conclusions on the topic;
- Research bias must be avoided, and it may be difficult to remove oneself and one's own experiences, biases or prejudices from the research;
- As phenomenology relies on the experiences of the participants, the accuracy of how they experienced the phenomenon may be vague due to the time lapse between the experience and the research being conducted. It also depends on how well the participants can verbalise their experiences; and
- This research is time-consuming, as there is interpretation of the data gathered and it can take weeks to accurately transcribe the information (Good, 2023).

This research takes the form of a phenomenological design aiming to understand the experiences of educators and principals who must practise duty of care (the phenomenon) daily. A phenomenological approach allowed for the reflection and analysis of participants' lived experiences with duty of care; however, it must also be noted that a few participants tended to veer off course of the actual questions due to the nature of the interviews.

## **4.5 SAMPLING**

This section provides an overview of sampling techniques and the selection of participants.

### **4.5.1 Selection of participating schools**

When considering the selection of schools the ideal was to have a mixed bag of fee-paying and non-fee-paying schools as this would have given a better understanding of the expectations of the practise of duty of care outside of formal school hours required of the educators and the schools. However, although permission was granted by the SGB chairpersons of the schools setting up the interviews was problematic due to the unavailability of the staff at times which were convenient to both the participants and the researcher.

As a result participating schools were selected from two bordering districts in KwaZulu-Natal. The participating schools were all fee-paying schools; however, they targeted very diverse families due to their location and the choice of home language. One private school was approached to participate in this research as this school also falls within these districts and it seemed to be a good comparison between best practices of what is expected at public schools and private schools in the districts.

Each of the public schools selected were selected for their diversity of learners and their location. This took into account the distance of the school from the learner's homes and how many learners would rely on transport other than parents to get them to school and home again.

#### **4.5.2 Sampling of individual participants**

Sampling is the selection of the participants to be approached to participate in a study. Purposeful sampling is used to select specific members of the population based on set criteria for the study. The sample selected may be used to represent a group which would be the target of the research study. Purposeful sampling is often used in qualitative studies where social issues may be identified. The sample group is identified to help the researcher to develop greater insight into the study questions (Stratton, 2024).

An advantage of purposeful sampling is that it requires less resources and time than most other traditional methods of research and can be used to compare different samples (Stratton, 2024) such as the educators, departmental heads, deputy principals and principals in this study to show the differences in their experiences and to evaluate whether they perceive their duty of care to be different due to the level of responsibility they have.

Multi-level sampling facilitates credible comparisons between sub-groups or different levels of the study. For example, comparing the responses to questions from educators to the responses from principals who are on a different level of management and therefore have a different perspective of the duty required of them (Onwuegbuzie & Leech, 2007).

The responses from the various levels allow for a certain amount of generalisation as they are comparing experiences from different levels within a school hierarchy. Regardless of how the sample groups are selected the researcher must always bear in mind that they are selecting participants for the unique value they bring to the study based on their experiences and these experiences yield their own descriptions which add to the overall value of the study (Onwuegbuzie & Leech, 2007).

Purposeful, multi-level sampling was used as this research is aimed at getting the experiences of and responses from specific members of the school personnel who deal with various issues and matters pertaining to their level of experience and work expectations according to the Personnel Administrative Measures (PAM) document (RSA, 1999). Multi-level sampling occurs due to the groups in schools that will be interviewed, namely educators, departmental heads, deputy principals and principals.

Participants were selected from a minimum of six schools in the coastal region of KwaZulu-Natal and included both independent and public primary schools. There were twenty-four (24) participants in this study.

Participant selection was purposeful and limited to members of six primary schools in two coastal districts of KwaZulu-Natal. The participants were selected for their experiences of duty of care to which they can relate. Participants were the principal or acting principal, deputy principal (if school has one), departmental head and a post level 1 educator from each participating school. The reason for making use of purposeful sampling was that I believed these participants were able to provide the best information to help answer the research questions for this study (McMillan & Schumacher, 2014). The selected participants are responsible for the safety of learners and must account for decisions made which impact the safety of learners at schools. School governing bodies decide on the opening and closing times for school gates and for the formal hours of school and these decisions are implemented by the principal and cascade down to the educators. Decisions need to be made with contextual factors in mind and these include learner transport, employing extra staff (security guards), or putting measures in place which impact the school and the learners.

## **4.6 DATA COLLECTION STRATEGIES**

Data collection forms an integral aspect of a research study. The purpose of collecting data serves to:

- provide information on the phenomenon being studied;
- measure the progress or effectiveness of interventions created to solve a particular problem;
- allow for decision-making processes to be made from an evidence-based platform;
- identify patterns or trends over time; and
- monitor or evaluate the effectiveness of programmes implemented (Hassan, 2024).

In a qualitative study non-numerical data is collected. This is in the form of opinions, experiences, perceptions and feelings of participants through various techniques. These techniques include interviews, focus group sessions, observations and the analysis of documents. Qualitative data collection allows for an in-depth exploration of the research questions and can provide detailed insight into human experiences (Hassan, 2024). Data for this study was collected through semi-structured interviews and analysis of documents provided by the participating schools.

### **4.6.1 Semi-structured interviews**

Interviews require one-on-one conversations between the interviewer and the participant. These interviews may be structured or unstructured (Thompson, 2016). Structured interviews have set questions which are asked in the same way to all participants. Unstructured interviews take the form of guided conversations. There is no set list of questions, however, the interviewer has a list of proposed questions or topics to be covered but allows for additional questions to be added depending on the responses of the participants (Thompson, 2016). Semi-structured interviews have the best of both structured and unstructured interviews. In semi-structured interviews the phrasing and ordering of the questions may be rearranged depending on the direction

of the responses from the participants. The questions are open-ended and responses frequently allow for a comparison between the responses given (George, 2022).

Each interview process comes with its own set of advantages and disadvantages. The advantages of semi-structured interviews are:

- The interviewer gets the best of both worlds as it combines the elements of a structured interview and unstructured interview making the responses of participants comparable, data gathered is reliable and there is flexibility to ask follow-up questions to gain in-depth responses through probing further into a response where there may be a rich response.
- Two-way communication is encouraged while at the same time the researcher may keep the participant on task avoiding unnecessary responses which may detract from the research questions.
- Semi-structured interviews have the advantage of introducing more detail to the richness of open-ended responses. Should a question not be understood clearly the researcher may clarify, rephrase or elaborate on the question to gain further insight into the response.

As with advantages semi-structured interviews also have their disadvantages:

- The flexibility of the semi-structured interview creates challenges in comparing responses between participants if the researcher has veered far away from the predetermined questions, giving a low validity to the overall responses.
- Due to being open-ended the researchers must ensure that they avoid leading questions which potentially create observer bias. The participants also may seek to provide the responses they think the researcher wants which would mean that the response is not an actual experience or not truthful to the experiences they are relating.
- Semi-structured interviews may be difficult to conduct as there needs to be a good balance between the planning of the questions and allowing for spontaneous side questions. Participants may be willing to share certain information but hesitant to respond to other information which can result in bias when responding. The researcher needs to strike the right balance between being encouraging to gain the responses yet remain unbiased so as not the

lead the participants to give the responses the researcher is wanting to get (George, 2022).

Semi-structured interviews were chosen as the primary data collection method for this study. Semi-structured interviews allow for flexibility during the interview process as the interviewer may deviate from set questions to probe more deeply into responses of the participant.

The questions for this research were based on the duty of care performed by educators at schools. Firstly, I wanted to ascertain what the participants understood about their duty of care. As this research focuses on the hours outside of formal school hours it was important to gain information on the practices of this duty during the times when learners arrived for school before school gates officially opened for the day and after the last formal school activity had ended for the day. I asked participants if they had been required to wait after the end of the formal school day for parents to collect learners as this allowed for responses on how parents responded to the educators waiting with their children, as well as how the educators themselves felt about the expectation that they will wait for the learners to be collected. I also wanted to know if parents understood that they have a responsibility and the accountability towards their children to collect them on time.

It is also important to note that as the schools are not specifically zoned to areas where the learners came from this also impacted on the arrival and collection times of learners. This led to asking about factors such as transport and how this may affect the arrival and collection times of learners. I asked if there were any specific policies or documents that the schools sent out to parents regulating the times of arrival and collection of learners and how these were followed up on. Finally, I wanted to know where the participants perceived the boundary of their duty of care; where exactly did they feel it began and where it ended. The interview protocol is inserted as an addendum at the end of this thesis.

#### **4.6.2 Document analysis**

Document analysis allows for the systematic reviewing or evaluation of documents related to a study. Documents include a wide variety of texts and allows for the

selection of the relevant documents to be studied in context to the research (Hassan, 2024). Documentary analysis provides rich information when it is difficult to spend a lot of time with the participants. Documents may also be used when seeking to gain further insight into the research topic or they may corroborate information gained through interviews, thus giving validity to the responses of the participants (Hassan, 2024).

Document analysis has been used by researchers for many years. The data is examined and interpreted to gain understanding and develop knowledge through the analysis, which gives insight into recorded statements and may provide corroboration or convergence of evidence (Bowen, 2009:28). Analysis of documents provides historical or background information into the area being studied. Studying the documents could suggest questions to be asked in the interviews and help to assist with the tracking of changes and developments in the area being studied (Bowen, 2009:30).

Documentary analysis is important to research as it provides contextual information and may provide a key to understanding the trends under study. Documents also allow for corroboration and validation of the findings derived from interviews or other research methods employed (Hassan, 2024). In this research, the documents confirmed the responses of participants to specific questions relating to the policies and procedures of the participating schools.

Advantages of document analysis are the cost effectiveness; exactness of references; a broad time span coverage of many events and settings; and the stability of the information being studied. The disadvantages of document analysis could be a lack of information because of incomplete or unsatisfactory responses by participants and insufficient detail as participants do not always provide sufficient details to provide answers to research questions. Retrievability could be difficult as some documents may be blocked on certain domains and may be biased selectivity because they may have been selected to be aligned with specific policies and procedures or a specific agenda (Bowen, 2009:32).

The documents selected for this study were primary sources used at this time by the participating schools. They included the policies, circulars and letters relevant to the

research questions. It was important to analyse these documents to show that the participating schools have put procedures in place to protect the staff and the learners when the learners are at school outside of formal school hours. The also corroborate that schools take this matter seriously and regularly send reminders to parents of the opening and closing times of schools and the procedures should parents not collect their children timeously. These documents proved to provide validation and corroboration of the responses of the participants, thus giving validity to these responses. Excerpts of these documents are included in the findings section of this thesis.

## **4.7 DATA ANALYSIS**

In the following two sub-sections I discuss how the data was analysed.

### **4.7.1 Analysis of interview data**

Analysis of the interview data begins once all the data for the research has been collected. To begin with it is important to maintain anonymity of participants, therefore they are all assigned with a number or pseudonym. In this research participants were assigned with a P for principal, DP for deputy principal, DH for departmental head and or Ed for educator. They were then also assigned a number from 1-6 relating to the participating schools. This allows for organisation of data.

Once all the interviews were conducted the audio recordings were transcribed. For quicker transcription of the audio files I used TurboScribe ([turboscribe.ai](https://www.turboscribe.ai)), an app available for the transcription of audio files to text files. The audio files contained many filler words, such as “um”, “like” and “like that” which were included in the text transcripts thereby making them verbatim transcriptions. However, these words were not used in the quotes where they were given as responses to questions. All text transcriptions were checked for accuracy against the recordings.

The text transcriptions allowed me to begin the coding process. This involved comparing the responses and to begin to determine categories or themes – recurring responses which stood out and showed the similarities or differences between the participating schools and participants.

Thematic analysis was chosen to analyse the content. This required identification of common topics, ideas or patterns to responses which allowed for preliminary conclusions to be drawn regarding the views of the participants experiences. These are the codes which were identified and selected from the data. Once the codes were identified they may be combined into appropriate themes. Themes are the broader subjects or areas which were identified through the coding – collating similar responses or questions under one broader theme to condense the information into a more cohesive report (George, 2022).

As this research was aimed at identifying a specific area of duty of care, I applied a deductive approach to the analysis of the themes. This involves investigating whether the responses confirmed the pre-determined themes or ideas based on the questions asked during the semi-structured interviews. As this analysis is subjective, it was important to ensure that I did not rely on my own interpretation or judgement of the responses to ensure that there was no influence of bias on my themes (George, 2022). Once these themes were identified I was able to then begin with the findings of the research.

#### **4.7.2 Analysis of selected documents**

Analysis of the selected documents requires that all documents are systematically reviewed and evaluated to determine whether they contain valuable content within the identified themes, or whether they constitute their own themes (Hassan, 2024). The documents used in this research were letters from the schools to parents, the code of conduct for learners, and circulars sent home on a regular basis to reinforce the schools' policies and procedures for the end of the formal school day. It was important to use only documents pertaining to the research question and not to evaluate documents which do not relate to this research.

Once all documents were read and analysed for their applicability to the study through content analysis – looking at what is stated in the document - and having understood the context of the documents codes could be extracted from the documents. These codes were then organised into the relevant themes of the research. As there were limited documents analysed and only documents pertaining to the research, the themes had already been pre-determined for this document analysis. The documents

were also used to triangulate the data gained from the interviews. Thereafter the documents were used in the findings to corroborate the verbal responses to questions (Hassan, 2024).

## **4.8. QUALITY MEASURES**

Data is collected in a study to provide information that may not be present in the currently available literature. It is therefore important to ensure that it is accurate and the quality of the data allows for better decision-making (George, 2022). Research is done to improve the understanding of the phenomenon. From the evaluation of the data collected recommendations can be made on how to improve the programmes or policies in place. This allows for increased accountability when evaluating the implementation of policies and make improvements in the areas where processes are lacking (George, 2022).

### **4.8.1 Trustworthiness**

The key to evaluating the trustworthiness of a study relies on the credibility, transferability, dependability, and confirmability of the study (Shenton, 2004). To maintain the trustworthiness of this research, I have used the guidance of my supervisor, or member checking, throughout the study. I have also followed the guidelines of the research criteria for maintaining an accurate report of my findings. Giving a profile of the participants and schools maintains a level of transparency which is essential for the trustworthiness of the study.

### **4.8.2 Dependability**

Dependability refers to the extent to which this research may be duplicated under similar circumstances and using similar processes (Stenfors, Kajamaa and Bennett, 2020). Dependability requires that accurate records are kept of the study and that transcripts of interviews are kept for future reference (Shenton, 2004). For a study to be dependable there should be sufficient data provided that other researchers would be able to duplicate the study. Enough information should be provided on the data collection and analysis process that another researcher may duplicate the study, albeit reaching a different conclusion (Stenfors et al., 2020).

### **4.8.3 Confirmability**

Confirmability looks at the objectivity of the researcher and whether the researcher can put aside any specific bias towards a particular participant. An audit trail should be maintained to ensure that all data is handled in a professional manner (Shenton, 2004). Confirmability relies on a clear link between the relationship of the data and the findings thereof. The researcher must show how they have reached their findings and make use of detailed descriptions and quotes in the findings. Confirmability of the study is enhanced by the inclusion of the participants' quotes in the findings of the research (Stenfors et al., 2020).

### **4.8.4 Credibility**

Credibility of the research relies on the plausibility and trustworthiness of the study. For this research to be credible it requires an alignment between the theoretical framework, research questions, data collection methods and the analysis and findings of the research. The sampling processes, volume of data and the analytical steps taken must all be appropriate to the framework of the study. The report findings should address the research questions and align with the existing literature and should not veer off in directions not indicated in the study (Stenfors et al., 2020). Therefore, for this study to be credible it should answer the questions posed in the study and align with the purpose of the study while adhering to the current literature without being distracted and veering off to answer questions not falling within the parameters of this study.

### **4.8.5 Transferability**

Transferability is the generalisation of the results of the study. In other words: could the results be generalised or transferred to other schools in the same province or the same country with a fair degree of accuracy (Shenton, 2004)? Transferability of this study would include whether other schools with similar demographics have similar problems and would the outcome of the study apply to these schools. An audit trail of the research process will allow for transferability of the study through similar data gathering processes.

## 4.9 ETHICAL CONSIDERATIONS

Ethical considerations are the principles which guide research practices. When using people as the participants in research studies there is a code of conduct to adhere to. It is important to ensure that the rights, dignity and confidentiality of the participants are protected (Bhandari, 2024). To ensure that these principles are adhered to the following guidelines must be followed:

- Voluntary participation – the participants must know they are participating voluntarily and may withdraw from the study at any point they so choose.
- Informed consent – Participants are informed of the purpose of the study, the benefits and the risks involved prior to agreeing to participate in the study.
- Anonymity – Information which may personally identify any participant is not to be collected or stated in the study.
- Confidentiality – The researcher may know who the participants are, but that information is not shared with anyone else. All personal details are hidden through giving each participant a pseudonym.
- Potential for harm – All physical, social or psychological types of harm that may be posed through the study are to be kept to a minimum.
- Communication of results – Work should be free of plagiarism, research misconduct and the results or findings of the research should be presented accurately (Bhandari, 2024).

To adhere to the above guidelines, I put the following principles in place:

- Informed consent was achieved by ensuring all participants in the study had been given a full explanation of the study, an opportunity to terminate participation in the study, and full disclosure of any potential risks involved in the study.
- Participation in this study was voluntary, and the participants could withdraw at any point.
- Participants were informed that they would remain anonymous, and their details would be kept confidential throughout the study.
- Potential for harm – this study is a low-risk, high benefit study and posed little harm to any of the participants through their participation.

- All participants have been informed that they may have a copy of the final report once it has been completed, submitted and approved.

#### **4.9.1 Ethics approval and permission to conduct the research**

Ethical clearances are required as all data will be gained through the participation of selected participants. The process involved applying for ethical clearance from the Ethics Committee of the Faculty of Education at the University of Pretoria once the proposed study has been approved (See Addendum A) Thereafter, permission to conduct research was requested from and granted by the KwaZulu-Natal Department of Education (Addendum B).

#### **4.9.2 Gaining access to selected schools and individual participants**

To gain access to the schools and participants, letters were sent to the SGB chairperson of each school requesting that they give permission for the school to participate in the study. Thereafter, letters were sent to the principals of the schools also requesting consent to conduct the interviews. Once both were given the principals were requested to inquire if any staff members were interested in participating in the study. Copies of these letters are marked Addendum C and D. These participants had to fall within the pre-determined levels of management and include Post Level 1 educators. Once identified, letters were sent to these individuals inviting them to participate in the study.

#### **4.9.3 Informed consent**

All potential participants received information about the study before consent was given to participate in the study. This required me to inform the schools and participants what the focus area of the study was, why I was interested in researching this topic, that there was no personal risk to any of the participants and that they could withdraw from the study should they choose to do so.

Participants were told they have the right to participate or withdraw from the study, they have the right to ask questions should there be a need for clarification on any aspect of the study, and build trust with the researcher through open and clear communication. Letters of informed consent were sent to all participants and a copy

of these letters is marked Addendum E. Once the participants had been made aware of their rights and the choice to participate they were asked to sign a letter of consent which is marked as Addendum F.

#### **4.9.4 Anonymity and confidentiality**

Anonymity requires that only the researcher has access to the names of participants (McMillan & Schumacher, 2014). It is important to maintain the confidentiality of the data so that data collected cannot be linked to the participants of the study. This was done by collecting data anonymously using aliases (McMillan & Schumacher, 2014). I have made use of aliases, for example P1 (indicating the principal of School 1), DH3 (indicating the departmental head of School 3) and Ed2 (educator of School 2) to maintain the anonymity of all participants and the confidentiality of the data. All responses to interviews will remain in the possession of my supervisor and I and safeguarded at the University of Pretoria as determined by the Ethics Committee of the Faculty of Education.

#### **4.9.5 Voluntary participation**

Voluntary participation requires that participants are not coerced, forced, compelled, or required to participate in the study (McMillan & Schumacher, 2014). The key to ensuring that participants voluntarily participate is through the informed consent of the participant allowing them to decide whether they would like to participate or not. In addition participants were assured that they may withdraw from the study at any time during the data collection phase.

### **4.10 CONCLUDING REMARKS**

This chapter dealt with the research methodology and the research design was presented and motivated. A qualitative phenomenological design was used.

The chapter was concluded by a discussion of the quality measures I implemented and an explanation of how the ethical issues pertaining to the study were addressed. In Chapter 5 I present and discuss the data.

## CHAPTER 5

### DATA PRESENTATION AND ANALYSIS

#### 5.1. INTRODUCTION

Chapter 4 detailed the research methodology and outlined the research design that was used in this study. A qualitative approach was taken, as it is the best method for interpreting the lived experiences of the participants (McMillan & Schumacher, 2014) who are currently teachers or principals at primary schools in the coastal region of the Lower South Coast of Kwa-Zulu-Natal. The option of semi-structured interviews with open-ended questions was deemed the best way to get participants to elaborate on their answers. Questions which require a simple yes or no answer do not give adequate information to the researcher, whereas an open-ended question allows for the participant to give more detailed information. It also provided me the opportunity to read between the lines when answers were given and to pursue a particular line of questioning that may provide more in-depth responses from a participant to a particular question or response (Nieuwenhuis, 2016; Oosthuizen, 2015; McMillan & Schumacher, 2014).

Letters and other documents relating to the research question were also examined to clarify certain aspects of the research problem and to identify the extent to which parents at the participating schools are informed of policy regarding opening and closing times of the formal school day, the expectations of parents to adhere to these times and the resulting consequences should non-compliance be a problem at these schools (Bowen, 2009).

Furthermore, the theoretical framework enabled me to provide descriptions of what the literature as well as legislative frameworks have to say in regard to the duty of care for learners in primary schools. In this regard Contextual Safeguarding Theory was particularly relevant to this research topic.

This chapter firstly provides general information and biographical information of the profiles of the participating schools and the individual participants. Thereafter the data is presented according to the themes that were identified during the data analysis. The themes are:

- participants' understanding of the 'duty of the care';
- where does 'duty of care begin and end'?
- early arrival of learners and procedures for caring for these learners;
- end of formal school day procedures, procedures for learners attending sport activities that end after formal school hours;
- learners not collected within allocated time frames and procedures for these learners;
- reasons for the early drop off and late collection of learners;
- teachers having to wait for learners to be collected;
- parental accountability and the expectations that teachers will look after their children;
- perceived boundaries for duty of care by teachers and schools;
- policies for early drop off and late collection of learners, incidents reported outside of formal school hours; and
- possible solutions to the problem of early drop offs and late collections.

## **5.2. PROFILES OF THE PARTICIPATING SCHOOLS**

All the schools that participated in this research are primary schools in KwaZulu-Natal. These schools offer Grades R to Grade 7 except one that only enrolls learners from Grades R to 3 (Foundation Phase). Five of the participating schools are public fee-paying schools varying in ranking from Quintile 4 to Quintile 5 schools. One is regarded as being a rural school while the other schools all fall within an urban setting, namely within the Port Shepstone central business district which adds to the security concerns for the safety for learners outside of the formal school hours. One participating school is an independent school and the demographics and socio-economic status of the families at this school can be described as more privileged than the participating public schools. The differences between the demographic and socio-economic profiles of the participating public schools and the participating independent school were noticeable.

Five of the six participating schools have English as the language of teaching and learning. The remaining school's language of teaching and learning is Afrikaans. Afrikaans and isiZulu are offered at the English-medium public schools as First Additional Language where parents have the choice to choose between the two

languages. English is the First Additional Language of the Afrikaans-medium school. This school has a number of classes for learners with barriers to learning whereas the other public schools do not have specific classes for children with learning problems. The Afrikaans public school draws learners from a large area as it is the only Afrikaans-medium primary school in the area. Fifty percent of the parents at the school apply for fee exemptions and the school has a feeding scheme in place to feed approximately eighty learners per day. They offer swimming, rugby, netball, hockey, athletics as extra-mural sport and will be introducing soccer due to the demand for this sport. Their focus is on safety and security while balancing this with quality teaching and learning.

The four English public schools also offer various sporting codes in the afternoon with swimming, athletics, rugby, hockey, netball and soccer being the sports of choice for the majority of the learners. One school tries to ensure that there are very few out of formal school time fixtures to prevent problems with transport for learners. Very few schools have their own school buses for transporting learners to other schools for fixtures and rely on parents to transport their own children. This frequently poses challenges as the distances between these schools are approximately 45kms.

As this region is a coastal region there is no circular feeder area, but rather an elongated feeder area that stretches along the coastline for about 150kms. Because this region of KwaZulu-Natal is mostly rural, the number of fee-paying schools is limited. Therefore, the parents who can afford to pay school fees generally prefer to send their children to these schools despite the distances. However, this means that parents do not necessarily choose the closest school to their place of residence or work, but often send their children to a school perceived as being a school which offers more than others in terms of quality of teaching and extra-mural activities. This is one of the reasons why I argue that there is this gap in the knowledge about the application of duty of care for educators outside the formal school hours. In years gone by the vast majority of learners would walk or cycle safely to and from school each day as they lived relatively close to their school. However, more recently this is no longer a criterion for parents when selecting schools for their children. They want the best they can afford to offer their children and will frequently send them to a school perceived as being one that will provide their children with the best possible education regardless

of the distance they have to travel in order to do so. A summary of the profiles of the participating schools is presented in Table 5.1.

**Table 5.1: Profiles of participating schools.**

	School 1	School 2	School 3	School 4	School 5	School 6
<b>Public / Independent</b>	Public	Public	Public	Public	Independent	Public
<b>Urban / Rural</b>	Semi-rural	Urban	Urban	Urban	Urban	Urban
<b>Quintile Ranking</b>	4	5	5	4	N/A	5
<b>Number of learners</b>	512	708	708	961	349	633
<b>Number of Educators</b>	29	34	29 + 2 sport coaches + 5 teacher assistants	26	19	31
<b>School fees</b>	R25870 (pa)	R14630 (pa)	R12500 (pa)	R3750 (pa)	R78000 (pa)	R13100 (pa)
<b>Greatest distance travelled by learners</b>	+/- 40km	60km	26km	60km	81km	45km

### 5.3. PROFILES OF THE INDIVIDUAL PARTICIPANTS

I interviewed educators in Post Level 1 positions, departmental heads, deputy principals and principals to gain as many perspectives as possible. Each post level requires a certain perceived level of duty of care, with the responsibility of principals being regarded as greater as compared to that of a Post Level 1 educator due to them being responsible for the professional management of the school as stipulated in Section 16(3) of the South African Schools Act (RSA, 1996b).

The majority of the participants have a Bachelor of Education degree. Two have honours degrees and two have masters' degrees. Some of the participants have a National Certificate in Education, an Advanced Diploma in Education or a National Professional Diplomas in Education. Three of the participants are currently upgrading their qualifications; one is studying to obtain an honours degree, one is doing a masters' degree, and one is doing a Ph.D. All the participants have more than 5 years teaching experience and a few of the participants have over 30 years teaching experience. The more experienced participants frequently mentioned how expectations of education and educators have changed during their careers.

To maintain the confidentiality of all participants they have been coded according to their post level. Participating principals are indicated as P1, P2, P3, P4, P5 and P6. Deputy principals are indicated as DP1, DP2, DP3, DP4, DP5 and DP6. Departmental heads are indicated as DH1, DH2, DH3, DH4, DH5, DH6 and teachers as Ed1, Ed2, Ed3, Ed4, Ed5 and Ed6. The number allocation corresponds to the schools that participated in the study. Therefore, all participants allocated the number '1' are from the same school, and the same applies to all the other participants. A summary of the profiles of the individual participants is presented in Table 5.2.

**Table 5.2: Profiles of individual participants.**

<b>PARTICIPANT</b>	<b>POST LEVEL</b>	<b>QUALIFICATION</b>	<b>TOTAL YEARS TEACHING OF EXPERIENCE</b>	<b>TEACHING CURRENT GRADE</b>
<b>P1</b>	4	HDE	43	Retired end 2023
<b>P2</b>	4	B.Sc., HDE	29	Principal
<b>P3</b>	4	HDE	39	Principal
<b>P4</b>	4	MBS, IRDP, B.A., Dip.Bus.Mgt.	17	Executive School Management
<b>P5</b>	4	Professional teaching certificate	40	Not teaching
<b>P6</b>	4	HBEEd.	28	Principal

<b>DP1</b>	3	Diploma in Education	31	Gr 6 & 7 NS, Gr 7 Tech
<b>DP2</b>	3	NPDE, Diploma in Education, ACE	22	Deputy Principal
<b>DP3</b>	3	HDE	32	Gr 7
<b>DP4</b>	3	NQF Level 5	11	Gr 3
<b>DP5</b>	3	HDE	30	Gr 4 Afr, Gr 6 Soc. Sc. Gr 7 EMS
<b>DP6</b>	3	M.Ed.	28	Deputy Principal
<b>DH1</b>	2	B.Ed.	17	Gr 2
<b>DH2</b>	2	HDE	30	Gr 1
<b>DH3</b>	2	B.Ed.	16	Gr 4
<b>DH4</b>	2	Professional teaching certificate	20	Gr 1
<b>DH5</b>	2	B. Prim. Ed	20	Gr 7
<b>DH6</b>	2	B.Ed.	22	Gr 1
<b>Ed1</b>	1	B.Ed.	6	Gr 1
<b>Ed2</b>	1	B.Ed	19	History, Art
<b>Ed3</b>	1	HDE	38	Gr 1
<b>Ed4</b>	1	Professional teaching certificate	8	Gr 2
<b>Ed5</b>	1	HDE	35	Gr R
<b>Ed6</b>	1	B.Ed.	18	Gr 1

<b>ABBREVIATION</b>	<b>QUALIFICATION</b>
B.A.	Bachelor of Arts
B.Ed.	Bachelor of Education
B. Prim. Ed	Bachelor of Primary Education
B. Sc.	Bachelor of Science
M. Ed	Master of Education
HDE	Higher Diploma in Education
MBS	Master in Business Studies
IRDP	Industrial Relations Development Programme

Dip. Bus. Mgt.	Diploma in Business Management
NPDE	
HBEEd	
ACE	Advance Certificate in Education

## 5.4. PRESENTATION OF DATA

In this section I present and discuss the data. This section is structured into sub-sections according to the thirteen themes which emerged during the analysis of the data.

### 5.4.1. Theme 1: Participants' understanding of 'duty of care'

Duty of care to learners is not simply a case of implementing policies drawn up by the Department of Basic Education, provincial departments of education and school governing bodies (SGB), and the school management team (SMT); it also requires a full understanding of the content of the policies and the knowledge to apply duty of care to everyday situations within a school environment.

Sub-section 28(3) of the Constitution (RSA, 1996a) determines that a child is a person under the age of 18 years. Section 29 stipulates that every child has the right to a basic education. Section 1 of the Children's Act (RSA 2005) also provides that children should be safeguarded and that they should be guided in respect of their education. The South African Schools Act (1996b) lays out regulations for the rights of learners and Clause 4(7) of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (RSA, 1998a) states that all learners have the right to a safe environment which is conducive to education. School facilities, (including equipment and furniture) should be well maintained, secure and clean. Clause 4(2) of The Regulations for Safety Measures at Public Schools (RSA, 2001) stipulates that all schools are declared as drug and dangerous object free zones. This means that schools and teachers must protect all learners from any potential harms and hazards they may face during a school day. The Code of Professional Ethics as adopted by the South African Council for Educators (SACE) defines an educator's duty to learners as being one where they must take all reasonable steps to ensure the safety of learners and do what is practically possible to inform parents of the learner's well-being (SACE, 2018).

The understanding of duty of care towards learners varied among the participants and seemed to be influenced by their post level, academic qualifications and the years of teaching experience. For example, P1 stated that:

*Duty of care is the responsibility for safety and security of children while they are at school, especially the minors.*

P2 remarked:

*I don't know if I really understand it, but what I think it is, is that it is our moral responsibility to actually be aware of what happens to the children at school and out of school.*

P3 likened duty of care to pastoral care by stating:

*Well, the children are at our school. Pastoral care should be given at all times, but there is a limit to it. When children finish at 12:15, I expect the parents to pick their children up within half an hour. We offer that pastoral care where I've got teachers on duty, and they look after the children.*

P6 provided a broader explanation for duty of care by explaining:

*Duty of care I see is basically the school's responsibility for the holistic well-being of the child, be it emotionally, physically, with regard to safety that must be all inclusive. That is how I see our duty of care.*

DP3 had this to say about duty of care:

*I'm guessing the teachers and the school's responsibility for caring for the learners and my understanding, the care of their safety and security aspect in particular.*

DP 4 elaborated on this idea as follows:

*We are obviously looking after them. We are the parental substitute during the school hours, and we take over all the responsibilities within the school, on the school property. And if I remember correctly there were like seven different things that we are supposed to do, the pastoral care, obviously the*

*academics and giving children a holistic approach. So yeah, that's basically my understanding. And then obviously after school making sure that they get home and sending them off safely from our end towards the parents' end.*

DP6 added to this by saying:

*I think it is about the level of pastoral care and your role and responsibility that extends to the learner that is in your care predominantly during school hours, but also extending out of school hours, because that is also important. It extends to doing everything that is within reason, within your control to do, to mitigate any type of obvious risks that either a child or a staff member, or even a parent coming into the school may encounter.*

DH3 summed up the understanding of duty of care very succinctly by stating that:

*For as long as the child is on the school premises that the school is actually the umbrella, that's the body that takes care of the child. But I do understand that there's a certain overlap, it is within the comfort zone, and I think parents are in a rut. But I think that for as long as a child is with us, the minute he or she enters the school gate, or leaves for that matter, it is our duty. Your arms reach everywhere to take care of the child.*

DH1 felt that:

*It is very important to know your children and the circumstances they come from. That is why we have our files, to go and read all about the child and if the child needs support, for example, it might be just to make sure that there's been a need, food, an open door, that they feel safe to come and talk to me about anything and I should be interested. I should follow up and on all of that and it's also important to have a good relationship with the parents.*

DH6 echoed this sentiment by stating:

*Basically, as an educator, you're dealing with children all the time, but these children have got a background, a home environment, and a school*

*environment. So basically I would understand it as providing the education, but also getting the background information of what happens at home, and which children are more vulnerable than the other children, and then bridging of the gap between home and school so that they can get the best advantage of this.*

DH5 stated:

*As an educator, every day we are entrusted with little human beings that need to be safe. So, it's a safety for me and it will be physical safety, the emotional safety and just making sure that each individual child is where they are supposed to be. Logistically coordinating this for the physical side of things is quite a mammoth task. And then the duty of care on the emotional side is also a big task in just making sure that they are comfortable and for a small child, especially those in Grades 1, 2 and 3, knowing where they are going to be next is very, very important.*

Considering these participants responses, it would be fair to conclude that they are looking at a broader picture of duty of care and that they feel that it is also important to understand the home circumstances of the learner and whether or not they have food or other needs which are not being met at home. It seems to include options on how to “bridge the gap between home and school” (DH6). The participants who are in management positions generally have more experience and therefore have a better understanding of duty of care than the average teacher, although this is certainly not always the case as illustrated by the responses of teacher participants.

Ed6 stated that while the child is at school:

*... it's basically taking the place of the parents in every way, whether it be health or education.*

Ed1 explained her understanding as:

*It is your duty for the kids and safety and things like that. You all have a duty at certain times where we have to be. And it is my responsibility in that area*

*to make sure it all runs smoothly. If there is anything that's suspicious or out of place, that I can step in to make sure it's nothing major.*

Ed4 simply stated:

*Well, it's to look after the safety of the children that's in your care during your work hours. So, if you're at school and it's after work hours and something happened on the school property, you're still liable.*

As duty of care and care in *in loco parentis* - taking the place of the parent, while the child is in your care (Roos et al., 2018) - are closely interlinked, it is interesting to note that very few of the participants mentioned the idea that the educator is acting in the role of the parent while the learners are at school. DP1 stated:

*Well, as a teacher, as an educator, in loco parentis is the safety and security, the well-being of the children and teachers. So, ... you have a responsibility to take care of everyone on the premises, whether it's the children or whether it's the staff that you protect.*

As already mentioned, Ed6 stated that it is:

*Taking the place of the parents in every way.*

While it is apparent that there is a broad understanding of the duty of the care among the participants, a precise and accurate description or definition of the notion of 'duty of care' is lacking. Although participants mentioned that they are responsible for the learners in their care, a few were able to communicate that they knew they were taking over the role of parents for the duration of the school day and that they "had a moral obligation to do so" (P2). DP5 provided the most accurate conceptualisation of 'duty of care':

*I have the duty and responsibility to care for and see to the safety of each d every learner under my care. This is not only a legal obligation but also a moral obligation...*

This moral obligation is to ensure that the child is protected in terms of physical health and safety, and that measures are put into place to ensure that learners should not

come to harm either during the formal school day or while attending school sanctioned activities off the school premises (Bremner, 2013).

There was no mention from any participant of any legislation guiding this duty of care, or even that it is mandated through legislation. Educators at all schools should be familiar with the SACE Code of Conduct for Educators and be knowledgeable about and have a good understanding of the expectations of care as provided by regulations published in terms of the South African Schools Act (Act No 84 of 1996b). Duty of care should also be constantly revisited at professional development meetings or workshops conducted either by the principal, department officials and teacher unions. Due to the importance of this duty, educators should be intensely aware of the consequences should they be found to be negligent in the carrying out of this duty.

What was most concerning about this particular question is that participants who are in management positions were unable to say with absolute certainty what the duty of care entails. For example, P2 started off with the response to this question by first saying:

*I don't know if I really understand it, but what I think it is ...*

This indicates that there is a general lack of up-to-date knowledge of the duty of care owed to learners and exactly what this duty entails (De Waal et al., 2001).

#### **5.4.2. Theme 2: Where does 'duty of care' begin?**

Literature is lacking in terms of an actual definition for the beginning and the ending of duty of care by educators. There is no definite timeframe which can be given and it seems to be dependent on the school, the environment in which the school is situated, the distances travelled to and from school by learners, as well as the fluidity of the boundaries set up at various schools.

The general agreement in literature, is that once the school gates have been opened to permit learners to enter the school premises, a duty is owed to those learners (Mampane, 2018; De Waal, 2000). However, we are now living in a world and in times where a learner may not be safe simply by being in the proximity of the school. For example, on the pavement outside the school gates waiting for the gates to open, or

in some instances even sitting and waiting in the vehicle. This was made clear when two separate learners were snatched from the front of their schools while waiting. In the first incident an 11-year-old girl was abducted while waiting for the school gates to open for screening during the COVID-19 pandemic (McCain, 2021). Although there were educators on duty they had yet to open the gates as it was not the official opening time. In the second incident a 5-year-old girl was snatched from the vehicle while waiting for school gates to open (Francke, 2022a). While these cases are few the seriousness of child trafficking and children being killed for various rituals cannot be ignored and should be a huge concern for parents and schools. Primary school children are particularly vulnerable sitting outside a school waiting for gates to open.

To answer the question of when participants perceived that their duty began, without fail almost all participants stated that their duty began:

*The moment the first child enters the school grounds. (P1).*

P2 confirmed this position by saying:

*I always like to think that I own these children when they come into my classroom, and I feel that we have a responsibility to find out what is happening at home.*

In some responses the participants stated that their duty began when they (the educators) set foot on the school grounds and not necessarily the learners. This is evident in the response from DP2 who claims that:

*The minute I actually step through that gate, I think, if I see my day starting, that is where it starts, and as soon as I am in the school grounds, in contact with the children.*

DP3 echoed this sentiment by stating:

*For me, being an educator, the responsibility begins the minute I step on to the plant. So, it does not matter if the children are entering the gate at that time, I'm still responsible for their safety and well-being.*

DP4 felt that there was more to the actual beginning of the duty and added:

*It's a tricky one, I suppose. Technically I would think it's supposed to hypothetically start when you arrive at school, but obviously when you're driving on the road and you see a child in your uniform and something's happened to them, I would definitely stop and get involved.*

DP5 states that your duty begins:

*When the kids are dropped off at school.*

DP6 stated that there was no specific time frame for the beginning of the duty for the day and said that:

*From the earliest that a child might come to school, and if I am on site, that is where I would say my duty begins.*

DH2 had a much more specific response to the time of the duty beginning and stated:

*I think it begins at 7:15 when we are expected to be in our classrooms.*

This sentiment is shared by teachers who feel that their duty begins at a specific time according to a duty roster as explained by Ed1:

*Well, for me a duty starts when you get to work. So, you can say, Ok I arrive at a quarter to seven, but my duty only begins at seven.*

However, Ed3 feels:

*As soon as we get to school, the duty of care would start because, although we start school at half past 7, we're here before that so that we have to get the kids in and then we're watching them until we actually formally start our lessons.*

While participants do not dispute that they have a duty to care for learners from a particular starting time in the morning, it is unrealistic and unreasonable to expect a teacher to arrive at 6 o'clock in the morning to take care of learners who arrive well before the gates open, although it is accepted that these learners are at risk being on their own. Unrealistic expectations should therefore not be created among parents that someone will take care of their children before the start of the formal school day.

In addition, Clause A.4.2.1 of the Personnel Administrative Measures (PAM) states that “all educators should be at school during the *formal school day*, which should not be less than 7 hours per day” (RSA, 1999) According to the PAM, the 7-hour day includes the breaks and the period(s) in which the learners are not at school (RSA, 1999). This must be read in conjunction with Clause A.4.1.5 which states that “[t]he expectation is that every educator must be able to account for 1800 actual working hours per annum” and that duties – outside the formal school day include planning, preparation and evaluation, extra and co-curricular duties, professional duties (meetings, workshops, seminars, conferences) and professional development (Clause A.4.2.2).

Generally, extra-mural activities are organised after the formal school day, which means that many educators stay after school to coach these activities. A 7-hour school day generally begins at 07:00 and then ends at 14:00, extending to 15:00-15:30 depending on extra-mural activities and external sport fixtures. This then raises the question of whether it is ethically correct to request that teachers fulfil extra duties and responsibilities by asking them to come to school at 06:00 to supervise the learners arriving at this time.

### **5.4.3. Theme 3: Learners who arrive at school very early and the procedures for these learners.**

With the exception of one participant all the participants stated that learners arrive at school very early in the morning well before the opening of the school gates. Regarding the procedures for these learners, it would appear that all schools have a system in place for these learners and that very few were expected to wait outside the school gates unattended. There are many reasons for learners arriving at school late and the many disadvantages of that late arrival for those learners (Western Cape Provincial Government, 2010, Equal Education, 2016, Maile & Olowoyo, 2017, Vukovic, 2017), but it would appear as if learners who are dropped off too early are not seen as a concern. This is problematic because there are frequently very young children who are dropped off at their schools before any educator has arrived at school. In winter, when it is dark, these learners are at their most vulnerable. Again the question arises:

Who is responsible for these learners especially if educators have not yet arrived at the school?

Mampane (2018) and Xaba (2014) argue that whenever a learner is within the school environment, including what could be termed the pick-up and drop-off points for learners, a duty falls on the educator to take care of these learners. Mampane (2018) adds that travelling to and from school should also fall within an educator's duty of care. However, this is debatable unless it is the school itself which is providing the transport to and from school for these learners. While they are travelling in private vehicles coming to school or leaving school, this duty cannot be extended to the educators who have no control over who the parents choose to transport their children to school.

While the participants are aware of the learners who are arriving early at school, they feel that the school cannot dictate to parents' what time the learners may be left, which raises the question of who will supervise these learners until the educators arrive. In *Alvin Jeremy Mageni vs the Minister of Education of the Western Cape Education Department* a learner was injured during a game being played on the school field after the school gates had been opened, giving learners access to the school grounds. However, there were no teachers on duty supervising these learners at the time of the incident as the school felt that it was too early for their duty of care to have started for the day. The court ruled that the gates had been opened to allow access to the learners to ensure their safety, which therefore meant that during this period where the learners are on school property prior to the commencement of formal school day must be regarded as being part of the formal school hours. The judgment added that because the learners had been allowed to enter the school grounds, the school became responsible for the well-being of the learners upon entering the school grounds. The court explained that even though the school bell had not rung, the parents had put the learner in the care of the school. Whether they were allowed to play tag rugby or not, they were engaged in a game that falls within the scope of an official activity of the school, which therefore required that the school was tasked with providing a duty of care towards to learners and to ensure that they were provided with a safe school environment. The court found that at the time of the incident certain activities at the school were already operational, such as the scholar patrol and security was manning

the entrance gates, and the teaching staff were in a meeting. It could therefore not be assumed that because the formal school day had not yet begun the school was not obliged to provide appropriate care. Because some activities were taking place and due to the nature of the relationship between the school, parents and learners, a duty of care was indeed owed to the learner during this time.

Participants acknowledged that they have learners who arrive at school long before the gates open. These learners are not left outside for safety reasons. They are allowed to enter the school property but are expected to stay within specific confined areas of the school without educator supervision during this time.

P1 stated that they arranged with their security guards and their grounds manager, who lives on the school property, to accommodate these children who have arrived early:

*The school has the responsibility for these children. We are working with minor children, not high school children.*

P2 explained that they too have a security guard and that the learners will wait with the guard until such time as educators start arriving at school.

P3 said that they:

*Allow the children who arrive early at the school and they must wait outside their classrooms. When the teacher arrives, they will be allowed into the classroom. But there are always GA's (general assistants) who live on the school premises, so they are here to take care of the children.*

P4 also has cleaning staff who live on the school premises and arrangements have been made with the cleaners to allow the children to come into the school grounds.

*They go to the classrooms and hang around outside the classrooms until they are open, which is also very early because our cleaners are there, but there are no professional staff on the premises at that time.*

P6, whose school is located in the central business district of the town, explained as follows:

*We have 24-hour security. We open the gate to allow the children in. They are all directed to their classrooms because then they are not visible [from the streets]. If they go to one central point for example, a hall, there are more chances of them being naughty or mischievous. If they all sit in the corridor in the front yard, they are visible from the main road. So, we would rather have them in the classroom out of sight.*

We here have a conundrum. Schools are very aware of learners arriving very early in the morning, and out of general concern for the safety of these learners they are allowed access to the school property without professional supervision by qualified educators. Instead, these learners may well be supervised by a security guard or cleaners who work for the school. Unfortunately, as reported in *Peet Gouws v Laerskool Lynnwood & MEC for Education Gauteng*, a child lost part of her finger when her hand was caught in the door after it was slammed shut by another learner. In this case the court found that although a duty of care is owed to learners, and that even though there was a reasonable degree of foreseeability that an unattended learner may be injured due to them running in the corridors, the chances of a door being slammed shut on a learner's hand was unlikely to happen as there had been no prior incidents of this nature and the chances of it happening again were unlikely. Therefore, it was determined that there was no negligence attributable to the educator or the school (Potgieter, 2015).

DP4 added that the normal procedure for early arrivals is as follows:

*They would go into the quad. We used to allow the children to play on the field before COVID but that changed and now the kids are waiting in the quad, and they go straight to their classes when they are opened up in the morning. The children are supposed to go in, sit down, keep quiet, take out a book to read or finish work or do something quietly.*

DH5 explained that they had a designated area at school:

*We ask them to stand in this area inside the gate, so they're protected. And under cover they know they must go there until somebody arrives. Until ten to seven, when the teachers are in the classrooms, or available from seven*

*o'clock, they wait in this area. And then when all the classrooms are open, they proceed to the classrooms.*

DH6 stated that:

*We have a security person, so our gates are not open until the security individual is on duty and then they will open the gates and let the children in. Obviously, the children are then not supervised, they are around the school, but all gates are closed, or there's a security person at the gate. They're in a secure environment and they're not loitering in the streets.*

The participants had a slightly different perspective on these early morning procedures. For example, Ed2 stated:

*They normally sit outside my classroom until it is open. I have some children who arrive before seven and I only have to get to school at quarter past seven. So, they are supervised, the security guard is around but they (the children) are often sitting outside my classroom when it is open.*

Ed 4 added:

*They walk into school, and they come and put their bags in front of the class and then they wait for the teachers to arrive at school. Usually there's one or two that arrive just before seven, but we have teachers starting from seven o'clock in the morning. There is no one supervising them [the learners], teachers come on duty at seven.*

Ed6 responded by saying:

*Before the gates open, they are not allowed into the school, but they do open the gate quite early. So, to my knowledge, I think the gate is open when children start arriving at school. I know the principal has been working on that and what to do prior, because it's a tricky one. You let the children into the school, but if there's nobody to supervise them and something happens on the premises, who is liable? It is not always what is right in our mind, it's who is liable at the end of the day.*

This raises the question of what is the correct or proper procedure for these children who are dropped off very early in the morning? Schools try to put processes and procedures into place to accommodate these learners and ensure that they are not outside on the pavement, or actually waiting on the street, but the liability of having unsupervised children has to fall on to the shoulders of someone, and in most instances, due to the fact that learners are dropped off at school within the direct proximity of the school, one can surmise that the school will be liable for the safeguarding of these learners. However, in *Peet Gouws v Laerskool Lynnwood & MEC for Education Gauteng*, the court explained that no reasonable parent would in all circumstances have their children under constant surveillance (Potgieter, 2015). One may well then surmise that a school is taking the precaution of protection learners from undue risks by allowing them onto school premises with the proviso that they are to stay within a restricted area.

If an injury occurs prior to having professional staff on duty, the question arises as to what would happen to a learner who has been injured? Have schools taken into consideration that even though they have general assistants, cleaning staff, or the school security officer looking after these learners, do these people have the necessary training and expertise to treat basic injuries? These support staff members are also not registered with the South African Council of Educators (SACE) and it would be unreasonable to expect that they should be responsible for the learners who have arrived at school very early in the morning. In terms of the 'reasonable man' test, it could be argued by schools that they are taking reasonable precautions to prevent harm by asking non-educators to supervise learners before the start of the formal school day. However, courts may argue that professional teachers cannot abdicate their duty of care.

The focus on first aid training seems to fall onto the shoulders of the professional staff and more schools are sending educators and administrative staff on first aid courses, yet do not consider that perhaps they should extend this to the adults who are there on school premises and supervising, regardless of the capacity of that supervision, prior to the arrival of the professional staff. P1 states that only "teachers and teacher's assistants have first aid level one courses". P3 explained:

*None of our cleaners are qualified. I feel that it is not their responsibility to be taking care of kids who get to school so early. Our one secretary gets to school at 06:30.*

P6 indicated that none of their general assistants or cleaners have first aid qualifications either, but she is unsure about security guards, as they are from a private company.

Schools are expected to have safety policies, emergency plans, and codes of conduct for learners; yet it would seem that appropriate supervision of learners before the commencement of the formal school day is being neglected. The first questions asked are: Is there a policy? Was the policy adhered to and what steps did the school take to prevent the learner from coming to harm? In determining whether the harm was a result of negligence, the court will also ask what measures were implemented to protect the learners from harm. The court will not only examine what measures were in place to protect the learners, but also what measures were not in place to protect the learners. This is illustrated in the case of *Wynkward NO v Minister of Education*, where the court stated that a warning was not sufficient to prevent a learner from being injured and that educators should have been placed on duty at various points which could be regarded as dangerous. In *Pro Tempore Akademie CC v Van Der Merwe* the court found that precautions had not been adequately fulfilled; even though the school had placed metal droppers around saplings, these metal droppers were not sufficiently cordoned off to prevent a learner from being impaled on one when he attempted to retrieve a ball.

The Department of Basic Education seems to overlook the fact that many parents no longer choose to send their children to the closest school to their residence out of convenience, but rather send their children to the school of their choice, which is one they perceive as offering the best education they can afford for their children at the time. This then results in children travelling vast distances to get to school every day, relying on taxis or other forms of transport and are at school well before the school gates open for the formal school day to begin. While these schools have put systems in place to protect learners as much as possible before the actual opening of the school day, there remains the issue that once the school takes physical custody of the

learners, they are owed a duty of care (Mampane, 2018). Allowing them to enter the gates without appropriate supervision, albeit for their own protection, may not be sufficient to avoid being held liable for negligence. In *Hawekwa Youth Camp and another v Byrne* the court reiterated that an educator must act as a reasonable parent would. However, Mellet (2013) argues that it may be unreasonable to expect a school to take over the safeguarding of a child at 06:30 in the morning.

In accordance with the ruling in *Peet Gouws v Laerskool Lynnwood & MEC for Education Gauteng*, the judge indicated that negligence could be the result of the absence of due care being shown to the child, stating that parents do not keep their children under constant supervision. By dropping their children off at school at 06:30, they are certainly not showing the care that would be applied in a 'reasonable parent' test. Therefore, it would seem that in these circumstances it would be unreasonable to apply this test to school managers and educators.

#### **5.4.4. Theme 4: End of formal school day procedures**

The National School Safety Framework (NSSF) (DBE, 2016) identifies the various stakeholders who must ensure that schools are safe environments for learners. This framework states that the South African Police Service (SAPS) must play an important role in supporting schools to maintain safety at the school and within the school community. One of the objectives listed in the NSSF is "to create safe, caring and child-friendly schools where quality teaching and learning can take place, and further to address incidents of crime and violence in a holistic and integrated manner" (DBE, 2016:26). For this to become a reality, partnerships are required with all relevant stakeholders who are able to best support and develop safe environments for learners.

While the learners are in school during the formal school hours this obligation to ensure safety falls on the school and the educators, who through their duty of care are required to provide a safe space for teaching and learning to take place. However, we know that each formal school day ends at a specific time decided by the SGB of the relevant school and thereafter the learners should ideally be collected from school or make their way home in a safe manner. To this end schools should have very specific procedures put in place to minimise chaos at the end of the day with learners spilling

out in all directions off the school grounds and there being no control of who is travelling with whom or how a learner is getting home.

In order to make this process flow as easily as possible and with as little disruption to the rest of the school, procedures for the end of the school day have been explained by participants. P1 explained:

*The bell rings and all register teachers take their classes to the main gate and make sure the children leave the premises into the hands of parents and guardians; they are on duty for half an hour. A lot of our children make use of private transport, so they are there to pick the children up at 14:00.*

DP1 elaborated by adding:

*We have a duty roster. So, let's say the Grade Ones and Grade Fours are on duty on a Monday, the Grade Twos and Fives will be on duty on Tuesday, and so they have it worked out until Friday. The teachers take their children to the gates. If it is your duty day, you will stay at the gate for half an hour. There are eight teachers on duty and three different gates they are allocated to. That is how we manage the end of the school day.*

P2 also stated that their learners are taken to a central collection point to be collected by the parents., However, P2 added:

*We give the parents about half an hour grace to fetch the children. If they don't collect, the security guard brings them to the office, and we phone the parents.*

DP2 added to this statement with the following:

*When all activities have ended, the guard will collect any children who are left, they should go to aftercare, but we have a problem. The parents don't want to pay for aftercare. So, the guard sits there with the children at the gate, and of course they have to wait inside the school gate as there is nowhere else to put them while they wait for their parents.*

P4 mentioned that they had a number of learners who walk home from school so they will leave the school premises when dismissed.

*The remaining learners go into a demarcated area which we call the pick-up zone at the bottom of the field. It's on school property, but it's fenced off and they go and wait there for their transport if they are not playing sport. We also have a homework club, so some of them go to the homework club.*

DP4 mentioned that:

*From Monday to Thursday we have duty points where we wait, and we usher the children away from the school to make sure there is no one left inside. On a Friday because there are no after school sports or things we lead our children all the way down to the safety zone. Then certain teachers go down to the front and the rest of us seat them in the safety zone or pick-up zone and then settle them for 10-15 minutes before we move off.*

P6 have a much more detailed plan of action, as they release learners at different times:

*The Grade Ones and Twos are released at 12:30 and the Grade R's at 12:15. The teachers remain with them. There is a teacher on duty until 13:00. Basically, half an hour's grace is given. The same will apply for Grade Three when they leave at 13:45. They are seated on benches along the corridor and the educators are on duty. There is a security guard at the gate. Then we have an educator who is responsible for staying on. She will contact educators of children who have not yet been collected after half an hour and they will call the parents. But we do have an arrangement with an aftercare service. Every parent has signed a consent form at the beginning of the year that should the child not be collected they have authorised that we can send them to the aftercare. That evidence is kept on their contact detail forms. Learners not collected will be walked across to the aftercare with a general assistant with a copy of the parent's contact details so that they can inform the parents where the child is.*

DP5 outlined their procedures as follows:

*Our school dismisses at 14:00 and I have two staff on carpark duty until 14:30. These staff are responsible to help the learners cross the road safely and are also expected to ensure pick-ups are dealt with quickly and efficiently not to slow down the traffic. Learners who have sport on a particular day will be collected by sport coaches from the amphitheatre. Sports starts as soon as possible after 14:00 and at 14:30 aftercare starts. Learners not doing sport will go to aftercare and do their homework in a classroom under supervision of the aftercare lady. At 15:30 when sport ends the aftercare kids all move to the awning to ensure that they are there when parents come to pick them up and there is no unnecessary delay when collecting children. There is an aftercare book where the person has to sign out for the child to ensure that we know who is going with whom if a parent phones to find out where a child is. At 16:15 the aftercare lady leaves and any kids still at school go to the phase head's office where they will stay until they are picked up.*

DH1 said that although they had procedures in place there could still be problems.

*The little ones don't always do as they are told by parents or the arrangements. Between 13:50 and 13:55 we walk the children to the gate and then we wait there. The parents come in; they fetch the children. The children know they are not allowed to wait outside the school, they wait inside. Some have to wait on the little blue benches. There is a teacher on duty until 15:00 or 16:00 as some parents don't want their children to go to aftercare. So, we have a roster. The teachers all wait 15 minutes and then the staff who are on duty stay there until the teacher with the register comes and takes over.*

Ed5, who is a teacher in Foundation Phase, was very specific about their end of day procedures:

*At 12:00 we line the children up. Those staying for aftercare are in one line and those that are going home at 12:00 in another line. The children who*

*are going to aftercare then go into our pre-primary garden where the aftercare teacher has arrived for her duty. And the parents come and fetch them from the gate. We give the parents the child in their hand, and they go and put them in the car. Parents must come and fetch their child from the gate and take care of them themselves.*

#### **5.4.5. Theme 5: Procedures for learners who are not collected within the allocated time frame.**

It is important to specify a time limit regarding the extra time that educators are expected to supervise learners who remain at school after formal school hours. It is noted that parents take advantage of knowing their children are being cared for and go shopping or delay collecting their children to suit their needs. Generally, school governing bodies determine the formal hours as part of their responsibilities at each individual school. By determining this time frame, they will usually include a reasonable time frame that learners may wait to be collected. As explained by Du Toit (2009) the expectation to collect learners within half an hour is a reasonable amount of time for parents to get to school. Beyond that time frame the time educators would use for preparation and marking is infringed upon. However, schools still have learners who are frequently left waiting beyond this time and therefore must have processes in place to take care of these learners; and more often than not it is expected of a security guard to supervise these learners.

While most schools have specific procedures for at least the first hour after the formal school day, it was also reiterated by the participants that their schools rely extensively on the security guards to monitor the children who are left waiting after the agreed upon times. However, this means entrusting children into the care of people who may not work for the school but rather for a private security company as mentioned by P6. The problem with such a situation is that the Department of Basic Education requires all staff members who work at a school to be vetted to ensure that they are not listed on the National Register for Sex Offenders (RSA, 2007). This prescription does not clarify that it applies to companies who are outsourced to provide security services. This problem was illustrated in 2018 when a 15-year-old learner was raped by the

school security guard while she was waiting for her transport to collect her after the formal school day (Damba, 2018).

This issue was articulated by P1 as follows:

*From 15:30 - 17:00 we have an additional security guard to observe the learners. He keeps a late collections book, and we contact the 'repeat offenders'. We have proof of parents with excuses; they must sign the book before taking the child.*

P2 explained that the waiting for parents or transport to collect learners

*... leads to bad behaviour, depending on how many learners you have. I have a group of eight learners who regularly wait, six go in one batch and the other two in another one, but the security guard knows them and knows exactly who the parents are as he is familiar with them now.*

P3 added:

*If we cannot get hold of the parents and it is becoming too late now where people have to go, then we take the child to the SAPS [South African Police Service] station and we ask them for assistance. We have an agreement with our local SAPS.*

DP3 mentioned:

*Security keeps an eye on them.*

DH3 added to this by stating:

*Because we are a primary school, we tend to be a little bit protective of our little ones. So, we encourage them to wait inside the gates. The security guard assists.*

DH4 also mentioned that it is the same learners who are regularly waiting to be collected after school:

*There was a pattern with certain children and then I threatened to call in welfare because I said it's not right to let your child sit here until 16:00 and*

*they [the parents] had to make alternate arrangements, which they obviously did. [If] we threaten enough, they [the parents] will do it.*

It is important to note that while there may be processes in place to ensure the safety of the children left on school property, we must be reminded that both the Constitution (RSA, 1996a) and the Children's Act (RSA, 2005) emphasise that the interests of the child remain paramount at all times. While educators do their best to act in the best interests of the learners by implementing safety measures, the tardiness of parents in collecting their children puts the learners at risk and adds to the burden of the school to maintain a safe environment at all times.

#### **5.4.6 Theme 6: Procedures for return of learners after attending afternoon sport fixtures.**

Sport is an important element of extra-curricular activities at many schools. Schools encourage learners to participate in at least one sporting code or cultural activity to give a balanced education to learners.

A large part of encouraging learners to participate in sport is that they are given the opportunity to compete against other schools. This promotes healthy competition and the development of sport talent among the learners. When participating in these sporting fixtures learners may not return to school at what may be regarded as the end of the formal day – the time when afternoon activities usually end. Therefore, procedures are needed to ensure that these learners are also collected timeously from school.

Communication comes out as a clear theme with regard to the collection of learners after sport fixtures with all the participants stating that parents are given letters with the expected time of arrival back at school so that the learners are collected relatively quickly upon returning to school.

*P1 stated: Coaches inform parents of the time they finish and must communicate clearly, so when parents are late, children go to the waiting area.*

P3 added:

*We have the parents sign a consent form. We tell them the expected time of arrival, requesting that parents pick learners up at that time.*

DP4 said:

*They try to come back within the school day, so that the children can get their transport. If they are later, they [the parents] make arrangements for them to be fetched. The children liaise with the parents and get consent forms signed for the parents to collect the children later. The teachers will be responsible for those children while they are there.*

DP5 mentioned:

*Learners come to aftercare until they are fetched, where I look after them until they are fetched by parents or drivers. Coaches have no responsibility to look after them once they have been dropped off from sports matches.*

However, all schools do not follow the same procedure as explained by P2:

*We don't have a school bus, so our children aren't brought back [to the school] after a school external sport event. Normally the parents would have to pick them up, but the teachers are responsible for waiting at that school until the children are collected. There are a couple of parents who don't. You phone them and they haven't come back. Then we phone them and tell them we are taking the child back to our school so that they can be collected from our school. If they go to aftercare, then we send them to aftercare. If not, we again phone the parents and say fetch them at school because we didn't wait at such and such school. We always make sure that the parents know where the child is, what has happened, but we do not wait at the other school for more than 45 minutes.*

P1 reiterated the importance of communication by saying:

*Let's say for example we have a netball fixture; from there we've got a teacher per bus. They will travel there and back. Beforehand, two days*

*before the fixture, we send out a notice to the parents saying this is the departure time and this is arrival time, more or less. We always say half an hour earlier so that parents are there, not for them to have to wait, but we don't want teachers sitting at school with children. It's not everyone, but you do get your parents taking advantage because they work until 17:00, they know this thing that the teacher is going to be there until 17:00. So, we send out these notices and then we ask on the notice, bus, own transport, this is the time to collect, if you have a problem call us, but we also take the parent's number and email, so that if we need to contact them when we get back, we have their number to do so.*

DH5 added:

*We have sports slips with the parents' telephone numbers. It is all laid out what time we will return, and we use WhatsApp in desperate situations.*

Ed3 explained:

*What we normally do if it's after school hours or if it's on a weekend, we obviously sign consent forms to say the start time and the end time, and the parents normally pick up from the venue that we are going to.*

However, it must also be noted that despite participants' arrangements parents are not always on time and they [educators] often need to wait for parents to collect their children. Ed 1 said:

*If I wait for 10 minutes, then I will phone the parent. But I as the coach, wait till my last kid has left.*

Ed3 confirmed this by saying:

*We ensure that the last learner leaves and then we leave the venue to go home.*

DH3 added:

*Before they leave, the parent is given a note to say that these are the times the child will be away. You must now make proper arrangements. And*

*should there be a problem after they come back, then the teachers will remain with them until such time that they are safe.*

While each school has its own procedures, the common thread with afternoon activities and sport away from school is communication through letters to parents with times given for the approximate return of learners to school. This, however, does not guarantee that the learners will be collected promptly, and there are occasions when educators or sports coaches have had to make use of phone calls to contact parents. They are often required to wait until the parents arrive to collect their children.

#### **5.4.7. Theme 7: Reasons for early drop off and late collection of learners.**

As previously mentioned, parents are no longer limited to the school within a specific zone from their place of residence or employment but will choose a school which they perceive as the best school to give their children a better quality of teaching and learning experience. There are many reasons for this. Some parents want their children to participate in sport and will therefore look at schools which offer a wide variety of sporting codes. Others may look at the cultural activities offered, while for others it is simply that they believe a particular school has a better teacher/learner ratio and therefore their children are more likely to receive a better quality of education. This is illustrated by the responses from the participants.

P1 explained:

*We are a coastline school; we have children driving long distances to get to school.*

P2 added:

*It is affected by parents working and not always having transport to come and fetch them, but I have some wealthy parents who work far away, and they will then arrange for a driver to fetch their children. However, because there are children in different phases, the driver will collect them when the older children come out of school, so the younger ones have to wait.*

P4 commented:

*Yes, parents are working. Also, a lot of our children go home in taxis. Now the taxis can't fit all the children and they're picking up from other schools. So, they have the first lot, they take them, drop them off wherever, then they come back for the next lot. It could be an hour where those children are waiting for the taxi to come back for the second lot.*

P5 explained as follows:

*I think we have a different path up here in town and some of them work possibly in Durban. So, they get up very early and then they travel, some of them have to get to the airport, maybe they are flying to Johannesburg, and they'll work there for the week. On a Monday you'll find that children are dropped a little earlier because parents are rushing to get to the airport. The picking up again is an issue. I think some of the parents that are habitually late are very senior businesspeople that are involved in meetings.*

P6 added:

*I think it is distance. I have a lot of children coming from Gamalakhe, living with their grandparents so that the parents can afford to send them to school. But the learner is put in the taxi at 05:00 and is probably driven around and around.*

DP1 commented:

*It's actually all three - financial pressure, parents working, and lack of transport. Parents rely on others to fetch their children, and they work long hours. We have a poverty problem in our area. We are also on the coastline, which is an issue. The schools are not like inland schools where transport by bus is available within a 2-4 km radius. Here people travel long distances to get to school.*

DP3 explained further about the transport and distance issues.

*Look, firstly, I think it is the distance that learners have to travel. And because of the driver's load. For instance, children are living on the 'Western strip'. We would be the first school they encounter. Depending on the driver's load, they would be dropped off sequentially. Sometimes they will come and be dropped off, and the drivers meet them here. Then they re-route the children into different vehicles going to different schools. The second factor is the time parents start work. So maybe if it's a parent dropping off, that parent is on a shift from 07:00. In terms of affordability, I don't think it's about affordability because they are paying for the transport. They're paying for private transport or public transport, either way, they pay.*

DP5 added:

*Both parents working and financial factors do play a role in drop off and pick up of learners. Some of our learners are dropped off by drivers due to parents not being able to do so due to work responsibilities and we have some kids who stay with nannies as the parents work elsewhere, so there are different reasons why parents rely on other people to fetch their children from school.*

DH6 agrees with DP5 and added:

*I think there are more parents that are working, or these parents are working further afield, and they've had to rely on a transport system to drop these children off. Obviously, this transport system is relying on picking up a variety of children from different schools, and that's what's leaving that time space. I think definitely there's not enough parents staying at home these days, they are all working, which is having a negative effect.*

Ed3 elaborated on this by saying:

*First of all, they are traveling from very far places so obviously with the transport, they can't be here on time. They're picking up a large number of learners and dropping them off at various schools. So, they're going to leave*

*at 06:30 and then again at 13:45 from one school, so they have to meet that deadline to be at school before that. So, I would think the first and foremost is not so much as the economic part of it because they're paying quite a bit for that transport actually. It is more the traveling. They are coming from one location to a school, and then waiting after school to get home because of the loads going back and forth.*

In terms of schools being selected specifically, DH3 explained:

*You know, firstly our school is a "hot spot" school. We seem to be, everybody wants to get into the school. But I don't think the parents think it through properly. You know, you get the child that's traveling all the way from Gamalakhe, then his transport is coming to pick him up late. The parents can't come because they are more than likely not even in the area. They are either working out of the province, out in another town, their grandma is at home. But I also think it is because of our economy. You can't run a home with just one person working. So, mom and dad are both at work. That's the one thing. The other thing is that it's the parents' choice to bring their child here. With the traveling time, I don't think it's well thought out, because these little children leave home at about 04:00 and end up sleeping in class.*

It must also be noted that a few of the participants felt that parents tend to take advantage of the fact that the children are being supervised at schools, so they will not always make an effort to ensure that learners are collected timeously, as stated by Ed6:

*I feel sometimes parents take advantage, but I also understand why when you're a working mom.*

Ed4 added:

*They rather want to stay at school because of different reasons, but normally it is because someone can supervise them.*

P2 claimed:

*It is just too easy to say it is a transport problem. There is an aftercare facility, and they can make arrangements to make use of it, but they just abuse the system.*

DH1 added to this by saying:

*You get a small percentage of parents that's very comfortable, they could go shopping and you know I even had a child in the classroom, because every day the mom was late, not because she was working, but because she was having an afternoon nap, so she'll come after the nap. We have had the odd ones as well: 'Oh, she's gone shopping, she'll come when she's finished doing whatever she wants to'.*

DH4 also stated:

*Some of them are [late] because of situations, but I think they are just taking a chance because they know there's somebody there looking after their kids. A lot of them go shopping and things like that first, they know there is always somebody there to watch their child.*

There are different opinions among the participants on the reasons for the early drop offs, but the late collections seem to have similar themes: the distance travelled from school to home; the taxis and the number of loads that are being driven back and forth; and the routes which may cause a particular school to be the first drop off point but the last pick up point; and the schools where learners are getting off one taxi to get onto another one that is going to their particular school. All of this adds to learners having to spend an enormous amount of time travelling to and from school, which is often detrimental to their learning. This is evident in that many learners are falling asleep in class due to getting up so early in the morning (DH3), and the being away from home until very late in the afternoon. Added to that are the parents who are happy to make use of the educators and schools as a 'babysitting' service, so they can go and do their shopping or get other chores done, as they know their children are in safe hands while they are under the school's supervision.

#### **5.4.8. Theme 8: Educators who have had to wait for learners to be collected.**

There are inevitably times when parents or transport just cannot get to school on time to collect a child. There may be heavy traffic on the roads, storms, or accidents which could delay someone getting there to collect the child.

Educators take on the role of *in loco parentis* during the school day, which means they are acting in the role of the parent for the time the child is in their care (Roos et al., 2018). While it certainly cannot be the fault of the child that the parents are late, educators do become frustrated when they are required to wait for the same parents regularly.

When asked if they have waited for learners to be collected after school or after an excursion or sport fixture, all the participants replied that at some stage they have had to wait for parents to collect learners. They all stated that you cannot blame the child but felt that it was unfair of parents to leave their children without any idea of the time they would be collected. P1's response was:

*I have waited many times. It is not the child's fault; the parents don't accept responsibility for minor children, they get distracted by other affairs at work and they take advantage because they know the school takes responsibility for the child's safety.*

P3 also mentioned the parent's lack of consideration by saying:

*Yes, I have had to wait until about 16:30. The parents did not seem to care, and they don't come themselves to collect their children. Nine out of ten cases they send a driver or someone else to pick up the child.*

P4 added:

*I have been called back from home to come to school and we sat until 19:00 because we could not get hold of the parents, because they've been using the phone, or they've changed their phone number and they didn't notify us. So, you're phoning around the whole world trying to get contacts and neighbours and people to try and get hold of the parents to tell them that their child actually hasn't come home yet.*

DP2 stated that as an educator, you have an innate sense of responsibility to stay with a child who has not yet been collected and explained:

*I remember we played away, and we had to wait because this one child and mum arrived very late to pick up. You can't just leave the child. There's that sense of responsibility and care. Unfortunately, as teachers, that's very strong in us. There's that sense of care and needing to make sure the children are safe.*

DP5 said that:

*I have waited until 19:30 on some evenings where the parents had to be phoned repeatedly before answering the call to inform them that their child is still at school. I think this happens due to a lack of communication between parents, children and the drivers.*

DH3 mentioned that they took learners on an excursion and did not arrive back at the time the letter had stated:

*We were half an hour late. The parents didn't wait. We had to phone them to say come back and pick up the child. They just left and went away. I live just up the road, so I am the first point of call if a child is left behind. I get phoned at 17:00 when a certain child is not picked up, then I must come back to school. I open the office, make a call to the parent, phone the parent to come fetch the child. It happens quite often.*

DH4 added to this by saying:

*I am not a person who can just leave a child behind. I waited until 18:45. The child had been waiting in the pick-up area where you're supposed to wait and I was leaving homework club at 17:00 and all the kids had gone. As I was leaving, I saw this tot come walking up and I said: "What are you doing here?" He said nobody came to fetch me, so I waited with him. I phoned his mother, his father, but nobody answered the phone, eventually I phoned the principal, and she came to open the office to see if we could find anybody else. By this time the child was distressed, he needed the toilet*

*and was starving, so I asked her to bring a sandwich, which she did and then we sat there and waited. Eventually we got hold of somebody who said they'll try get hold of the parents and when the father came it was 18:45. When he eventually arrived, he didn't even say thank you.*

DH6 also mentioned:

*On one occasion we had a problem with phone numbers. All the phone numbers on the contact list, the parents, the alternate contacts, and no one was answering these calls. It got to 18:00 I think. The previous principal was with me and we stayed until we got into contact with the parents. In the end we had to go to SAPS to tell them what the story was. The child was eventually collected at 19:00, but we waited and the parents were not very appreciative of it. It was like it was a normal thing, you know, you just leave your child stranded for hours, not answering our phone calls. What we find our biggest problem is the phone numbers and contact details that are not always up to date. Well, they change numbers frequently and then they don't update us.*

Regarding the frequency of waiting for parents, Ed6 stated:

*Yes, all the time. It's not the child's fault. And I try to reassure the child, because sometimes they get quite hot when they're sitting waiting there. I always try to reassure them, but it gets frustrating if I've got something to do after school. Murphy's Law says the day when I have something planned early and I need to get out of there, something happens, and I have to wait. But I generally don't mind waiting with them.*

The majority of the participants indicated that they have had to wait for learners to be collected by parents, in some cases have waited for extended periods of time without being able to contact parents. While they find that this is frustrating and imposes on time they should be spending with their own families, they also feel that it is not the child's fault and that they cannot leave a child unattended, especially when it is beginning to get dark. The learners may not always know the reasons for parents arriving late and there are undoubtedly emergencies that crop up from time to time,

but parents cannot simply expect that a member of the school staff will be on hand to supervise their child, especially when no communication is forthcoming from the parents.

Educators are inherently duty bound to care for learners, and the participants' responses give credence to the statement that they will go over and above to ensure learner safety, but at what cost to their own safety and the time they could be with their own families. It would seem that the participants state that although they find waiting frustrating, they don't mind, but we need to consider that their own children are losing out on their time with their parents due to a duty the educator feels obliged to uphold.

#### **5.4.9. Theme 9: Parental accountability.**

The Bill of Rights as contained in Chapter 2 of the Constitution (RSA, 1996a) gives every child the right to education in a safe teaching environment. For this to be successful, schools and parents need to work together to ensure that the environment is free from harm, and learners feel secure while they are at school. As the primary caregivers of their children, parents need to ensure that they also play their role in maintaining a safe educational environment for their children (De Waal & Serfontein, 2015). As a part of this, parents are required to ensure their children attend school regularly and that they are punctual for school (SASA, 1996). Kiral (2019) also states that it is the parents' responsibility to ensure their children are protected from harm. To this end, it is vital that parents take accountability for the safety of their children and do not delegate this duty to the school or educators after formal school hours. Oosthuizen et al. (2018) also reiterate that parents must take the necessary measures to ensure the safety of their children. However, it would seem that the parents do not necessarily adhere to their responsibility for the safety of their children when they send them off to school in a taxi very early in the morning or are negligent in collecting their children from school timeously at the end of the formal school day.

When the issue of parental accountability was raised with the participants, this is what they had to say:

*They must be responsible for their own minor children because the world has changed drastically especially with child trafficking because they make*

*their own children targets and victims when they don't adhere. Children without documents due to poverty are so easy to get out of the country and there is no way to trace this child. These children are at the top of the list, they don't "exist" because there is no record of them. (P1)*

P2 said that in the case of the safety of learners:

*They should go to aftercare. I believe the aftercare should fine them for being late. Generally parents will phone to say they are on their way, but sometimes parents are irate because we phone them to say the child has been waiting for 45 minutes. They make it our fault for not phoning, but they are late collecting their children.*

P3 felt that a different course was necessary with these parents:

*I normally call them and counsel them. It's not my job to counsel them, but we give some counsel and tell them not to leave your child unattended. The child needs sustenance and some of them come to school with only chips for lunch. So, I explain that this is what can lead to your child getting into trouble, interfering with other children, getting up to mischief. It may also lead to breaking the law, stealing and so forth. The parents need to step up.*

P4 reiterated:

*The child's suffering because they're sitting waiting.*

P5 stated that:

*I would say that as much as you want us to respect you as parents, there should be reciprocal respect for the professionals who work with your children. You are abusing a trust relationship with your children in the way you're not respecting their rights. They still have to do homework, but you're just disrespecting everybody in your own interest.*

P6 simply stated:

*You are failing in your duties as a parent.*

DP2 said that times have changed:

*If I think back, times have changed. Remember when we were at school, we walked. We rode our bicycles. But now with everything going on around us, you think what is wrong with parents that they don't have a more urgent sense of responsibility, that some parents would just not even think twice about staying late, wherever they are, and not bother to pick their children up. I don't know if it is a generation thing. The modern-day parents, it's definitely different to when I was growing up. Parents are just irresponsible now.*

DP3's real concern is the safety of the child:

*The child needs somebody, an adult in the home when they go home. The child needs to know that they need, you know, psychologically, emotionally, they need to know they are cared for. And that is the biggest barrier. By being left at the school, that child is scared. That child is never sure if they are actually going to go home? Are my parents going to come? What time are they going to come? Those feelings of insecurity follow them everywhere. And that is what we need to deal with, that child feeling safe, that child feeling protected, that child feeling that they are wanted and needed.*

DP4 felt that parents take advantage of the school's efforts to keep the learners safe:

*Our school used to have an after school duty, I think we called it 'taxi duty', and a teacher would wait for half an hour after school to make sure the children were seated and safe, and the parents used to come and fetch them at 14:00. Now they are coming to fetch them at 15:00 or even later, because they abuse the system. They knew someone was watching them for free so that was when the school decided to cut back and force the responsibility back onto the parents with the safety zone, but it doesn't always work perfectly.*

DP5 stresses that:

*As a parent, your first responsibility is the emotional and physical well-being of your child. Not answering the phone or showing up late, makes them feel insecure and unhappy.*

DH2 also stated that:

*They [parents] are jolly irresponsible, and they are making their child anxious.*

DH4 said that:

*I think a fining system might work, or you just make it less easy for them. Keep them in the classroom so the parents have actually got to come out and face you and say; 'I'm terribly sorry for the inconvenience', instead of them sitting there and the kid jumps up and gets in the car and off they go again.*

Ed2 and Ed3 both had the same sentiments regarding responsibility, with Ed2 stating:

*Wake up and take some responsibility. Don't you see how it distresses your child?*

Ed3 added:

*You have to take responsibility for your child, first and foremost. Their safety is important, be considerate.*

Ed4 went further and added:

*This is child neglect. The child sitting there for three hours is a long time, especially for a little one. That's child neglect and should be reported to child welfare.*

The participants feel strongly about the learner safety and that parents need to step up and take responsibility for their children. However, in many instances parents work quite long distances from the schools their children attend, which means that getting to the child takes time. As much as schools expect parents to be more responsible

and accountable for the well-being of their own children, one must not lose sight of the personal challenges parents are confronted with. As a result, school often tend to go the extra mile to ensure that learners are kept safe when dropped off early or while they are waiting to be collected. However, this adds an extra burden on the school.

Section 60(1) of the South African Schools Act (1996a) determines that the State may be held liable should an injury occur during a school activity. However, once the formal school day is over there is no longer any official school activity taking place while a learner is waiting for his or her parents, which begs the question whether this section of the Schools Act covers the school when in fact parents should have taken over their responsibility by collecting their children within a reasonable time frame.

#### **5.4.10. Theme 10: Perceived boundaries of ‘duty of care’ for educators.**

As a theory Contextual Safeguarding is applied in the fields of social welfare or social work. However, with schools having learners who arrive early or having to wait for a long time for their parents after formal school hours, this theory has its merits in being applied to a school environment, where learners who are unsupervised may be exposed to potential harm (Nyathi, 2022).

Having examined literature there seems to be no finite end to an educator’s duty of care. Some educators would argue that when they leave the school their duty ends, but the reality is that this does not happen. Other educators may contend that they still worry about learners who may be at risk at home, who are, for example, in homes where financial pressure means that they may well not get a wholesome meal for supper, or where the learner is exposed to abuse of some sort.

When asked about where educators felt they could safely draw a line between their duty and the parents resuming their care and responsibility answers varied according to physical and time structure boundaries.

P1 felt that:

*With minor children there is no definite line. Both parties have to share this responsibility, and they cannot hand over the responsibility. They cannot forsake this at all.*

P2 stated that they had a physical boundary that they could use as the boundary for their duty of care:

*The school gates. That's why we tell our children they're not allowed to walk through the gates.*

In terms of a time boundary P2 added:

*Parents should collect their children within half an hour of the end of the day.*

P3 explained their boundary as:

*You see in the front of our school we put up cones. The children waiting for transport cannot go beyond those cones. If they do then it's their responsibility. As long as they are waiting in the bus shelter and are on school property they are our responsibility, but if they leave the premises, then it unfortunately becomes the parents' responsibility. The pavement is still part of the school responsibility, so we take care of them when they are there, but ideally the boundary would be where the cones are along the edge of the street. Parents have half an hour to collect their children, which is what our agreement is. After half an hour parents must take responsibility.*

P4 mentioned that they have a pick-up area, which was still on school property and said:

*I think once they walk through that gate then they should be the parents' responsibility. Once school finishes at 14:00 then it's the parents' responsibility.*

P5 had a very different point of view:

*My personal opinion is that it is irrelevant. The child is in your care. Ok, I don't see a physical boundary, for example a child sneaks across the road to the garage shop to go and buy a hamburger and they should actually be on our premises. Technically speaking it's still our responsibility, it doesn't mean we can exonerate ourselves from that duty of care because there is*

*an expectation they should be on our premises. Even if a child bunks school to go surfing, the parents think they are here and they are not, kids who leave school during school time must have a special exit form from reception signed by the duty teacher.*

In terms of a boundary linked to time, P5 argued that due to extra-mural activities and the various school phases having different times that they end school and extra-mural activities their boundary linked to time was more flexible. There was also a lot of roadworks taking place in this area at the time of the interview, which meant the school had no choice but be more patient due to traffic volumes and parents caught in stop-and-go areas around the roadworks.

P6 stated:

*Fortunately, being in the CBD, we literally have the pavement right around. If I could literally draw a boundary, it would be that pavement. Once you set foot out of my school gate and you are handed over to the responsible adult, my duty has stopped. Fortunately, or unfortunately, they are in the centre of town so safety is taken more seriously at school. Learners do not leave school on their own. They must be collected by an adult before they leave the school gate. Learners wait inside the school grounds to be collected. The security guard at the gate ensures that they are accompanied when they leave the school.*

The time for collection of learners was more rigid in this case:

*Within 15 minutes due to the fact that we are in the CBD and there is a lot of traffic congestion around the school at the end of the day. (P6)*

In terms of a physical boundary, DP1 stated:

*I would say the boundary is the school gates and the fence. If you allow children to go outside, then you're putting yourself in that situation. So, you keep them on the school premises. You manage the pavement area around your school, it's in front of your school. If something happens there and you*

*don't do anything, you have parents watching and the school gets a bad name. It is a very difficult one, a grey area.*

As far as time is concerned, he felt:

*According to the PAM document the school day is 7 hours; so it depends on the school timetable. Some schools come out at 14:00 and then have sport until 15:00. I would say that 15:00 is a reasonable time, so an hour later would be my cut-off time. (DP1)*

DP2's idea of their boundary for duty of care extended beyond the school gates:

*When they get into the car. I would say further than the gate safely into the vehicle. We had a child getting into the wrong taxi accidentally and it caused huge stress for us. I think our responsibility is taking care of the children, making sure that the right parents are picking them up. I think you can't say the gate is where the child is picked up. There's a lot of things that can go wrong from the gate to the car. (The boundary would be) further than the gate, your visual periphery, where you see the children coming in the cars, parking area, pickup areas.*

DH4 agreed with this statement:

*Outside the gates as in on the pavement, as soon as they are out the gates. Even the parking area is part of the school safety zone and is closed off, so as soon as they go out of that area it's the parents' responsibility.*

Mampane (2018) agrees with this point of view and states that the school should include all drop off and pick up points as part of the school property and therefore the schools' duty extends to those physical areas as well.

DH3 felt that:

*It would be the gate. If you are talking about a physical barrier it could be both the gate and the fencing around the school. I think that's where for me, but I don't really see it stops there. I mean, if a child gets outside the gate and gets run over or something, we have to take that into consideration.*

DH2 also mentioned:

*My boundary would be the gate as soon as they are out the gate. And when they're in the gate, they are our responsibility. Even the car park, because we have children there. Sometimes the little ones sit in the car and wait for the big ones. And then when we see them, they're in the tree, they're running around, but if they fall out of that tree and break an arm when they're supposed to be sitting in the car with mum, you know that's not our problem.*

In terms of a timeframe for collection, DP2 felt that:

*15 minutes is an ideal time limit, but up to 45 minutes. Although 45 minutes is a long time for a child to wait after school.*

DP3 stated:

*Apparently I have no boundary because I worry about the children. As a manager and a teacher I love the children and I want them to feel protected and safe. I wish we could have this discussion with parents so that we can establish the boundary and then we could make parents see it. Then we can set a boundary, but right now the child is the priority.*

DH5 reiterated this idea:

*There is no specific boundary. It's that interaction, knowing I am handing this child to that person.*

Ed1 said that:

*Once I see the parent taking the child, then it's the parent's responsibility.*

Ed2 also said:

*Probably the other side of the road. I feel it is my responsibility to make sure the child crosses the road safely. I actually take them to their cars if it's on the other side of the road. And it is also my responsibility to make sure they're getting into the right car. And I have always viewed that as part of the school property still. Maybe I am different, but I think it's from a safety*

*point of things. I don't feel like the gates are where the duty ends. I feel like that part is still my responsibility, to make sure they're getting in their car safely. Until I have seen them in their car, and they've left.*

It therefore seems that while many educators include the periphery of the school, the pavement, the pickup points, and some even the car park area as part of the school property, they will continue to ensure that their duty of care continues until the child is safely in the hands of the parents. Only a few participants mentioned that they felt their duty extended beyond the time the parents collected the children. However, according to Section 110 of Children's Act (RSA, 2005) incidents where learners are harmed outside of school, which the school or educator are aware of, must be reported to the relevant authorities, which puts educators in a precarious position should learners come to harm during the time they are waiting for parents.

#### **5.4.11. Theme 11: Incidents outside of formal school hours.**

The Contextual Safeguarding Theory focuses situations outside of the school or home where a child may potentially be exposed to various forms of harm. It relates to various systems that can be put into place to protect children (learners) from potential harm and includes ways to incorporate community cooperation to ensure that children (learners) are safe at all times (Firmin, 2017; Featherstone et al., 2020). Through partnerships with parents, caregivers and members of the community, a multi-agency approach to child protection is essential to get a wider community to assist with the protection of learners outside of formal school hours (Firmin, 2017, Wilson et al., 2022).

How does this affect a school environment? While the learner is attending school and on the school premises the learner falls directly under the educator's duty of care because the educator is *in loco parentis*. However, when formal school hours are over and the child has once again been handed over to the care of parents or guardians, it should require that this duty would cease for the educator. However, in terms of Section 110(1) of the Children's Act (RSA, 2005) should a child be abused and someone is informed of this abuse or is aware of this abuse and does nothing to report it or to protect the child, that person may be held liable and found guilty of negligence as well as the perpetrator of the abuse. Therefore, educators must be aware of

potential harm learners may face and should be prepared to act should incidents be reported to them.

With the increase of learners who have smart phones and who are on various forms of social media they open themselves up to cyber-bullying, stalking, and grooming for various nefarious reasons. Unfortunately, in many cases, parents are not aware of what their children are doing on their phones and the children may not always tell their peers unless their peers are on similar social media platforms or they are using these social media platforms together. However, in many cases schools have policies in place that do not allow cell phones to be brought to school, particularly in the primary schools. Parents and educators will not always know if the learners have been exposed to cyber bullying or grooming unless the learner talks to an educator or his or her parents about it.

However, for the purposes of this study, I asked the participants if they were made aware of situations where learners had been in situations where they were harmed or faced harm and if these situations were reported or how they were handled. As this is a delicate area, I chose to only ask participating principals this particular question.

P1 mentioned that unfortunately he was aware of too many incidents but would share a few of these incidents.

The older brother (who is in high school) of some of his learners walked to the primary school to fetch his younger siblings. He was assaulted and nearly stabbed during that incident. A couple of girls ran away from home as they were being molested, as the principal he was called by the parents and then assisted the police with the case. He will frequently be contacted by members of the community who have seen some of child learners begging next to the road for food, or who are left alone at home due to social circumstances, violence, and abuse.

*In these cases, I always get the social welfare involved. Networking is very important in a school community; you need to know the right people and have them on board to assist with these children in dire need. We don't realise how blessed our own children are, we cannot become complacent and accept this as the norm, because this is not a norm. There is no*

*template, and each case must be handled on its own merits, but do not engage when in is NOT in the best interests of the child. This is not always easy because the child may end up in a worse situation, try to get the parents on board, work through the courts and assist the children in every way possible. ALWAYS IN THE BEST INTERESTS OF THE CHILD. (P1)*

P2 mentioned that he had incidents involving pornography:

*Parents of a learner sent a letter to me to make me aware that another child was sending around suggestive material, and the children were talking about it during school time. This child was making suggestive noises and using hand gestures in class. The parents were called in and informed of what was going on. The matter was reported to SAPS and social welfare.*

P3 stated that there is a fine line between family feuds and school incidents:

*We have had incidents, but sometimes it is a case where it may be neighbours and the children do not get along, then the parents expect the school to deal with it. When it is outside the school, we rather expect the parents and families to deal with these incidents. There is a fine line, and we deal with each case according to its merits under the Child Care Act. I am obligated to report it as it has been brought to my attention. Generally, we get the families to resolve their own personal issues. Under the Child Care Act, we have to report abuse even if it is only alleged, then let the law take its course. We help where we can, but we don't take on things out of our jurisdiction.*

P4 mentioned:

*If it is general bullying, we call the kids in and try to sort it out the next day following the disciplinary measures as per the school's code of conduct. We phone the parents. If it is a fight, we call the parents in immediately to the school and they get Friday detention. With cyber-bullying incidents, parents are called in and the evidence is shown to them. For reported cases of abuse, we contact our police liaison officer who comes and speaks to the parents and the children.*

P6 said that as they accommodate very young learners (Grade R to 3) there were very few cases that had been reported to her, but added there were small incidents.

*Learners urinating in public, photos taken of the children, learners congregating at the public library, but no serious issues as the learners are too young.*

These experiences have reinforced the idea that as an educator you simply cannot switch off once you leave school and believe that you are no longer required to assist. When an incident is reported, educators must act in the best interests of the child as stipulated in Section 28(2) of the Constitution and Section 9 of the Children's Act.

#### **5.4.12. Theme 12: School policies to mitigate early drop off and late collections.**

The Regulations for Safety Measures at Public Schools (RSA, 2001) published in terms of Section 61 of the South African Schools Act prescribes the safety measures must be implemented by schools. These safety measures include but are not limited to access to public schools and the early release of learners from school.

Therefore, all schools must have policies in place which outline how they will maintain a safe and secure learning environment for the learners in their care.

In terms of Section 8 of the Schools Act (RSA, 1996b) every school is required to have a code of conduct for learners which details acceptable and unacceptable behaviour and the consequences of unacceptable behaviour. Schools are required to have a school safety policy which outlines how the school will deal with various situations which may cause harm to learners. For example, an evacuation plan in case of a fire, what to do in medical emergencies, and early release procedures.

In the code of conduct schools usually outline the start and end of the formal school day along with the expectation that learners arrive before the school bell rings and where they will go to at the end of the formal school day to be collected. They may outline exactly what the end of formal school day procedures are. However, in terms of having an actual detailed policy regarding the early drop off of learners and the late collection of learners, there are no guidelines from the Department of Basic Education

with regard to these learners and what the expectation of care is from the schools for these children.

When participants were asked about a policy some thought they may have one, but could not find it and others said there was no specific policy in place, although they do inform parents in letters and messages throughout the year. Studying copies of these documents confirmed that this is indeed the case. Numerous letters and messages are sent out reminding parents of procedures. However, none of the participating schools could produce one document that specifically could be labelled as a policy on drop off and pick-ups before and after formal school hours. P1 did say that:

*Yes, our policy is communicated in the diary and forms part of our code of conduct.*

P3 admitted:

*I don't have a written policy but do have a gate duty policy. They [the teachers and security guards] must look after the children, make sure they are safe and so forth, but I don't have a policy, which we need to draw up.*

P5 said:

*No, it's just in the beginning of each term. Each phase head sends out a letter with all the rules and regulations. So that's where it is. I don't think it's an official policy. It's just a circular and it's made known to all parents. If there's going to be a change for any reason, we also then send out a letter which goes to the parent body.*

DP2 stated:

*I think in our SMT meetings we have discussed it often. I don't know if we've formally drawn it up. It was a part of the COVID-plan. There isn't a separate policy. It is a part of our code of conduct, but not a separate or specific policy.*

DP5 said:

*It forms part of our safety policy.*

However, DH5 stated:

*There's no written policy, just all verbal. We do a lot at orientation; the children that come to Grade 1 have been in Grade R. So, they know the exact system and that when school ends, they're handed over to the parents.*

DH2 commented:

*No, we don't have a policy. Can I say that? Is that bad? We actually looked for it because I said to 'M' let's get our policy out, so we can show you the policy, but we don't have one. So, we have all these rules, and they get put into newsletters and the letters get sent home and when we phone and say, 'You're 15 minutes late and the policy says ...' But we actually don't. We have formalised it into a policy that we have not been able to find. Maybe there is one somewhere, or we actually need to draw one up.*

Ed1 said:

*That is the book situation we follow where they have to sign out and then after a certain time we do phone the parents. After a few times, if it happens more regularly, then we write a note asking the parents to collect their kids a bit earlier. If that is not possible, we'll see if they can't join the aftercare where it's certain hours beforehand and things like that. So, we do notify the parents in such a sense.*

Ed4 said:

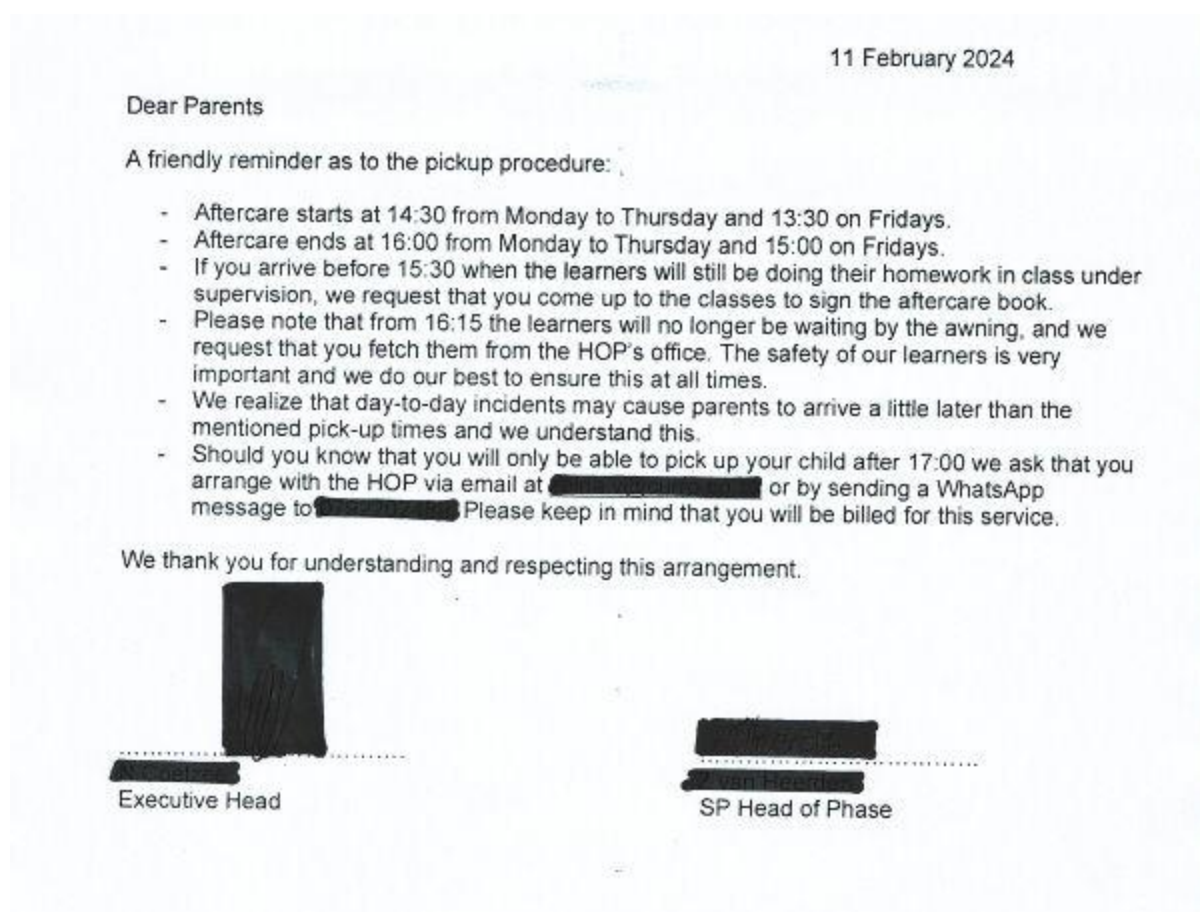
*There's a policy, but we do inform the parents regularly what time they must pick up the children from the school, as soon as possible. Actually, it's got like 15 minutes that the children must leave the pick-up zone. But you can't force them. We will not let the child go and stand in the street. It is much safer, because they are still on school property.*

Ed6 mentioned:

*After school care, yes, like I explained with the slips and phoning and follow up. Before school we have a teacher on duty from 07:00. And the gate is opened at ... I think it is 06:00, to be corrected. But those are really the only policies in place. We have spoken about it a lot of times, because like we say, liabilities are the issue. If you open the gate early and you have an injury, you could be in trouble.*

In terms of written communication to parents informing them of the times for dropping off and collecting learners before and after formal school hours, letters are sent out to parents by some of the participating schools. Examples of these letters are presented in Figure 5.1 - Figure 5.6.

**Figure 5.1: Letter sent to parents by School 5.**



**Figure 5.2: Letter sent to parents by School 6.**

Dear Parents / Guardians

**RE: LATE COLLECTION OF LEARNERS FOR 2024**

There are instances when parents experience difficulty with the collection of their child/ren at the end of the school day. This presents a concern for the child/ren and for the school.

To ensure the safety of the child/ren concerned, we have made a contingency plan with

██████████ situated on the bottom school field at ██████████  
██████████.

**PROCEDURE FOR LATE COLLECTION**

- Learner collected late – first occasion - phone call from school.
- Learner collected late – second occasion - phone call from school.
- Learner collected late – third occasion - phone call from school and learner/s will be sent to ██████████ for parents to collect their child.
- Please see attached compulsory return, consent form regarding late collection of learners.
- It is then the responsibility of the parents to contact ██████████
- Parents will have to pay ██████████ on collection for rendering this service of caring for their children.

**FOR LEARNERS NOT COLLECTED WITHIN 30 MINUTES OF SCHOOL ENDING FOR THEM, THE PROCEDURE FOR LATE COLLECTION WILL BE IMPLEMENTED.**

The School day ends for learners at the following times:

- Grade R close at 12:15 late learners will be sent to aftercare at 12:45
- Grade 1 close at 12:30 late learners will be sent to aftercare at 13:00
- Grade 2 close at 12:30 late learners will be sent to aftercare at 13:00
- Grade 3 close at 13:45 (Mon-Thurs) late learners will be sent to aftercare at 14:15
- On a Friday, all learners are released by 12:30.  
Late learners will be sent to aftercare at 13:00.
- Grade 1 and 2 sport learners – end at 13:45 late learners will be sent to aftercare at 14:15
- Grade 3 sport learners – end at 14:30 late learners will be sent to aftercare at 15:00
- **No child/ren who attend ██████████ may remain on the school premises after 15:00.**
- There are a number of Aftercare facilities that cater for children whose parents are unable to collect them timeously on a regular basis at the end of school.
- You have completed a form with your correct contact details which will enable us to contact you or someone close to you in the case of need or an emergency. This alternate number (of someone local) is important if we are unable to contact you.
- **It is compulsory for all parents to acknowledge receipt of this notice and sign the attached consent form. This attached consent form must be returned to the class educator at the start of 2024.**

We ask you to keep this notice in a visible place for reference purposes so that you know exactly where your child will be if you are late in collecting him or her.

We thank you for your co-operation.

██████████  
Principal

**Figure 5.3: School 6: Acknowledgement of notice pertaining to late collection of learners.**

**ACKNOWLEDGEMENT OF NOTICE RE: LATE COLLECTION OF LEARNERS FOR 2024**

**PROCEDURE FOR LATE COLLECTION**

- Learner collected late – first occasion - phone call from school.
- Learner collected late – second occasion - phone call from school.
- Learner collected late – third occasion - phone call from school and learner/s will be sent to [REDACTED] for parents to collect their child.
- Please see attached compulsory return, consent form regarding late collection of learners.
- It is then the responsibility of the parents to contact [REDACTED].
- Parents will have to pay [REDACTED] on collection for rendering this service of caring for their children.

FOR LEARNERS NOT COLLECTED WITHIN 30 MINUTES OF SCHOOL ENDING FOR THEM, THE PROCEDURE FOR LATE COLLECTION WILL BE IMPLEMENTED.

The School day ends for learners at the following times:

- Grade R close at 12:15 late learners will be sent to aftercare at 12:45
- Grade 1 close at 12:30 late learners will be sent to aftercare at 13:00
- Grade 2 close at 12:30 late learners will be sent to aftercare at 13:00
- Grade 3 close at 13:45 (Mon-Thurs) late learners will be sent to aftercare at 14:15
- On a Friday, all learners are released by 12:30.  
Late learners will be sent to aftercare at 13:00.
- Grade 1 and 2 sport learners – end at 13:45 late learners will be sent to aftercare at 14:15
- Grade 3 sport learners – end at 14:30 late learners will be sent to aftercare at 15:00

**THIS FORM MUST BE RETURNED TO THE CLASS EDUCATOR AT THE START OF 2024 ON EITHER MONDAY 15 OR TUESDAY 16 JANUARY.**

I \_\_\_\_\_ (Parent/ Guardian)  
of \_\_\_\_\_ (learner) in Grade One 2024:

- have read and understand the notice regarding the Late Collection policy and procedures of [REDACTED]
- consent for the school to implement the procedures explained within the notice and School Code of Conduct.

Signed \_\_\_\_\_ Date \_\_\_\_\_

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School 3 has included the procedures pertaining to the arrival and collection of learners after formal school hours in their code of conduct for learners. This is presented in Figure 5.4. The school stresses the start and finish times, but at no point

in the code of conduct do they explain what the learners are to do if they arrive before the gates open and what the procedure is for learners who are not collected timeously.

**Figure 5.4: School 3: Extract(s) from Code of Conduct for Learners**

**8. SCHOOL TIMES**

Monday to Friday:  
School begins at **07h45**  
Pupils are expected to be at school at **07h30**.

**School ends at the following times - Monday to Thursday:**

Grade R	:	<b>12h15</b>
Grades 1 and 2	:	<b>12h30</b>
Grades 3	:	<b>14h00</b>
Grades 4 – 7	:	<b>14h05</b>

**Friday:**

Grade R	:	<b>12h15</b>
Grades 1 and 2	:	<b>12h30</b>
Grades 3	:	<b>12h45</b>
Grades 4 – 7	:	<b>13h35</b>

**Break times:**

**Foundation Phase:**

Tea time	:	<b>10h00 to 10h15</b>
Lunch break	:	<b>12h15 to 12h35</b> (Grade 3)

**Intermediate and Senior Phase:**

Tea time	:	<b>10h00 to 10h15</b>
Lunch break	:	<b>12h15 to 12h35</b>

**POLICY REGARDING LATECOMERS**

Children are expected to be at school by 07h30. The bell will ring at 07h45 for the start of school. Parents or the driver of the child's transport are expected to excuse the children from the Principal for arriving at school after 07h45.

In addition to this - the following policy will be enforced regarding latecomers.

- (1) A '**Late Stamp**' will be stamped in the child's homework book.
- (2) All children who arrive late for school are to report to the Principal with their homework book to have the stamp placed in their books for their parents to take note.
- (3) After the third 'Late Stamp' in a month or term - the parents of the child will be requested to visit the principal to explain why their child is arriving at school late.
- (4) Should constant late coming persist - the continued enrolment of a child will be reviewed.

**It is stressed that parents are responsible to ensure children arrive at school punctually.**

#### School Hours

- (1) The academic school day starts at 07h45 for all grades. The academic school day finishes at 12h15 for Reception Grade; 12h30 for Grades 1 and 2, 14h00 for Grade 3; and 14h05 for Grades 4 to 7. On Fridays, Grades 1 & 2 finish at 12h30; Grade 3 finishes at 12h45 Grade 4 to 7 finish at 13h35. \*subject to change\* Parents will be notified timeously of closing times on the last day of the term and interhouse sport etc.
- (2) A pupil may not be late for school.
- (3) If a pupil is late for school the pupil must report to the Principal and then the teacher in charge.
- (4) A pupil may not be late for lessons.

Although School 4 also sends out a letter to parents regarding school times, the emphasis is on punctuality of learners rather than their safety. A copy of this letter is presented as Figure 5.5.

**Figure 5.5: School 4: Letter to parents regarding school times.**

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19 May 2023

Dear Parent/Guardian/Caregiver

**Re: Punctuality**

Please take note of the official school times of [REDACTED]

**Foundation Phase: 7.30 am to 13.45 pm**

**Intermediate and Senior Phase: 7.30 am to 14.15 pm**

We have noticed a pattern of learners arriving at school late on a regular basis.

We would like to therefore encourage parents to ensure that learners are at school no later than **7.20 am**. This allows for the learner to prepare for the school day by freshening up and unpacking their books.

It is extremely unsettling when learners arrive at school in the middle of a lesson. The learners are also disadvantaged as they miss out on the start of the day and setting the tone for the day.

We appeal to parents to comply with the school policy on the school times, and to also ensure that the relevant transport providers are notified of the correct times.

Should learners continue to default in this regard, measures will be taken to use the break times for learners to catch up with any outstanding work.

We thank you for your continued support and look forward to a positive response.

Yours in education,

---

[REDACTED]

Acting Principal

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P1 sent a letter to parents in which their cooperation is requested to collect learners timeously after the formal school hours. A copy of this letter is presented in Figure 5.6.

**Figure 5.6: Letter sent to parents by School 1.**



**Translation:**

*The following information is clearly found on page 10 of the learners Code of Conduct with the general school rules, and it is concerning to note how certain parents just do not follow the rules and ignore all requests.*

*Once again, a friendly reminder to parents and guardians who simply leave their minor children, for personal reasons and without required written communication with the school. Learners not participating in sports, must be collected promptly by 14:30 by parents or alternate aftercare arrangements can be made with the school, which provides aftercare at a reasonable cost.*

*The safety and security of every child is the duty and responsibility of the parents and guardians. Unfortunately, the school cannot be held responsible for each individuals' personal circumstances, not accommodate them. Prior written cancellation of learners at the Aftercare is essential and it is not fair or considerate of parents of guardians to*

*simply leave children in the school's care, and assume that they are being taken care of, without the cooperation of the concerned parents or guardians. Records and registers will be strictly kept of these parents and guardians.*

*Your cooperation and understanding are appreciated in regard to this important aspect of the safety of your child at our school.*

It is evident that although the participating schools do communicate with parents regarding the school times and when parents are expected to collect their children after school, no clear policy and procedures exist with regard to learners being dropped off early before the commencement of the formal school day. Also, there seems to be a gap with regard to procedures to be followed when learners are not collected timeously after the formal school or after extra-mural activities.

#### **5.4.13. Theme 13: Solutions – what more can be done to mitigate risks to learners?**

It is generally accepted that educators know that they have been delegated a specific duty to take reasonable care of learners in their care and to ensure that the environment they are in is safe and conducive to teaching and learning. Age, experience, and behaviour of learners need to be taken into account when planning any activity. Should an activity be regarded as a high-risk activity, educators need to take steps to mitigate the risks to learners (Barnes, 2009; Du Plessis, 2010; Fowler, 2018).

It stands to reason that learners who arrive at school before the gates open and who are waiting for collection after the formal school hours are subject to certain risks that could be foreseeable, depending on the environment the school is placed in.

When asked about possible solutions to this challenge faced by schools, participants were generally in agreement that this is not a new problem, nor is it unique to one district. Furthermore, all the participants agreed that they have learners who are dropped off very early and collected later than the agreed upon times.

It would seem that the participants feel there is no perfect solution. However, a number of suggestions were made. P1 stated:

*It is not a new problem and will always be there. Where you work with people there will always be variables and factors that you have to take into consideration. Parent has a heart attack and there is no way of contacting the child. There must be cooperation and clear communication; additional contact numbers in diaries, crisis situations – extra numbers to follow up. It is human nature that things can go wrong. Parents can get hijacked or mugged. So, there must be clear communication, and this responsibility falls to the adults and not the children.*

P2 said:

*Considering it practically, extending to an earlier drop off time becomes an option. But how do you accommodate learners in a manner without creating an expectation?*

P4 asked:

*Is there a perfect solution? It would be not to allow children out of the area, but the Department of Basic Education would not allow that. Or to lock the gates at a certain time until we can let them in, but we can't do that. Our problem is not the parents living out of the area, but the parents working out of the area.... they drop learners off at 06:00 in the morning to get to work themselves and then again in the afternoon. We have homework club, but parents don't want to pay for the extra homework club or private people to look after the children. Parents don't listen. They are allowed to send their children to the school of choice. It is no longer according to a specific residential zone.*

P6 felt that:

*To have an aftercare on site will not solve the problem. This will just delay the departure of the children, because parents would still come late. Transport – subsidising transport, or the best solution is to zone the schools, so that we would not get the children from far away. They would need to go to the school closer [to their homes]. However, this opens up a lot of corruption because people lie about where they live. Funded transport, but*

*the question there is who will fund these children? We had specific school buses that went to specific areas, which helped, but that was funded by the department and has been done away with. Boarding facilities for little children would work, but that requires space and huge funding to do so. Transport is the best solution, but how that will be funded is the biggest problem as there are no state funds.*

DP3 said:

*Ok, you know the general structure of having to attend a school close to home would alleviate the problem. But this comes with the understanding that not every school offers the level of education for the children and what the parents want. Parents should not feel that the school next door is not offering the same level of education as the one in town, so that puts pressure on parents to provide the best education they could give. They want their children to have a better education than they had. All schools should have the same resources and offer the same education to all, we have not had the chance to redress the challenges. An effort (should be made) by the government to ensure that all schools are effective (and equal). The next thing to be challenged, no transformation in the way the teachers, learners and parents perceive education. Parents view school from behind a veil of politics, teachers do the same and the children copy the parents. (We are) constantly coming up against the criticism of political affiliations.*

*Start school later, but that won't mitigate the problem because they will still get home very late, this comes down to affordability and convenience. Every school should offer the same level of education, and every educator must offer the same commitment, regardless of which school they work in. Hostels would help, where the children live near the school throughout the term and they go home for the holidays. Homework is done, it teaches independence, consistency, children are cared for, and those structures are good, so they keep to routines. However, this is not affordable for every parent. Teachers need an attitude check, and they need to reign in their attitudes towards the children and the schools. Teachers must change and*

*parents need to support the schools and the needs of the schools. Training teachers efficiently, because then parents won't see rural schools as offering a lower standard of education with large numbers of learners in each class.*

*30 years after SA became a democracy and despite the Constitution, the Bill of Rights, the Education White Paper, all these wonderful pieces of paper, and education has not equalised for all learners. The curriculum has changed so many times, that the challenges for children, and COVID, the changes in the families, no parents, no real caretakers, the children have no options for home support, so they have no choice but to come to the schools that offer the support. The love and care that allows these children to be given the support they need. Politicians must start focusing on the children and imparting the legacy of principles and values and morals that will ensure progress in our country. Everything we do is under the veil of politics, but the politicians send their children to the top private schools, so they do not see the inequality and the challenges faced by our educators and children. This is a generation that will follow when we are gone. They are going to be the ones to lead our land, our doctors, our nurses, etc. So, we need to give them the very best we can. Unless we change our perspectives, it is going to be very difficult to change the transportation and the school the parent chooses to send the child to the school of their choice. It will boil down to affordability of what the parents can offer to these children. We want our children to have access, to have better than we had, so we need to make sure that the teachers make the effort, and the education structures change to ensure that every single child gets the same quality learning experience.*

Learners arriving for school early and not being collected timeously after the formal school day has ended, is not a new situation. This has been going on for decades. Parents need to get to work on time, and therefore drop the learners off at school as it is regarded as a safe space.

It would appear from discussions with participating principals that there is no perfect solution to the problem of learners waiting outside or inside the school property as

each school has their own safe space allocated to protect these learners. However, no matter how this problem is presented there is no consensus for a perfect solution at this point. Therefore, the conclusion is that each school will put actions into place to deal with their issues and do what they feel is the right thing to do, to ensure that learners arriving early or being collected late are protected to the best of their ability.

#### 5.4.14. Most notable comments on each theme

The most notable comments that were made by participants are summarised in Table 5.1.

**Table 5.1: Most notable comments**

Theme	Participant/s	Most valuable comment
Theme 1: Participants' understanding of 'duty of care'.	P6	<i>Duty of care, I see is basically the school's responsibility for the holistic well-being, of the child, be it emotionally, physically, with regards to safety, that must be all inclusive. That is how I see our duty of care.</i>
Theme 2: Where does 'duty of care' begin?	P1	<i>The moment the first child enters the school grounds.</i>
Theme 3: Learners who arrive at school very early and the procedures for these learners.	P6	<i>We have 24-hour security. We open the gate to allow the children in. They are all directed to their classrooms because then they are not visible [from the streets]. If they go to one central point for example, a hall, they're going to, there is more chance of them being naughty or mischievous. If they all sit on the corridor in the front yard, they are visible from the main road. So, we would rather have them in the classroom out of sight.</i>
Theme 4: End of formal school day procedures.	DP4	<i>Monday to Thursday we have duty points where we wait, and we usher the children clear of the school to make sure there is no one left inside. On a Friday, because it's not after school sports or things, we lead our children all the way down to the safety zone. Then certain teachers go down to</i>

		<i>the front and the rest of us seat them into the safety zone or pick-up zone and then settle them for 10-15 minutes before we move off.</i>
Theme 5: Procedures for learners who are not collected within the allocated time frame.	DH3	<i>Because we are a primary school, we tend to be a little bit protective of our little ones. So, we encourage them to wait inside the gates. The security guard assists.</i>
Theme 6: Procedures for return of learners after attending afternoon sport fixtures.	DP5	<i>Learners come to aftercare until they are fetched, where I look after them until they are fetched by parents or drivers. Coaches have no responsibility to look after them once they have been dropped off from sports matches.</i>
Theme 7: Reasons for early drop off and late collection of learners.	DH6	<i>Both parents working and financial factors do play a role in drop off and pick up of learners. Some of our learners are dropped off by drivers due to parents not being able to do so due to work responsibilities and we have some kids who stay with nannies as the parents work elsewhere, so there are different reasons why parents rely on other people to fetch their children from school.</i>
Theme 8: Educators who have had to wait for learners to be collected.	P1	<i>I have waited many times, it is not the child's fault, the parents don't accept responsibility towards minor children, they get distracted by other affairs at work and they take advantage because they know the school takes responsibility for the child's safety.</i>
Theme 9: Parental accountability.	DP2	<i>If I think back, times have changed. Remember when we were at school, we walked. We rode our bicycles. But now with everything going on around us, you would think that parents, what is wrong that they don't have a more urgent sense of responsibility, that some parents would just not even think twice of staying late, wherever they are, and</i>

		<i>not bother to pick their children up. I don't know if it is a generation thing. The modern-day parents, it's definitely different to when I was growing up. Parents are just irresponsible now.</i>
Theme 10: Perceived boundaries of 'duty of care' for educators.	P1	<i>With minor children there is no definite line. Both parties have to share this responsibility, and they cannot hand over the responsibility. They cannot forsake this at all.</i>
Theme 11: Incidents outside of formal school hours.	P1	<i>The older brother of some of my learners (who is in high school), walked to the primary school to fetch his younger siblings. He was assaulted and nearly stabbed in that incident. A couple of girls ran away from home as they were being molested, as the principal he was called by the parents and then assisted the police with the case. He will frequently be contacted by members of the community who have seen some of child learners begging next to the road for food, or who are left alone at home due to social circumstances, violence, and abuse. In these cases, I always get the social welfare involved. Networking is very important in a school community; you need to know the right people and have them on board to assist with these children in dire need. We don't realise how blessed our own children are, we cannot become complacent and accept this as the norm, because this is not a norm, there is no template and each case must be handled on its own merits, do not engage when in is NOT in the best interests of the child. This is not always easy because the child may end up in a worse situation, try to get the parents on board, work through the courts and assist the children in every</i>

		<i>way possible. ALWAYS IN THE BEST INTERESTS OF THE CHILD.</i>
Theme 12: School policies to mitigate early drop off and late collections	Ed4	<i>There's a policy, but we do inform the parents regularly what time they must pick up the children from the school, as soon as possible. Actually, it's got like 15 minutes that the children must leave the pick-up zone. But you can't force them. We will not let the child go and stand in the street. It is much safer because they are still on school property.</i>
Theme 13: Solutions – what more can be done to mitigate risks to learners?	DP3	<i>Ok, you know the general structure of having to attend a school close to home, it would alleviate the problem. But this comes with the understanding that not every school offers the level of education for the children and what the parents want. Parents should not feel that the school next door is not offering the same level of education as the one in town, so that puts pressure on parents to be given the best education they could be given. They want their children to have a better education than they had. All schools should have the same resources and offer the same education to all, we have not had the chance to redress the challenges. An effort by the government to ensure that all schools are effective, not everyone can come from rural areas so that is not an option. The next thing to be challenged, no transformation in the way the teachers, learners and parents perceive education. Parents view school from behind a veil of politics, teachers do the same and the children copy the parents. Constantly coming up against the criticism of political affiliations.  <i>Start school later, but that won't mitigate the problem because they will still get home very late, this comes down to affordability and convenience. Every school should offer the same level of</i></i>

	<p><i>education, and every educator must offer the same commitment, regardless of which school they work in. Hostels would help, where the children live near the school throughout the term, and they go home for the holidays. Homework is done, it teaches independence, consistency, children are cared for, and those structures are good, so they keep to routines. However, this is not affordable for every parent. Teachers need an attitude check, and they need to reign in their attitudes towards the children and the schools. Teachers must change and parents need to support the schools and the needs of the schools. Training teachers efficiently, because then parents won't see rural schools as offering a lower standard of education with large numbers of learners in each class.</i></p> <p><i>30 years after SA became a democracy and despite the Constitution, the Bill of Rights, the Education White Paper, all these wonderful pieces of paper, and education has not equalised for all learners. The curriculum has changed so many times, that the challenges for children, and COVID, the changes in the families, no parents, no real caretakers, the children have no options for home support, so they have no choice but to come to the schools that offer the support. The love and care that allows these children to be given the support they need. Politicians must start focusing on the children and imparting the legacy of principles and values and morals that will ensure progress in our country. Everything we do is under the veil of politics, but the politicians send their children to the top private schools, so they do not see the inequality and the challenges faced by our educators and children. This is a generation that will follow when</i></p>
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		<p><i>we are gone. They are going to be the ones to lead our land, our doctors, our nurses, etc. So, we need to give them the very best we can. Unless we change our perspectives, it is going to be very difficult to change the transportation and the school the parent chooses to send the child to the school of their choice. It will boil down to affordability of what the parents can offer to these children. We want our children to have access, to have better than we had, so we need to make sure that the teachers make the effort, and the education structures change to ensure that every single child gets the same quality learning experience.</i></p>
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## **5.5 CONCLUDING REMARKS**

This chapter firstly described the profiles of the participating schools and the individual participants. This was followed by a presentation of the data analysis according to the themes that emerged during the data analysis, which included quotations from the various participants that were most applicable to the questions. The quotations are taken verbatim from the transcripts of the interviews. In the next chapter (Chapter 6) I present and discuss the findings.

## CHAPTER 6

### DISCUSSION OF FINDINGS

#### 6.1 INTRODUCTION

The aim of this study was to examine the understanding of educators' duty of care outside formal school hours and how they apply this duty to learners in their care. The idea of using the Contextual Safeguarding Theory as the theory to frame this study is due to this theory being based on a sociological structure. Contextual Safeguarding considers the protection of children who may be in a situation where they could potentially face harm. It uses the context that safeguarding is not limited to one specific group of people, but is rather a community based ideal, making use of other services within a community to provide the necessary protection for these children (Firmin & Lloyd, 2020).

To assess whether a learner is in a situation where they may be exposed to harm requires that we recognise that harm occurs through an interaction of individual choices and the environmental contexts. Contextual Safeguarding considers a collective approach to protecting children and requires that parents assist in this protection. Contextual Safeguarding can also be labelled as being the responsibility of a wide range of community members, who would play an active role in the protection of children (Firmin & Lloyd, 2020). Learners who are left at school very early in the morning or after the formal school hours have ended are in an environment which could potentially place them in a harmful situation unless each individual school takes precautions to ensure the safety of these learners.

This study examined the experiences of educators at six schools in KwaZulu-Natal and the approaches these schools have taken to protect learners who are at school outside of formal school hours. The participants were also asked how they felt about this extra duty of care which they had taken on and where they would potentially draw the line if it was up to them. They also got the opportunity to respond to the question of how they felt about the parental accountability for the children and what they would say to the parents if they were able to do so about their responsibility towards their own children. The question was asked as to whether each school had a formal policy

in place for these learners who were at school outside formal school hours and how communication with parents took place. Selected participants were asked if any incidents had happened outside of formal school hours which had been reported to them. Finally the question was asked if there was an ideal solution to this problem.

## **6.2 DISCUSSION OF THE FINDINGS**

In the following sub-sections I discuss the findings according to the themes that emerged from the data.

### **6.2.1 Theme 1 - Participants' understanding of 'duty of care'**

Participants were asked about their understanding of duty of care. Responses were varied and many of the participants agreed that they owed a duty to care for learners while they were in their care during the school day or during school sanctioned activities. A few participants felt that their duty extended beyond the formal school day and that they wanted to know about the home circumstances of the learners in their care in case there were specific needs or particular circumstances which could affect the learner's ability to learn while at school. Among those mentioned were financial circumstances and whether the learner and their families had sufficient food at home.

Several participants likened a duty of care to pastoral care and stated that they felt that they were responsible for the learner in a holistic manner. Therefore, not only to protect them and ensure their physical safety but also to take care of their mental well-being and to better understand the learner's home life. Several participants felt that it was important to know what sort of family circumstances the learner came from so that if there were specific needs, such as food or the child would require stationery, then educators are better able to treat a learner more empathetically. However, they stated that learners must firstly feel safe enough to speak to them.

One participant (DH3) likened this holistic approach to an umbrella and stated that the children should feel safe within the reaches of that "umbrella", the educator's arms need to reach out and protect the learner at school. Another participant mentioned that knowing about home circumstances would help to "bridge the gap" (DH6) between the home life and school life to create an environment in which the child felt comfortable. DP6 mentioned that as a member of the school management team they felt that the

duty of care could extend beyond school hours, arguing that educators must mitigate any risks to children at the school.

DH1 commented that duty of care went as far as having a good relationship with the parents. This would ensure the learner felt safe and was able to speak to the educator when needed.

Safety and the responsibility to ensure that learners were safe at school emerged as an important aspect of duty of care. Several of the participants mentioned that it is an educator's duty to look after the safety of the learners in their care (DP3, DH1 and Ed1). Safety of educators and visitors to the school were also mentioned, especially by participants who are in management positions. They included that a duty of care was owed to any visitor at the school. One participant in particular mentioned that safety was not only a duty, but also a legal and moral obligation (DH5), while DP2 stated that there was a moral responsibility to be aware of what happens at school.

What came across was that although participants had a basic understanding of the idea of duty of care, very few understood the implications of acting *in loco parentis* (in the place of the parent) during the school day and the responsibility this entails. One participant articulated duty of care as "taking the place of the parents in every way, while at school" (Ed6).

An educator's duty to ensure the safety of learners comes from many sources, as explained in Chapter 2. It is for this reason that educators should be required to be familiar with the "legal rules governing education in general, as well as those that apply to extraordinary situations that require a higher degree of care from the educator" (Joubert, 2016a:175).

Having a vague idea of the duty of care, as mentioned by P2 "I don't know if I really understand it, but what I think is ..." is worrisome and the lack of educators' knowledge or understanding will certainly not hold up in court if anything were to happen to a learner while in their care. For this reason, regular on-going professional development in this area is a vital aspect of in-service development for all educators.

### 6.2.2 Theme 2: Where does ‘duty of care’ begin?

In terms of the Constitution (RSA, 1996a), South African schools Act (RSA, 1996b) and the Children’s Act (RSA, 2005) every learner has the right to safety and security within a school environment. In addition, parents and guardians must take the responsibility to protect their children. However, in a school environment it is the educator who takes over this obligation from the parents (Joubert, 2016a). What the legislation does not clearly define is the timeframe given for this duty other than when the child is in the care of the educator. It has been argued by Mampane (2018) and De Waal (2000) that once the learner steps through the school gates the duty of care begins.

When this question was asked, there were a variety of responses from the participants: “When the child comes into my classroom” (P2), to “when I step onto the school property” (DP3), and “when the kids are dropped off at school” (DP5). DP6 explained that their duty began “from the earliest the child might come to school and if I am on site”, while Ed1 stated that they felt their duty began “when I get to work” even if it is before 07:00. Another educator felt that as they are expected to be in their classrooms by 07:15, that was the time their duty began. While the general consensus around the start of the duty was more or less when the educator and learner arrived at school, there are learners who arrive at school well before the official time the school gates open. There is thus no consensus among the participants as to when duty of care actually commences.

Ed3 commented on this by stating that

*“... as soon as we get to school, the duty of care would start because, although we start school at 07:30, we’re here before that, so we have to get the kids in and then we are watching them until we actually formally start our lessons”.*

This sentiment shows that participants are aware of the fact that they do have a duty to look after or supervise the learners while they are on school premises.

DP4 added to this by stating that should they see a learner in school uniform outside the school premises, and something had happened to that learner, they would “stop

and get involved”. This ties in with Mampane’s (2018) reasoning that educators are responsible for learners who are travelling to and from school, as well. However, the problem with this statement is that unless learners are travelling to school in school transport or in buses specifically allocated to learner transport by the provincial Department of Education, the learner is in the care of the driver of that vehicle, whether it be the parent, a driver who is paid to collect learners or public transport. Learners who are in school vehicles or learner transport would not be covered by Section 60 of the South African Schools Act (RSA, 1996b) in the case of an accident even if the school has the relevant insurance on vehicles and public liability. Private vehicles used for transportation of learners should ensure that they also have the necessary insurance and public liability coverage should they be involved in an accident on the way to school or home from school. Section 60 of the Schools Act (RSA, 1996b) makes provision for learners who are injured in vehicles which are not owned by the school or used for specific school activities but does not clarify whether these are school sanctioned activities or simply transporting learners to and from school. I would argue that as the school exercises no control over the transport arrangements of parents, the school in general and educators specifically cannot be responsible for a duty of care towards learners during the time they are travelling to and from school.

### **6.2.3 Theme 3: Learners who arrive at school very early and the procedures for these learners.**

Learners arriving well before the school gates open has become more of a problem over recent years. Participants in this study agreed that there is a problem with learners who arrive at school very early in the morning and being left unsupervised. This has resulted in schools having to make provision for these learners.

In 2010 the Western Cape Provincial Government had noticed an increase in the number of learners arriving early for school. Maile and Olowoyo (2017) and Vukovic (2017) state that there are many factors which result in the early arrival of learners. Among these factors are that both parents are working, their inflexible work hours require that they are at work at specific times, so they [the parents] drop their children off to ensure that they are at work timeously.

Participants mentioned that their schools had put several practices in place to monitor these early arrivals, as it was not safe to have them waiting outside the school grounds. For example, schools allowed learners early access to the school property at designated places where they could be supervised. This supervision was not done by a qualified educator but rather by general assistants of the school or the school security guard who would take care of the learners until the staff arrive. At this point the staff member on duty would take over or the learners would be allowed into the classrooms and the educators would supervise these learners.

COVID-19 also played a role in changing the times that learners were dropped off at school. As every child had to be screened daily, which was a time-consuming process, learners were frequently granted access earlier than 07:00 when school gates were usually opened. Schools had staff on duty for screening and many educators had extra duties to monitor social distancing as well. DP4 commented that prior to the COVID-19 pandemic, learners would be allowed to play on the field in the mornings, but that changed. Learners are now required to wait in the quad and then go straight to their classes when they were opened in the morning. These learners were expected to sit quietly and read or complete work but did not necessarily have anyone supervising them at this time.

It has been argued that school has not formally started yet and any activities or games being played prior to the bell ringing could not be regarded as part of the formal school day. This was used as an argument in the case of *Mageni vs MEC WC Department of Education* (2021) when a child was injured and lost sight in his one eye during a game of tag rugby being played by a group of boys before the bell had rung. However, as the children had been given access to the school grounds, the court ruled that they were owed a duty of care during this time.

As all participants had mentioned that they had learners arriving very early for school, the procedures for these learners had to be investigated. Each school had made arrangements that would ensure learners were kept off the pavement and the street, but they were not necessarily supervised by professional staff. As DH5 explained learners would stand within an undercover demarcated area until someone arrived. At 06:50 when teachers arrived the learners would proceed to the classrooms.

DH6 stated that they had a security person who would let the children in, but obviously the learners were not supervised. According to DH6 they were in a secure environment and “not loitering on the streets”. Ed2 also stated that they had a security guard who would walk around but that the learners were waiting outside the classroom for it to be opened.

The issue of no one supervising learners came up again when Ed4 stated that the teachers usually arrived around 07:00 and there was no one supervising learners until teachers “came on duty at 07:00”. Ed6 added the gates at their school were opened quite early, usually when learners started arriving (but could give no actual time when this took place), and again said there was nobody to supervise the learners. Ed6 added: “If something happens on the premises, who is liable? It is not always what is right in our mind, it’s who is liable at the end of the day.” Within the Contextual Safeguarding Theory, the schools are doing what is right by not having learners exposed to danger outside the school grounds. However, they then open themselves to the risk of a learner being injured and not having any professional staff on duty to supervise them. This could result in the school being held liable for an injury that would otherwise not have taken place on school grounds

In the case of *Gouws v Laerskool Lynnwood and MEC for Education, Gauteng (2015)*, a learner lost a part of a finger when a classroom door was slammed shut by another learner. The court stated that a reasonable parent would not have their children under constant surveillance. Can one then consider that the same would apply to a school who allows learners access to the school grounds to keep them in an environment which would be regarded as safer than the pavement?

#### **6.2.4 Theme 4: End of formal school day procedures.**

The end of the formal school day can be described as the end of the school sanctioned and extra-mural activities for the day and not necessarily the time that the last bell rings. An exception would be when learners are attending sport fixtures or cultural events at other schools and return later than the end of their scheduled practises.

As with procedures for learners who arrive early at school, schools have specific procedures in place for the end of the formal school day. All participants explained

their end of day procedures and stated that educators had supervision duties after the formal school day, the duration of which ranges between 10-30 minutes depending on the school. These procedures were only for the children who were not participating in extra-mural programmes for that particular day.

P1 stated that their learners were taken to the main gate and the children were handed over to the parents at the gate. Educators were expected to remain on duty for half an hour. DP1 gave more detail on this explaining that they have a duty roster and different educators were on duty on different days. They also have more than one collection point so educators were spread out among the various gates where parents were able to collect their children.

P2 also felt that half an hour was an adequate grace period for parents to collect their children. After this half hour the remaining learners are taken to the office so that parents could be phoned to find out where they were and how long they were expected to be. DP2 added that at the end of their extra-mural activities, the security guard would “collect any children who were left” and that they were expected to go to the aftercare facility. However, he mentioned that parents were reluctant to pay additional fees for the aftercare facility, a sentiment that was echoed by many other participants. Therefore, the security guard would have to sit with the learners at the gate waiting for the parents to arrive.

P4 mentioned that they had a large number of learners who walked home after school who would leave the premises unsupervised. This is unusual in many schools, as the trend is to have parents or a driver collect the learners from school. P4 also stated that the remaining learners were taken to a demarcated “safety zone” at the bottom of their school field which was fenced off and where the learners had to wait for their transport to collect them. They also have an aftercare or a homework club, where learners could go to if their parents could only collect them after 16:00. DP4 added that educators were required to wait at the safety zone for 10-15 minutes before they went to attend to their extra-mural activities for the day.

P6 explained their afterschool procedures in detail. The school is situated in the central business district and there is usually a lot of traffic around the school particularly at pick up times. They felt that it was far too dangerous to allow learners to wait on the

pavement so therefore had a staggered end of day routine. The Grade One and Two learners left first. They were taken to their pickup point by educators and were seated on benches along the corridors. Educators remain on duty and the security guard at the gate would call individual learners when their parents arrived to collect them. All parents are required to sign consent that should learners not be collected on time the learner would be taken to an aftercare facility across the road from the school. At the end of the agreed waiting period the learners are taken to the aftercare and parents are required to collect their children from the aftercare.

It is noted that of the six schools which took part in this study five schools admitted that they had problems with parents paying for the aftercare at the school. This results in learners sitting at the gate waiting and the school secretary, an educator or the security guard having to call parents to find out where they were and how long they expected to be before collecting their children.

All six of the participating schools have a specified time limit, which they expect parents to adhere to for the collection of children at the end of the day. All six schools stated that they had parents who did not adhere to the time frames and that inevitably there were learners who were left waiting for hours for their parents to collect them.

#### **6.2.5 Theme 5: Procedures for learners who are not collected within the allocated time frame.**

As previously stated all schools have given parents specific time frames to collect their children from school. However, it is a given that not all parents will adhere to these time frames. In some instances there may be a delay due to an accident, the parent was not able to leave work on time, or there may be roadworks along the way which hampers the traffic flow. Unforeseen events happen and parents may arrive late. However, what is important to remember is that communication with the school goes a long way to mitigating the frustration experienced by the educators and the fear or anxiety created in the child when their parents are unexpectedly late to collect them.

When asked about the procedures for learners who had not been collected on time, there was general consensus among the participants that they had “repeat offenders” (P1); parents who were habitually late to collect their children. These were also parents

who did not want to pay for aftercare facilities. There is no way to combat this situation, so the schools have put procedures into place to ensure that the learners are safe and are not wondering around the school or on the pavement while they are waiting for their parents.

P1 explained that they had an additional security guard who was there to observe the learners who are waiting. They have a late collections book which all parents are required to sign when they collect their children. He (the principal) would then speak to the “repeat offenders” about collecting their children on time. P1 stated that “we have proof of parents with excuses; they must sign the book before taking their child”.

P2 commented that the security guard at their school was quite familiar with the learners and their parents because they regularly have to supervise the same learners waiting to be collected. DP3 added that their security guard kept an eye on the learners who had not yet been collected.

DH4 mentioned that when they had noticed a pattern of certain learners being left at school they threatened to contact social welfare as the children were abandoned. The rationale for this statement is that “it is not right to let your child sit here until 16:00!”. After this threat was made parents made alternate arrangements to collect their children on time.

All the participating schools employ security guards, who are not only at the school to prevent burglaries. It seems as if one of the main tasks of these security guards is to ensure that the learners are supervised and kept safe while they wait for tardy parents to collect them from school. This is problematic because these security guards are not trained to work with children, nor are they registered with the South African Council of Educators.

#### **6.2.6 Theme 6: Procedures for return of learners after attending afternoon sport fixtures.**

Extra-mural or extra-curricular activities are an important part of the school programme. Learners are encouraged to participate in team sports and cultural or social activities to develop skills working as a part of a team. These activities have the

added benefit of keeping learners fit and active or developing other skills if the learner is not a sporty child.

Inter-school sport fixtures are a vital aspect of school sport developing a spirit of competition among learners in a healthy environment. Learners who participate in sport are encouraged to participate in these fixtures between schools. This, however, requires travelling to and from the other schools which could result in learners arriving back at their own school slightly earlier or later than the times given to parents. Traffic plays an important role in this travel time, as does the time it takes to round learners up and ensure that all are in the vehicles they should be in.

Inevitably, after returning from a sports fixture there is likely to be a learner or two whose parents have not yet arrived to collect them. When asked about the procedures for these fixtures, communication was the clear response from participants. DP4 stated that as transport was a problem for them they tried as much as possible to ensure that all sport fixtures took place during the school day. Consent forms and approximate return times are sent to parents with adequate time to plan for these fixtures. The participants also stated that the educators who attend these fixtures with the learners are responsible for ensuring that the learners are collected after they returned to school.

P1 indicated that coaches inform parents of the time they were likely to return to school when they send out the consent forms for the learners to participate. If parents are not there to collect learners when they return, they have to go to the pre-arranged waiting area where a security guard would supervise the learners. The importance of consent forms and communication with the parents was echoed by P3. DP5 mentioned that learners who were not collected immediately were expected to go to the aftercare facility where they were looked after until they were collected by parents or drivers. It was clearly stated that it was not the responsibility of the sport coaches to wait for the parents as the educators were there to do so.

P2 explained that they do not have a school bus so they relied solely on parents to transport learners to matches and that they would go straight home after the sport fixture. For the few learners whose parents could not take them to the fixtures an educator/sport coach would take them to the fixture and then drop them off at school

afterwards if they did not travel with friends<sup>1</sup>. They were expected to go to the aftercare facility upon arrival back at school, to wait for their parents to collect them. Should parents be collecting them from the school where they played the fixture the educator is expected to wait with the learners until all are collected. They would give parents up to 45 minutes to collect learners. Thereafter, they would call the parent and return to school.

As previously mentioned communication is key when it comes to arranging sporting activities. Letters must be sent out at least three days prior to the fixture to give parents time to make the necessary arrangements<sup>2</sup>. DP1 added that they usually indicate that learners will return half an hour earlier than expected on the letters rather than having the learners having to wait for parents. However, it was also noted that there were some parents who “take advantage, because they work until 17:00” so that would be when they left work to collect their children, because “the parents know there will be a teacher until 17:00” (Ed3). All participants mentioned that in the consent letters sent<sup>3</sup> out the parents are required to add their contact details so that they could be contacted if there were any changes to arrangements or if they had not arrived on time to collect their children.

When asked about who would wait with learners after they returned from fixtures some participants stated that if they were the coach they would wait until the last child had left (ED1). Ed3 also stated that they only leave when the last learner has left. DH3

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<sup>1</sup> Clauses 8A to 8E of the Regulations for Safety Measures at Public Schools require that any school participating in an extra-curricular activity applies for permission to take learners off the school premises. The application form for permission requires that the school includes the nature of the transport, the drivers of the vehicles, details of the insurance and roadworthiness of the vehicle, passenger liability and the drivers must provide their valid driver’s license or professional driving permit. Therefore, where educators are driving to sport venues with learners in their vehicles permission must first be granted by the relevant district office for this to take place. Should permission not be obtained the principal may be negligent in allowing the learners to travel with unauthorised drivers.

<sup>2</sup> Section 8C(1) of the Regulations for Safety Measures at Public Schools states that a public school must obtain written consent from the parents of the learners who will be undertaking any school activity off the school premises.

<sup>3</sup> While there is no direct mention of the consent forms to be signed by parents for school excursions or sport fixtures, the Regulations for Safety Measures at Public Schools states in Section 8B(1)(g) referring to documents and information required – “any other relevant details” – which could be the parents’ contact details. While parents are required to give consent for their children to participate in school activities, Section 8C(2) also states that parents cannot be requested to sign an indemnity form which indemnifies the school against any legal action which may arise as a result of the school activity.

added that if there were issues when the learners returned, the “teachers will remain with them until such time that they are safe”.

While communication is important and was discussed by all participants, it must also be noted that many of the participants stated that not all parents adhered to the time frames to collect learners from these sporting activities. In a few instances participants mentioned that they had to wait for extended periods of time before learners were collected.

#### **6.2.7 Theme 7: Reasons for early drop off and late collection of learners.**

A number of factors contributing to learners being left at school outside of formal school hours were identified by the participants. Among these factors are:

- Parents who both work and need to be at work for long hours each day;
- Parents who live far from the school and rely on other means of transport to get the learners to school;
- Parents who travel for work and rely on other means of transport to get learners to school;
- Schools not being zoned to specific areas but chosen by the parents as being the best option for their children; and
- In limited circumstances, learners are left waiting simply due to parents knowing they are being supervised and therefore parents neglect to collect their children timeously.

While participants stated that they did what they could to get parents to collect learners timeously through regular written communication, it was also noted that parents are informed that should learners not be collected on time there are alternatives given for the care of these learners. It would appear that schools know that they will not have all learners collected on time and to ensure they themselves are protected they put plans in place to ensure learner safety, which enables parents to deviate from the times given for collection of learners.

The above-mentioned factors were the most common factors affecting times that learners are collected but are not limited to those factors. P1 stated that because their school is a coastline school, parents travel long distances to get the children to school. P2 added that parents had children in multiple phases of the school. Learners in the Foundation Phase are released earlier and their parents are inclined to have their younger children wait until it is time to collect their children who are in more senior grades. The younger ones inevitably have to wait for their older siblings to finish school.

P4 explained that as parents are working many learners go home by mini-bus taxi. The mini-bus taxis can only take a limited number of learners so will frequently have to do two or three runs to collect all the learners which requires the learners to wait until the taxis returned for them. This is exacerbated by the mini-bus taxis also collecting children from other schools and filling up rapidly with them which means that they can only collect a few from their school on the first run. DP3 also mentioned the taxi routes as a contributing factor to learners having to wait.

P6 stated that learners travelled a long way to get to school because parents can afford to send their children to the school of their choice. This resulted in children being transported in mini-bus taxis. DH 3 added that their school was regarded as a “hot spot” school. In other words, it is a school to which many parents want to send their children as it offers a better “quality of education” than some of the surrounding schools. As a result many learners would inevitably have to travel considerable distances to get to school.

However, despite all the above factors participants mentioned that parents also simply “take advantage” (Ed6). Because they know that there is someone looking after their children, they are not under pressure to collect their children on time. Ed4 added that the children stay at school for various reasons, but mainly because “someone can supervise them”. P2 summed up the responses by stating: “It is just too easy to say it is a transport problem. There is an aftercare facility, and they can make arrangements to make use of it, but they just abuse the system”.

While it is clear that transport and both parents working are major factors in the late collection of learners, this is not the sole reason for parents not arriving on time to

collect their children from school. For some parents it seems that it is simply a case of convenience because there are people who are there to supervise their children. They are therefore happy to take advantage of the situation when it suits them.

#### **6.2.8 Theme 8: Educators who have had to wait for learners to be collected.**

When participants were asked about educators having to wait for learners to be collected by their parents after the formal school day the majority responded in the affirmative. Participants said that the learners felt anxious about being collected very late, they were hungry due to not having enough food to get them through such a long day and were concerned about their parents not collecting them on time. When asked about parent responses to collecting learners late most participants stated that parents did not thank them for waiting with their children. In a few cases parents were even upset with the participants and schools for having to come out and collect their children. In some instances parents would make excuses for their lack of communication or have changed cell phone numbers which is why the school could not get hold of them. Most participants commented on the number of times parents changed contact details without notifying the school.

Participants stated that they felt the expectation from parents that they would look after learners was frustrating. According to P1, “parents don’t accept responsibility for their own children”. P3 mentioned that “parents did not seem to care” when contacted very late about their child who was yet to be collected. Parents would also frequently send someone else to collect their child and not come themselves.

Although waiting is frustrating and the lack of appreciation by parents was commented on the participants did clarify that they could not blame the learners. It was not the learners’ fault that parents did not collect them on time (Ed6, DH4, DP2). Participants felt that parents need to take accountability for their own children and start being more responsible as the adults. In a few cases mentioned the participants had waited for hours for parents, tried several phone numbers, and when they did finally get hold of the parents the lack of accountability was astounding. DH4 mentioned an occasion when they eventually managed to get hold of the father at 18:45. He was unaware that his child had not yet come home from school and when he arrived to collect his child he seemed annoyed at the inconvenience of having to collect his child that late. As the

primary caregivers parents remain responsible to ensure that they also execute their duty of care. It cannot be abdicated to the school and educators who are the secondary caregivers.

It is noted that where this parent felt he was being inconvenienced due to having to come to fetch his child from school at a late hour, the Children's Act (RSA, 2005) states in Section 18(2)(a) that the parent has the primary responsibility to care for the child. In all matters regarding the child, the best interest of the child is of paramount importance, especially when it comes to the care and protection of children. With regard to the Contextual Safeguarding Theory the parent may not abdicate his/her responsibilities to third parties. Parents are still required to contribute towards the care of their children and should work together with the school to ensure the safety and well-being of children.

### **6.2.9 Theme 9: Parental accountability**

Parents are the primary caregivers for their children. As such they are expected to ensure that their children attend school regularly and are punctual (RSA, 1996b). The South African Schools Act stipulates that every child has a right to be educated in a safe and secure environment (RSA, 1996b). Oosthuizen et. al. (2018) adds that parents must take all necessary precautions to ensure the safety of their children.

Dropping children off at school before the school gates have opened, or even before there are adults to take care of the child or leaving them at school for hours after the formal school day has ended, is negating the responsibility for their own children. This duty cannot and should not be abdicated to others to perform on behalf of the parents. Yet, it would seem, that many parents do exactly this.

Participants were very vocal about parental responsibility and stated that "they must be responsible for their own minor children because the world has changed drastically, especially with child trafficking" (P1). P3 said that parents need counselling to understand that by leaving their child unattended they were exposing their child to all sorts of trouble and mischief and could lead to the child breaking the law and concluded by saying: "Parents need to step up".

P4 added that they felt learners were suffering by waiting, explaining that in many cases learners had no extra lunch or drinks and would become very hungry while waiting indefinitely for their parents to collect them. P6 stated that “parents are failing in their duties as parents”.

DP2 also commented about how “times have changed”.

*When we were at school, we walked, rode our bicycles. But with everything going on around us now, you would think parents ... [would] ... have a more urgent sense of responsibility, some parents would just not think twice of staying late, and not bothering to pick up their children. ... modern-day parents ... are just irresponsible.*

DP3 spoke about how learners would feel and that the anxiety caused by parents not being available would create a sense of insecurity in the learner. Not knowing what time their parent would collect them was unsettling to learners and affected them emotionally and psychologically. DP4 added that they felt that parents simply took advantage of the school’s efforts to keep learners safe to such an extent that the school decided they needed to force the responsibility back onto the parents. However, DP4 admitted that it did not always work. Ed4 added that it was simply a case of child neglect to leave a child sitting at school for three hours waiting for parents to come and fetch them.

The participants were unanimous that parents were failing their children by not being accountable for and available to their children. The frustration of the participants at seeing how learners feel and respond to parents when they are late can be summed up as distressing. It would seem that if the participants could tell parents exactly how they felt they would all tell parents that it is their (the parents’) responsibility to take care of their own children and not rely on the schools to do so for them.

Once again it must be noted that parents cannot abdicate their responsibility to care for their own children. As noted previously, the Children’s Act (RSA, 2005) is very clear on the responsibilities of the parents. The child, according to the Bill of Rights (RSA, 1996a), has the right to be cared for in a safe environment. While the child is at school and is in the care of the educators who act *in loco parentis* during the school day, the

parents should resume this responsibility to care for their own children after the formal school day has ended. Contextual Safeguarding Theory requires that parents work with the school and other members of the community to create safe environments for children. When the parents are not taking on their own responsibility for their children they are failing in their role to safeguard their children.

#### **6.2.10 Theme 10: Perceived boundaries of ‘duty of care’ for educators**

Based on the responses by the participants a distinction can be made between physical boundaries and time boundaries of duty of care to learners. In terms of a physical boundary, P2, DH4, DP1, DH2, and DH3 all stated the school gates are the boundary. P3 explained that they have cones which are placed on the road alongside the pavement in front of their school. The pavement was within the boundary and the cones marked the edge of their boundary. Once learners walked past the cones they were no longer on school grounds and therefore they were not owed a duty of care.

However, P1, P5 and DH5 argued that a boundary was irrelevant. The learner is in the care of the school and until they are physically handed over to their parents, the duty continues. P1 added that both parties – parents and the school - have to share this responsibility. P5 mentioned that they experienced incidents where learners had

*sneaked across to buy hamburgers at the garage shop across the road, but technically speaking, it doesn’t mean we can exonerate ourselves from the duty of care because they are expected to be on our school premises.*

P5 added that:

*Even if a child bunks school to go surfing, the parents think they are here, but they are not. Kids who leave school during school time must have a special exit form from reception signed off by the duty educator.*

DP3 argued as follows: “Apparently I have no boundary, because I worry about the children” and continued that as a manager she wants learners to feel safe and protected. However, she mentioned that it would be good to have this discussion with parents so that they can establish a boundary and make parents see it. P6 explained that because they had pavement all around the school and with the school situated in

the CBD, learners are not allowed to exit the school gates on their own. They have to be handed over to a responsible adult. Therefore, the physical boundary for this school is the school fence. Ed2 commented that the school pavement can be regarded as part of the school grounds and therefore saw the boundary as being the opposite side of the road. She mentioned that she would actually walk children to their parent's vehicles and make sure they got into the right car. She concluded by saying:

*I don't feel like the gates are where the duty ends. I feel like that part is still my responsibility to make sure they're [the learners] getting in their car safely. (Ed2)*

As far as a time frame goes many participants felt that half an hour was adequate time to allow for parents to collect their children from school. However, P4 said that as soon as school ended that was the time to draw the line. It then becomes the parent's responsibility to resume care for their children. P6 felt that 15 minutes was the limit for parents to collect learners.

DP1 referred to the Personnel Administrative Measures (PAM) (RSA, 1999) which is published in terms of the Employment of Educators Act (RSA, 1998b) and stated that according to this document, educators are expected to work seven hours a day<sup>4</sup>. So, depending on the school timetable, if school ended at 14:00 and then offered sport until 15:00, that hour would be the time parents were expected to get to the school to collect their children. Overall, the general timeframe given as a reasonable time limit for parents to collect their children after the end of the formal school day was between 15 to 30 minutes. The participants generally agreed that regardless of any boundary in place - physical or time limit - educators cannot simply ignore their duty to safeguard learners in the absence of their parents. It is not only a legal duty, but a moral obligation to do so. Educators are generally innately more concerned about the learners and will still worry about them long after the formal school had ended.

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<sup>4</sup> This interpretation by DP1 is incorrect. The Personnel Administrative Measures (PAM) requires educators employed by the State to work for at least 1 800 hours per year. Because there are at least 200 school days per year, educators are expected to work for nine hours per day (1 800 hours/200 school days = 9 hours per day). The PAM does, however, stipulate that educators must be at school for at least 7 hours per day.

### **6.2.11 Theme 11: Incidents outside of formal school hours.**

The participating schools all had put various plans in place to protect the learners before and after the formal school day. Among these plans were:

- Having a specific set of procedures for learners who arrive very early for school and having them enter school grounds to be supervised by security guards on the school premises;
- The provision of a safe space inside the school grounds, specifically demarcated for learners who are waiting after school to be collected;
- A roster for staff who would supervise learners while they are waiting for parents or transport;
- The provision of an aftercare facility for learners who are waiting to be collected. However, this measure had its own problems because many parents could not afford to pay the additional fees for the aftercare centre.

Despite all plans and procedures put into place invariably incidents do happen after the formal school day. Due to the nature of a school, such incidents are reported to the school principal. As this is a potentially sensitive area only the principals were asked about incidents which had been reported to them and which had taken place after school hours. It must be noted here, in terms of the Children's Act (RSA, 2005), should abuse in any form be reported to an educator and if they do not report it to the relevant authorities, they themselves may also be held accountable and could be found guilty of negligence.

P1 mentioned that unfortunately he was aware of too many incidents. He mentioned that the school serves a community which is regarded as being economically strained and this resulted in learners either being molested, or who have been seen begging for food or money. In all instances he attempted to get the community members involved to assist these learners. This included members of local churches, the social welfare, and the SAPS where necessary. This is a good example of Contextual Safeguarding Theory being put to use in a school community to protect the children. The school serves a community which is regarded as being economically strained and

this resulted in incidents happening in the homes of the learners. One of the incidents reported to him was of a couple of girls who ran away from home due to being molested. The parents called him and he assisted the parents and the police to locate the girls. An older sibling of a couple of his learners was walking to school to collect the younger ones when he was assaulted and nearly stabbed. He continued that he was frequently contacted by members of the community as they had seen some of his learners begging next to the roads for food, or that young children had been left alone at home due to social circumstances. His response was that it is very important to have a network of people who could assist. This network included members of the local SAPS, the social welfare and members of church communities. The reasons for networking are that "... you need to know the right people and have them on board to assist with these children in dire need" (P1). He added: "We don't realise how blessed our own children are, we cannot become complacent and accept this as the norm, because it is not a norm, there is no template, and each case must be handled on its own merits". He emphasised that in every case action had to be taken in the best interests of the child.

P2 mentioned that he had an incident of pornography reported to him where parents had made him aware of a learner who was sending suggestive material via social media. He (the learner) also made suggestive noises and hand gestures in class. The SAPS and social welfare were informed of these incidents.

In the case of family feuds or arguments between neighbours, P3 mentioned that at times they would receive complaints from parents about the children of their neighbours with whom they had a problem. She stated that each case had to be dealt with according to the merits and that in these situations they tried to get the families to resolve the issues between themselves as it was not necessarily to do with the school.

Bullying was mentioned as a problem by P4. Their strategy was to call the learners in as soon as they were made aware of the bullying and follow the disciplinary measures in their code of conduct for learners. Parents were also informed when there were incidents of cyber-bullying and they were shown the evidence of this. For reported cases of abuse the police liaison officer was called to assist.

These incidents and how the principals responded are very clear indications that schools do not handle them in isolation and are using a network of people outside of education to assist. This falls exactly into the ideals of Contextual Safeguarding as the school is not acting in isolation but is using the people who are able to offer extra assistance from the South African Police Services, social welfare, churches and other members of the community who are able to work together to offer the protection and assistance to the learners who need it. It does also reflect quite clearly that as a principal there is no time limit to duty of care, but rather that in many instances the principal may well be the one who is coming to the aid of the learner and parents at hours which fall well outside the formal school day.

#### **6.2.12 Theme 12: School policies to mitigate early drop off and late collections**

When asked about policies that regulated the drop off times and procedures and the late collection of learners participants were unsure as to whether their school had any in place. Many of the participants mentioned that letters are regularly sent to parents reminding them of the times for the school day. When extra-mural activities are arranged and sport fixtures planned letters are sent to the parents for parental consent for learners to participate. Generally such a letter would also state the likely end time of the activity or the return time of the learners if they were playing a match at another venue. However, no participant could say for certain that their school had a specific written policy to govern this matter.

It was mentioned by P3 that they have a gate duty policy. However, this only regulates the duties expected of the staff and the times they are required to stay on duty. P1 and DP5 stated that the information is in the school safety policy or in the learner code of conduct.

Examples of letters sent home were examined for the purposes of this study and they revealed that although the times were given for the end of the day, they seldom mentioned the procedures in place for learners waiting for parents to collect them. One school has a system in place whereby parents provide written consent at the beginning of every year for the child to be taken to a nearby aftercare facility if parents are unable to collect their children on time. In most cases the participants mentioned that although

their school provided aftercare, parents were reluctant to pay for the facility and therefore they had the problem of learners waiting in a designated area.

The concern with this is that once again it falls on the school to make arrangements to accommodate these learners. While it is not the fault of the learner that they are not collected on time, it becomes the burden of the school which cannot simply close the gates and say that they are not responsible for the children. The Children's Act (RSA, 2005) and SA Schools Act (RSA, 1996b) emphasise that educators and schools must act in the best interests of the child at all times. This then creates the expectation that schools must provide care for learners who are waiting to be collected.

### **6.2.13 Theme 13: Solutions – what more can be done to mitigate risks to learners?**

Is there a perfect solution to this question? This study shows that there is not. What has come to light through this study is that educators and schools will find ways to accommodate learners who have been dropped off very early before school starts and who are waiting for parents or drivers to collect them from school.

It must be noted that this is a problem which is not unique to one school, nor is it unique to one district or one province and it would seem that there is also no perfect solution to this problem. However, it must be noted that each school has its own unique context and the socio-economic status of the children and their parents varied in each school which requires different strategies to deal with problems.

Suggestions were made that could potentially alleviate some of the problems related to these learners who are at school outside formal school hours. Cooperation with parents and drivers and clear communication is essential. When the school is informed that learners will be collected late, plans can be made to keep these learners in a secure environment, especially if there is a specific time given for the arrival of the parents or driver to collect these learners.

It would seem that the more solutions the schools create the more ways there are of circumventing them. Humans by nature will find ways to get round what they perceive as a problem and will come up with something else that suits them better. Which ultimately means that regardless of what measures a school puts in place to try to

assist and accommodate parents, there will be parents who take advantage of the situation and it creates the expectation among some parents that the school will continue to find ways to accommodate them. At the end of the day all the school can do is try their best and do what is possible with the means available to them to protect the children.

Schools, now more than ever, need to be innovative in their solutions to caring for learners who are at school outside of formal school hours. The reasons for these children being there vary depending on the particular context – transported in a mini-bus taxi with a specific, designated route; parents who need to get to work early; or parents who rely on others to assist with transporting their children. What does not vary is that the school needs to work with members of the community to ensure that all are on the same page – that is that they need to find ways in which the learners who are at school during these times are cared for and protected. This requires the schools to put together a safety committee which includes local welfare, SAPS officials, security companies, church groups, the support of the tribal chiefs (in KwaZulu-Natal this is very prevalent in many areas), educators and parents, who can develop programmes that are supported by all members of the community and always ensures the safety of the learners. At the end of the day, we must keep in mind that it is the responsibility of all to ensure that children are safe and protected.

### **6.3 CONCLUDING REMARKS**

In this chapter I presented a discussion of my findings. It is evident that schools (and educators) find it challenging to ensure that appropriate care is provided to learners before and after formal school hours. In addition, it is evident that schools and educators do not always receive the necessary support from the parents. It seems as if the local school context contributes to this challenge. In the next chapter (Chapter 7) I answer the research questions, provide recommendations for practice and suggest areas in need of further research.

## CHAPTER 7

### CONCLUSION AND RECOMMENDATIONS

#### 7.1. INTRODUCTION

The primary purpose of this study was to investigate how primary school management teams and educators apply their duty of care towards learners before and after the formal school day. More specifically, the aims of the study were to:

- Explore educators' perceptions of duty of care before and after formal school hours;
- Explore how the context influences a school's application of duty of care;
- Critically analyse the policies in place and how they affect expectations and practice of duty of care before and after formal school hours; and
- Based on the findings of the study, make recommendations to improve policy and practice pertaining to educators' duty of care before and after school hours.

To achieve the above, the following main research question was formulated:

How is duty of care applied before and after the formal school day at primary schools in KwaZulu-Natal?

The following secondary questions were formulated to inform the primary research question:

How is duty of care perceived by educators at selected primary schools?

How does duty of care affect educators before and after formal school hours?

How do the socio-economic contexts of schools influence the application of duty of care before and after formal school hours?

What policies and procedures are in place at the participating schools to ensure the safety of the learners before and after school at selected primary schools?

How do the policies affect the expectation, experience, and practice of duty of care?

A duty of care is owed to learners who are on the school premises. Generally, this duty begins when the school gates open to admit learners. There is no question about this duty. However, the application of this duty and whether a school owes a learner a duty of care outside the formal school hours is debatable. While there are undoubtedly educators who will remain with a learner who has not been collected by parents, there are other educators who feel that once the official school day has ended so has their duty. While there are educators who feel the need to know about the home circumstances of the children in their care, it does not apply to all educators. Many feel they have their own families who are often neglected due to the additional demands placed on them by parents.

It would seem that the number of learners who are dropped off long before school gates open and who are still waiting to be collected after the formal day has ended is increasing. The data suggests that there are varied reasons for this increase in numbers. However, regardless of the reasons for this situation what remains a concern is that there is no definitive answer to the question of who are responsible for care learners who are at school before and after formal school hours.

Literature, legislation and case law dictate that children are owed a duty of care by their parents and their educators. It is every child's right to be in a safe and secure environment and to be protected from abuse, maltreatment, and neglect as stipulated in Sub-section 28(1)(c) of the Bill of Rights (RSA, 1996a). Furthermore, the Bill of Rights (RSA, 1996a) adds that every child has the right to basic nutrition, shelter and healthcare.

Section 28(2) of the Constitution (RSA, 1996a) states that in all matters concerning the child the best interest of the child is of paramount importance. Sub-section 7(1) of the Children's Act (RSA, 2005) adds that children need to be protected from physical and psychological harm caused by exploitation, maltreatment, abuse, neglect, degradation, or exposing a child to violence and other harmful behaviours. There is no indication that this is only the responsibility of the parents or the school, but implies

that every child is entitled to these rights in every environment the child finds themselves in.

Section 29 of the Constitution (RSA, 1996a) dictates that every child has the right to basic education. This is reinforced in the South African Schools Act (RSA, 1996b) which stipulates that it is compulsory for all children to attend school from the age of seven years (RSA, 1996b). Furthermore, the School Act reinforces the idea of a safe and secure environment where children are protected from violence and harm (RSA, 1996b).

The South African Council of Educators details the conduct of educators in terms of how they treat the learners in their care. Educators are required to avoid any form of humiliation and refrain from abuse, both physical and psychological. Educators must take all reasonable steps to ensure learner safety and do what is practicably possible to inform parents of the learner's well-being (RSA, 2000).

Added to the above, in the Regulations for Safety Measures at Public Schools (RSA, 2001), Clause 4(2) states that school premises must be free of drugs, alcohol and dangerous objects and no person may directly or indirectly cause any harm to anyone else. Additionally, Clause 9(6) requires that schools must ensure the safety of all learners, staff members and any visitors to the school during school activities.

The National School Safety Framework (DBE, 2016) goes further in terms of school safety and states that school safety is not solely the task of the school but should include the school community, the South African Police Service (SAPS), local security companies, churches, ward councillors and parents. The inclusion of the greater community in ensuring safety can be reflected in Contextual Safeguarding Theory, where communities should work together to protect learners in situations where they may potentially be exposed to harm (Nyathi, 2022). The National School Safety Framework (DBE, 2016) and Contextual Safeguarding Theory amalgamate in that both consider the potential for harm and suggest the practice of community intervention to protect vulnerable children. They both encourage creative thinking to solve problems, are strength-based, draw upon networks between professionals, communities and families, and look to problem-solving to find the best solutions to ensure learner safety (Firmin et al., 2021).

## **7.2 ANSWERING THE SECONDARY RESEARCH QUESTIONS**

In the following sub-sections I answer the secondary research questions. Where applicable, I have integrated the Contextual Safeguarding Theory, which formed the theoretical framework of the study.

### **7.2.1. How is duty of care perceived by educators at selected primary schools?**

All the participants are professionally trained educators who work at fee-paying primary schools in KwaZulu-Natal. Not all the participants are employed by the KwaZulu-Natal Education Department; some are employed by the school governing body of their respective schools. Several of the participants have continued with formal studies to improve their own qualifications. All participants are recognised as experienced educators due to their years of service in the field of education. What has emerged from the data is that although the participants demonstrated a good understanding of duty of care, there is ambiguity in terms of how this duty is perceived before and after formal school hours.

In terms of duty of care during formal school hours participants all expressed that they were aware that learners had the right to be protected while in the care of the school. Participants explained that this was not only a right, but also a moral and legal duty to ensure the safety of learners during the school day. Some of the participants also argued they felt that this duty extended beyond the school day as well, especially in cases where a learner's family was financially strained and whether or not learners had food to eat. However, the comments made about the duty of care outside of school was limited to the well-being of the child at home, and not specifically regarding the child waiting to be collected from school.

Participants discussed ways in which they worked together to ensure the safety of learners. This collaboration between staff members, professional and non-professional staff, to protect learners emerges through the references to various duties they are required to fulfil both during school hours and after school hours. However, there was little collaboration with the broader community including the parents. The majority of parents are cooperative and will collect their children on time but there were

always the few parents who would not cooperate and did not collect learners on time (Firmin et al., 2021).

Schools have taken the initiative to create safe spaces on the school grounds to ensure that learners are able to stay within the safety of the school rather than to wait outside of the school on the pavements before the official opening of the school gates and at the end of the school day. These safe spaces go a long way to giving learners the assurance that, no matter how long they wait, they are protected (Firmin et al., 2021). Participants mentioned that they had duties during the afternoon sport programme where they were required to stay with the learners who were waiting to be collected. After a pre-determined time they left and another person was employed to stay with the learners who were still waiting for parents.

### **7.2.2. How does duty of care affect educators before and after formal school hours?**

Most participants explained in detail that they would take care of learners as they could not leave a child unattended waiting at school without knowing when their parents would arrive. This can be ascribed to most of the participants being parents themselves and they approached this question from the point of view of having to ensure the learners' safety as they would their own child's safety. As the educator acts *in loco parentis* during the school day, the Constitution (RSA, 1996a) and the Children's Act (RSA, 2005) specify that they must always consider the child's best interest.

Educators are generally still at school for a few hours after their school day has ended as they are either working in their classroom or coaching various extra-mural activities. Participants stated that they would check on learners who were waiting as some of the schools did not have professional staff watching the learners who had yet to be collected. These learners were frequently watched by security personnel who were on the school premises and were employed to keep an eye on these learners, as well as performing general security duties during the school day. However, although schools have been proactive in terms of ensuring that learners are being cared for, it must be noted that the people supervising the learners are not registered as professional educators with the South African Council for Educators (SACE), nor are they

professional members of staff who have been trained to care for children which could potentially pose a problem should an incident occur during this time.

Participants indicated that they felt that some parents took advantage of schools knowing that the educators would automatically look after the learners and therefore some parents neglected their own responsibility to collect their children timeously. It was also noted that although waiting with learners could be annoying, especially when they had their own plans for the afternoon, participants indicated that they knew that they could not blame the learners for the parents tardiness in collecting them within a reasonable time frame.

Participants were often frustrated because there seem to be an expectation that they would simply take care of a learner who is waiting at school because they are at school albeit busy with other tasks. The participants expressed that they felt as though they were not treated as professionals and that their time was devalued due to the expectation from the parents who are 'repeat offenders' - those parents who regularly arrived late and showed no gratitude to the staff who were supervising their children.

However, responses from participants indicated that they felt they could not have learners exposed to potential harm either before or after formal school hours. For this reason schools had put systems in place to protect learners who were waiting for school gates to open or waiting to be collected from school. Although this actions came more from a concern for learner safety rather than as an aspect of duty of care.

### **7.2.3. How do the socio-economic contexts of schools influence the application of duty of care before and after formal school hours?**

Parents have the right to choose the school they would prefer to send their children to and they are no longer limited to specific residential zones. Parents are sending their children to schools of their choice and which they can afford to send their children to. Fee-paying schools is generally perceived as schools who offer better quality education. This has the effect that learners are reliant on public transport to get to school and home. This results in learners often being dropped off at school very early and collected late due to the routes used by mini-bus taxi drivers and the number of learners being transported.

A few participants explained that wealthier parents were often the culprits who would be late in collecting their children from school as they would go shopping or attend to other appointments prior to collecting learners from school. Many of these parents would also frequently embark on long travels leaving their children in the care of others and making alternative arrangements to have their children dropped off at school and collected from school. Participants also alluded to the fact that younger siblings are expected to wait at school until the eldest sibling is dismissed from school. This is particularly applicable to learners who are in Grade R or in the Foundation Phase as their school day is shorter.

The data also suggests that parents selected schools on their perceived strengths and what they can offer to the learners in terms of education and extra-curricular activities both cultural and sporting activities. It is unfortunate that many parents do not cooperate with their schools in terms of collecting their children timeously.

#### **7.2.4. What policies and procedures are in place at the participating schools to ensure the safety of the learners before and after school at selected primary schools?**

The Regulations for Safety Measures at Public Schools (RSA, 2001) defines the supervision of learners as being the reasonable management and control of learners at school, whether on school excursions or sporting activities, and includes the formal school day. The Schools Act (RSA, 1996b) also states that schools should be regarded as safe zones, free from harmful materials or weapons. This in essence has to provide the foundation of any policy created by the school for the protection of learners outside of formal school hours.

The data indicates that although the participating schools do not have specific policies in place they are guided by the Regulations for Safety Measures at Public Schools (RSA, 2001). While the provincial Department of Education have not provided any specific guidelines regarding the safety of learners outside of school hours, the participating schools have put procedures in place to protect learners who arrive early before the commencement of the formal school day and those who have to wait to be collected after the end of the school day.

Participants could all give examples of communication sent to parents regarding school times and the expectations that learners would be collected on time, but as for a written policy outlining all procedures none were available. In terms of Sub-section 20(10(f) of the Schools Act school governing bodies are given the responsibility to determine the times of the formal school. However, there is no specific mention of what the requirements are for taking care of learners before and after formal school hours.

To assist parents, schools have put procedures and support structures in place (Firmin et al., 2021). The data suggests that parents are given a specific grace period of approximately fifteen to thirty minutes to collect their children after which parents are contacted telephonically to find out why they had not yet collected their children. Some parents would only collect their children when the oldest child finished school, so the younger siblings had to wait in a waiting area. It was also noted that there were parents who knew their children were in the care of the school and would only collect them when they had finished work. These parents would not, or could not, pay for the aftercare facilities made available by the schools and it then fell on the school to ensure that there was adequate supervision for these learners. In these situations the parents were not repeatedly contacted as they would either not answer the calls, or would simply state that they were on their way to collect their children but were delayed.

Schools had created specific 'safety zones' on the school premises for learners who either arrived very early or who were left waiting after the school day had ended. In many of these cases educators were on duty for a specified time limit. Thereafter the learners were either watched by the security personnel or simply left to sit in the area unattended.

Some of the participating schools have procedures in place where they call on the local SAPS to assist with learners who are left waiting at school until very late (Firmin et al., 2021). However, there have been occasions when a school did not receive the desired support from SAPS. There are also attempts made to counsel parents on the affect their tardiness has on their children but there is little evidence that these efforts are actually successful.

What is clear from the data is that the participating schools all have implemented procedures to mitigate the safety threats to learners who are left attended by their

parents due to early arrival before the commencement of the formal school day or late collection after school (Firmin et al., 2021). Although the participating schools communicate these procedures to their parents, not all parents adhere to these procedures creating an environment where the safety of learners is being compromised.

#### **7.2.5. How do the policies affect the expectation, experience and practice of duty of care?**

There is an expectation that during the formal school day educators will perform a duty of care for the learners who are involved in extra-mural activities, including school excursions. To do this educators collaborate with one another to ensure that there are staff on duty before school begins, during break times and at the end of the day, when learners are leaving school. This collaboration is needed to create a safe environment for learners (Featherstone et al., 2020; Firmin, 2017) where educators can also feel that they will be protected should a learner be injured during this time.

Educators are required to be registered with the South African Council of Educators (SACE) and are therefore also expected to adhere to the guidelines in terms of their professional conduct towards learners, colleagues and parents. More specifically, Clause 3(13) of the Code of Professional Ethics (SACE, 2017) expects that in the execution of their duties an educator must take “reasonable steps to ensure the safety of the learner”. With no specific school policies in place at the participating schools, the participants are generally guided by moral and ethical norms in the execution of their duty of care.

While there is generally a lack of specific policies pertaining to duty of care before and after the formal school day at the participating schools, there is no lack of responsibility by the educators and schools towards the learners who are left at school before and after formal school hours. Quite the opposite was noted with participants mentioning that they had stayed at school for a number of hours after their official day had ended simply to ensure that the waiting learners had someone to watch over them and ensure their safety. The data suggests that they do not shirk their duties towards the learners in their care.

From the data it is very clear that schools have done more than is reasonably required of them through the creation of safe spaces within the school premises, collaboration between staff, both professional and non-professional, to watch the learners after their extra-mural activities had ended and implementing and maintaining set procedures for the learners, parents and educators to follow (Featherstone et al., 2020; Firmin, 2017). In all the participating schools these procedures have been put into place due to the context in which each participating school finds itself (Featherstone et al., 2020; Firmin, 2017). For example, schools that are in the city centre may experience particular threats to learners which may not be experienced by schools in residential neighbourhoods. However, the data seems to indicate that the safety of learners is regarded as the most important factor underpinning the procedures for dealing with learners who arrive early at school or who are waiting for long periods to be collected after school.

### **7.3 ANSWERING THE PRIMARY RESEARCH QUESTION: HOW IS DUTY OF CARE APPLIED BEFORE AND AFTER THE FORMAL SCHOOL DAY AT PRIMARY SCHOOLS IN KWAZULU-NATAL?**

While it can be argued that there is no specific legislation or regulations pertaining to duty of care before and after formal school hours, the data gathered indicates that the participating schools have recognised that there are potential safety threats to learners before and after the formal school day. They have put several procedures in place to ensure that duty of care is applied outside of the formal school day. The safety measures implemented by the participating schools are influenced by the location of the school (school context) and can be categorised into proactive measures, early interventions and reactive measures. These are discussed in the following sub-sections.

#### **7.3.1 Context matters**

Each of the participating schools fall within certain contexts which are either perceived as being a relatively safe context or one with potential hazards (Featherstone et al., 2020; Firmin, 2017). As the schools are primary schools, the young age of the learners is taken into consideration and influences the procedures the schools have put in place to protect and care for the learners. The location of each school is as follows:

- School 1 is situated on the edge of a rural area with two extremely busy roads running past the school. Both roads have a large number of taxis using them as they are on the taxi route from the rural area 6 kms away. This route goes directly into the main shopping area along one road and the city along the second road. Parking space for parents and vehicles collecting learners is extremely limited and many cars park along both sides of the roads.
- School 2 is also in a residential area and has a main road at the back of the school. The front of the school has a steep, winding road. Although there are speed bumps along this road it does not always deter drivers from speeding. Parking is limited to a small area on the school side of the road and a larger area on the pavement across the road from the school.
- School 3 is in a residential area but has very winding, narrow roads leading to the school with blind corners and bends where it would be impossible to see a child if they suddenly ran into the road. It is very difficult to navigate these roads and parking is non-existent in the front of the school. There is a demarcated parking area at the bottom of the school field, however, getting in and out of this parking is hazardous due to the narrow road.
- School 4 is in a residential area with a main road as the border on the one side of the school. There are a number of speed bumps along the road that runs past the school. Parking for parents is limited at the front of the school and parents tend to park along the pavements. The road is wide so it is easier for other vehicles to pass them.
- School 5 is also in a residential area with a main road, petrol station, and college within a very short distance from the school. The college in close proximity to the school creates hazards for young children who may be easily influenced by older people. The school has a security guard at a boom gate to control access to the school at all times. Parents may park inside the school grounds when dropping and collecting children.
- School 6 is situated in the centre of the town. This school is bordered on three sides by very busy roads, one of which doubles as a taxi rank. The school has

high fences around the entire school and security guards at both sets of school gates. One gate is automated for staff to park their vehicles inside the school grounds. This gate is not used for learner access. The other gate is a pedestrian gate and is closed throughout the day. A security guard is at the gate and will allow access to authorised persons. Parking for parents is limited to the front of the school, but collection time is also lunch time for many people who work in the area. The road is extremely busy and it is not irregular to see vehicles double-parked waiting for children to come out of school.

### **7.3.2. Proactive measures**

The data suggests that the participating schools are pro-active in mitigating safety threats that may occur before and after the formal school day through regular communication to parents, the appointment of security guards, the use of general assistants to supervise learners, after care centres, and by creating so-called 'safe spaces' (Featherstone et al., 2020; Firmin, 2017).

#### **7.3.2.1 Regular communication to parents**

The participants indicated that their schools send regular written communication to parents detailing the opening and closing times of their school and the times of extra-mural activities. When there are excursions or sport fixtures, letters are sent to parents requesting consent for the learner to participate (DBE, 2001) and giving the times for the learners to be collected. Participants indicated that regular communication with parents was key to ensure collaboration between the school and the parents and to promote the cooperation of the parents (Featherstone et al., 2020; Firmin, 2017). However, the data indicates that this did not guarantee that parents would cooperate.

#### **7.3.2.2 Aftercare centres**

The participating schools make use of aftercare centres where learners are accommodated after formal school hours. The advantage of these aftercare centres is that learners are not only supervised by trained educators but are also able to do homework under supervision, The disadvantage, however, is that the participating schools levy additional fees for learners who attend these aftercare centres and there are many parents who cannot afford the additional cost. As a result there are a

significant number of learners who are excluded from the aftercare centres. Aftercare centres are thus only partially effective.

### **7.3.2.3 Creation of safe spaces**

Taking the school contexts into account, having safe spaces in the school grounds is deemed by the participants as essential to mitigate threats to the safety of learners (Featherstone et al., 2020; Firmin, 2017). None of the participating schools felt it was safe to allow learners to wait on the pavement in front of the school for the school to open. The same applied to learners having to wait to be collected after the formal school day or after extra-mural activities. To address this problem, the participating schools created so-called 'safe spaces' and allowing learners to gain early access to school grounds. Learners entering these 'safe spaces' would then be supervised by security guards.

The creation of these safe spaces is due to the participating schools responding to the potential threats to the learners. They have taken measures to prevent foreseeable harm to the learners based on the location and layout of the school.

The negative aspect of creating these safe areas is that staff are required to supervise the learners either before or after school. Educators have duties which they are expected to fulfil, but the time frame for these duties only begins after 7:00 am which means that schools have to ensure that there are other adults (security guards) who can supervise learners prior to this time. This proactive measure is taken by the participating schools to limit the exposure of the learners to potentially harmful situations or environments while they are outside the school premises (Featherstone et al, 2020).

### **7.3.2.4 Security guards and general assistants**

The participating schools rely heavily on security guards who are appointed by their school governing bodies to safeguard learners before and after the formal school day. While this mitigates threats to the safety of the learners it is problematic that these people are not professionally qualified as educators and are not registered with SACE. In addition, many of them do not possess first aid qualifications. While it is not necessary for every educator to have a first aid qualification, it is beneficial to have

someone with first aid training to deal with minor incidents or injuries which may happen from time to time. It must also be noted that the duty of care cannot be delegated to a third party by the educators or the school management (Fowler, 2018; Prinsloo, 2005; De Waal, 2000). The duty falls on the educators and the school.

Making use of security personnel is aligned to Contextual Safeguarding Theory in that collaboration (Featherstone et al., 2020) between professionals, families and communities is essential to ensuring the safety of learners. The schools are using forethought to solve the problem in a manageable way whereby they are employing security personnel to assist with the care of learners who are left at school after the end of the formal school day.

### **7.3.3 Early interventions**

Apart from the pro-active measures as discussed above the participating schools also implement early interventions, namely a 'grace period' for collecting learners, educators waiting with learners to be collected by their parents, and telephonic reminders to collect learners after sport fixtures.

#### **7.3.3.1. Grace period**

Participants mentioned that although school ended at a specific time it is recognised that parents may experience challenges to collect their children on time due to traffic congestion and other unforeseen circumstances. The participating schools therefore gave the parents a 'grace period' of up to half an hour to collect their children. Educators supervise the waiting learners during this time. Thereafter learners who are still waiting to be collected are either taken to an aftercare centre as per the communication with parents at the beginning of each year, or the learners are taken to the school office and parents are contacted telephonically.

The same procedure applies to learners returning from sport fixtures. A grace period is given and then parents are contacted to ascertain where they are and how long they would be before collecting their children.

### **7.3.3.2. Educators waiting for parents**

The data suggests that educators often have to wait for parents to collect learners long after the pre-determined end of the formal school day. In terms of having to wait for parents there was consensus among the participants that at their schools educators collaborated with one another in this regard (Firmin, 2017). The vast majority of the parents will ensure that they are on time to collect their children. It is therefore not every day that educators are left waiting for hours for one or two learners to be collected. While this is deemed as going above and beyond the call of duty, participants stated that they could not in good consciousness leave a learner unattended at school when it was beginning to get dark, not knowing if the child had eaten or not and having no idea where the parents were or what time they would arrive to fetch the child.

The negative aspect of this is that educators then also put themselves at risk by waiting indefinitely in a potentially dark school for parents to arrive. They too may have a family who is waiting for them to return home to prepare dinner, do homework with their own children, and to complete their family routines for the day.

### **7.3.3.3 Telephonic reminders**

A standard practice at the participating schools is that parents get telephonic reminders to collect their children from school when they (the parents) are late. Parents are also contacted telephonically to inform them what time to collect their children after an away sport fixture.

### **7.3.4. Reactive measures**

Two reactive measures were identified in the data. In extreme cases and as a last resort, participants would ask the SAPS for assistance. Also, parents who are 'serial offenders' would be counselled.

#### **7.3.4.1. Contacting the South African Police Service (SAPS)**

One of the reactive measures mentioned by participants was that they would as a last resort contact the SAPS and arrange to drop a learner off at the local police station to wait with the police officials on duty (Featherstone et al., 2020) until the parents collected their child. Although mentioned by a few participants this not a preferred course of action and is only taken in extreme cases. Generally, the early interventions as discussed in the previous section are sufficient to ensure that parents collect their children within a reasonable period of time.

The positive outcome of SAPS support is that parents are generally unlikely to be neglectful of their children again. However, the anxiety and stress of a learner must be considered as the psychological effect on a young child being left at the police station to wait for parents may have traumatic side effects. This is therefore not seen as the chosen option for learners who are left waiting, but rather would be used in extreme circumstances and only if the same learner had been left on previous occasions.

#### **7.3.4.2. Counselling the parents**

Counselling of the parents requires that there is collaboration between the staff and the parents and that parents will cooperate with the school. It is important to build a relationship of mutual trust with the parents to ensure that they are supportive of the schools' activities and efforts to work with the parents and the community in keeping the learners safe. Counselling would likely be done by the senior members of the school management team and could include members of the SAPS and social workers (Featherstone et al., 2020; Firmin, 2017) to explain the importance of timeous collection of learners from school to the parents who are serial offenders.

### **7.4. RECOMMENDATIONS**

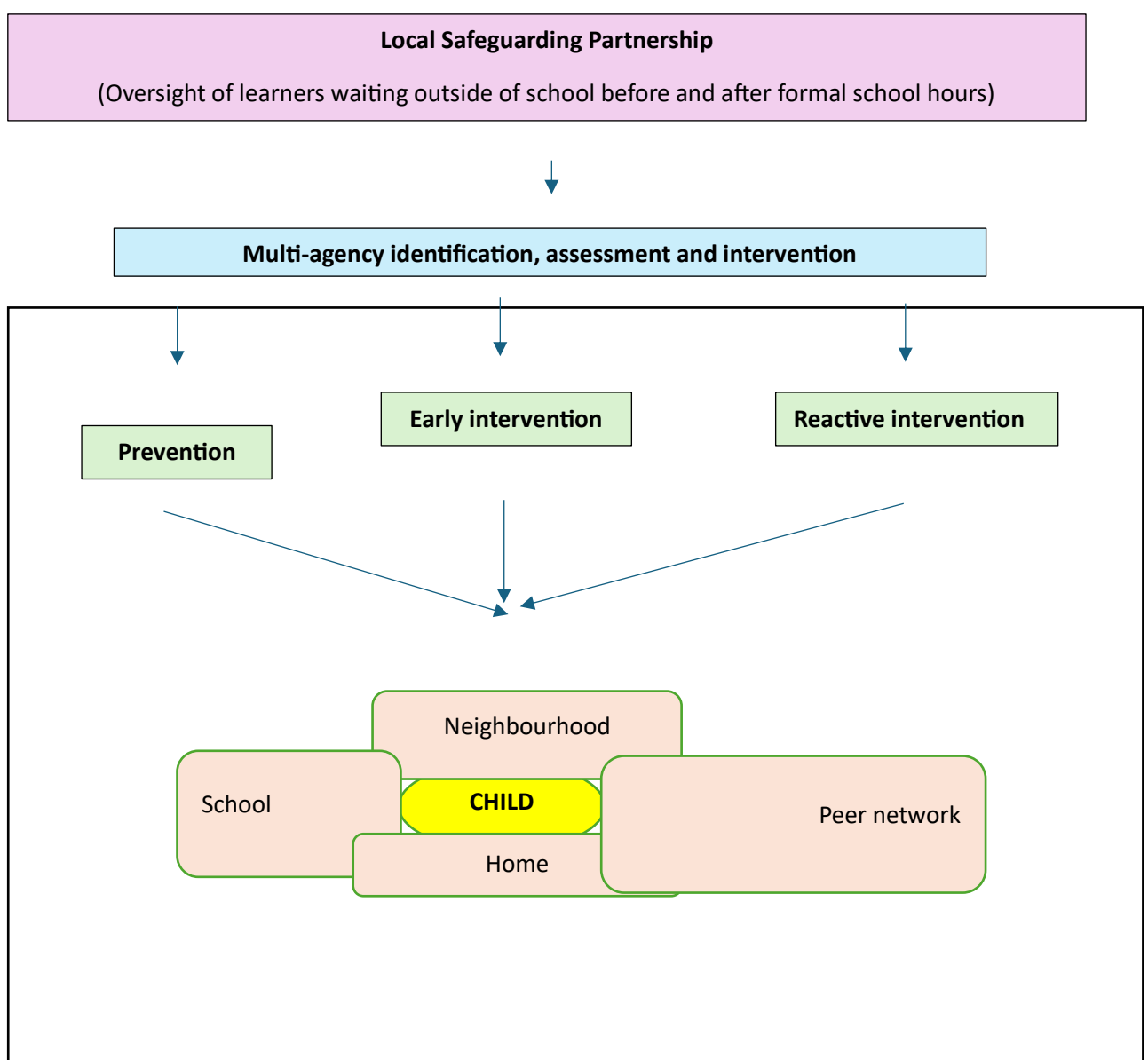
Based on the findings of the study, the following recommendations are made:

- This study proposes a framework for safeguarding learners before and after the formal school day (see Figure 7.1).

Contextual Safeguarding Theory places the safeguarding of all children who may be in a place where they could potentially face harm at its centre. Ideally the safe-guarding

of children is community-based and should involve the entire community for it to be most effective. A policy or framework should be created for South African schools to mitigate threats to safety of learners during the ambiguous waiting for their parents. For this to be possible there needs to be multi-agency co-operation among specific members of the community who are able to identify, assess, and intervene in the risks faced by learners. In this way, all role-players can collaborate to maximise the effectiveness of the framework (Firmin, 2017).

**Figure 7.1: Proposed Contextual Safeguarding Framework for South African Schools (adapted from Firmin, 2017)**



As illustrated in Figure 7.1, the child should be at the centre of multiple social contexts. In terms of local safeguarding partnerships. A multi-agency approach would include the local SAPS, security companies, social workers and local community leaders must take an interest in the safety and well-being of learners at local schools. It is important to note that the identification, assessment and early intervention of potential threats to the safety of learners are made by all within the partnership (Firmin, 2017). It cannot be said that the members of the local community (neighbourhood), the peer network of learners, educators (school) and parents (home) are not a part of the solutions. They all play a vital role in ensuring the safety of learners outside of formal school hours. This framework needs to be applied to the setting or the context in which the school finds itself so that the resources, structures, and partnerships required are used to the greatest extent and to the benefit of all learners waiting outside of schools (Firmin, 2017). It must also be emphasised that these contextual interventions must complement and enhance the processes already in place and must establish working relationships between schools and parents.

- The limited access to aftercare centres due to additional costs need to be addressed.

Although it is recognised that aftercare centres place an additional financial burden on school governing bodies, it is recommended that they consider ways in which these aftercare centres can be accessible to all the learners whose parents cannot collect them immediately after the formal school day has ended. For example, school governing bodies should add the costs of these centres to the school's budget. Cost saving measures could include making use of volunteers from the school community to supervise these learners.

By doing so they will be collaborating with the school to develop programmes that would be to the benefit of the learners while they are waiting to be collected from school (Featherstone et al., 2020). While Contextual Safeguarding Theory focuses on the protection of learners, programmes where learners can be kept busy and active, or be given assistance with homework and studying fall directly under this umbrella, as they have a dual purpose: to keep learners from getting bored and getting into

trouble, while at the same time they are busy and receiving help with academic concepts they may find challenging.

- Regular training of SGB's and the educators on the legal implications of their duty of care is of utmost importance.

This will ensure that all are aware of the latest amendments to various Acts pertaining to children and childcare (Joubert, 2014; Oosthuizen et al., 2018). It will be of great benefit to schools if all staff and members of the SGB's have a legal understanding of their duty of care for learners, both at school and outside of school, on school sanctioned tours, excursions, and sporting events. This also applies to the transporting of learners to and from these events.

- Schools must intensify their efforts to educate parents on the dangers of learners arriving for school well before the school gates open and leaving learners waiting at the end of the formal school day.

It is very unfortunate that this has become an area of grave concern and that we cannot simply assume that a child waiting outside of a school is safe due to the proximity of the school and the fact that there may be staff at school very early. As mentioned in a news report in 2018 Damba reported on an incident where a 15-year-old learner was raped by the security guard at the school she attended. While this is not a regular occurrence, it is devastating to think that those who should be protecting learners cause harm instead. Therefore, parents cannot be complacent about their children's safety and should adhere to the schools' requests for learners to be dropped and collected at the correct times.

- It is recommended that schools establish a learner safeguarding forum.

This forum should include representatives of school governing bodies, the local policing forums, security companies, school management teams, members of the community – such as church leaders, ward councillors, community leaders, and parents (Featherstone et al., 2020) who can collaborate to create programmes which could keep children busy after school until they are collected. This may take the form of homework classes, extra sport offered to learners, or extra tuition for learners who face challenges in their academic work.

- Schools should adopt and implement specific policies which would cover the “grey area” identified by this study.

This research established that no formal policy addresses the procedures to be followed when learners are dropped off prior to school gates opening and the end of the formal school day. These policies may be incorporated into existing school safety policies and may be guided by the National School Safety Framework (DBE, 2016) and the Regulations for Safety Measures at Public Schools (RSA, 2001) to ensure that all correct procedures are in place. The current existing safety policies in schools can be amended to include this aspect of school safety. The importance of having such a policy in place is that should an incident occur where a learner is injured, the school can show that they have had the foresight to mitigate harm to learners through careful planning and consideration of contextual factors (Featherstone et al., 2020).

## **7.5 SUGGESTIONS FOR FURTHER RESEARCH**

The following suggestions may be applied to future studies as they were not included in this study:

- For a stronger and more diverse understanding of this topic it would be recommended that similar research be conducted at schools in different contexts, including schools which are in larger metropolitan cities, schools in rural areas and schools with different socio-economic contexts.
- Research involving participants in other related fields could lead to an even better understanding of this phenomenon. For example, future studies could involve legal experts, social workers, members of local policing forums and security companies, members of school governing bodies and parents.

## **7.6 SIGNIFICANCE OF THE STUDY**

This study has highlighted the complexities and ambiguities of the application of duty of care before and after the formal school day. From a Contextual Safeguarding Theory perspective it is evident that the primary responsibility for duty of care before and after the school day is located at the level of educators and their schools. Although

most parents collaborate in this regard schools are experiencing increasing challenges in safeguarding learners when they transition from the home to school and vice versa.

The findings of this study could potentially be used to:

- Inform schools of their responsibility for learners before and after formal school hours;
- Inform school policies regarding duty of care before and after the formal school day;
- Inform professional development programmes regarding the implementation of duty of care before and after the formal school day.

In addition this study proposes a Contextual Safeguarding Framework for the development and implementation of strategies to mitigate the safety threats to learners. This framework highlights the importance of multiple role-players.

## **7.7 LIMITATIONS OF THE STUDY**

Every study has its limitations, this one is no exception (Viera, 2023). The limitations of this study include the following:

- This study was conducted in only six fee-paying schools in one district of KwaZulu-Natal. In this district there are many non-fee-paying schools which face different challenges and would have different solutions or approaches to challenges.
- This was a qualitative study, which means that the findings cannot be generalised to all schools in South Africa.
- Because I am a school principal myself, it is quite possible that I could have been influenced by my own biases during the data analysis.

## **7.8 CONCLUDING REMARKS**

Schools are faced with learners who are sitting outside the school gates long before the gates open and have learners waiting after all formal school activities have ended. The reality is that there is no perfect solution for safeguarding these learners. While

many schools have created their own procedures to accommodate these learners and to protect them, what they are doing is adding to their burden of duty of care in order to mitigate the potential threats to these learners.

Parents have the right to send their children to the school of their choice. There is no doubt that parents want the best for their children and will do what they can to provide the best education they can afford. However, the result of this is that learners often are left unattended before and after the formal school day placing an additional burden on educators in terms of their application of duty of care. This study has found that the participating schools do recognise that their learners may be vulnerable before and after the formal school day and that measures are put in place to mitigate threats to learners. However, further studies are needed to determine whether it is the case in all schools. Also, this study established that there is limited involvement of the broader community in the application of duty of care before and after the formal school day.

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*Hawekwa Youth Camp and the Minister of Education for the Western Cape v Gary Michael Byrne* [2009] ZASCA 156; 2010 (6) SA 83

*Lusakhanya Gora v Kingswood College, Jonathan Goldberg, Kingswood College Council and Daniel Moore* 2019 EC 5517/2015

*Peet Gouws v Laerskool Lynnwood & MEC for Education Gauteng* Case no 3223/1

*Pro Tempo Akademie CC v Van der Merwe* (20853/2014) [2016] ZASCA 39 (24 March 2016)

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# ADDENDUM A



23 August 2023

Dear Mrs TA Mackay

The application for ethical clearance for the research project described below served before this committee on 23 August 2023:

<b>Ethics Protocol No:</b>	<b>EDU065/23</b>
<b>Principal investigator:</b>	<b>Mrs TA Mackay</b>
<b>Student/Staff No:</b>	<b>22910672</b>
<b>Degree:</b>	<b>Doctoral</b>
<b>Supervisor/Promoter:</b>	<b>Dr A du Plessis</b>
<b>Department:</b>	<b>Education Management and Policy Studies</b>

The decision by the committee is reflected below:

<b>Decision:</b>	<b>Approved</b>
<b>Comments:</b>	
<b>Period of approval:</b>	<b>Three years</b>

The approval by the Ethics Committee is subject to the following conditions being met:

1. The research will be conducted as stipulated on the application form submitted to the Ethics Committee with the supporting documents.
2. Proof of how you adhered to the Department of Basic Education (DBE) policy for research must be submitted where relevant.
3. In the event that the research protocol changed for whatever reason the Ethics Committee must be notified thereof by submitting an amendment to the application, together with all the supporting documentation that will be used for data collection namely; questionnaires, interview schedules and observation schedules, for further approval before data can be collected. The changes may include the following but are not limited to:
  - Change of investigator,
  - Research methods any other aspect therefore and,
  - Participants.

The Ethics Committee of the Faculty of Education does not accept any liability for research misconduct, of whatsoever nature, committed by the researcher(s) in the implementation of the approved protocol.

Best wishes

Prof Funke Omidire  
Chair: Ethics Committee  
Faculty of Education

Room 3-63, Level 3, Aldoel Building  
University of Pretoria, Private Bag X20  
Hatfield 0028, South Africa  
Tel +27 (0)12 420 5656  
Email edu.ethicsadmin@up.ac.za  
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Fakulteit Opvoedkunde  
Lefapha la Thuto

## ADDENDUM B



**KWAZULU-NATAL PROVINCE**

EDUCATION  
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE HEAD OF DEPARTMENT

Private Bag X9137, PIETERMARITZBURG, 3200  
Anton Lembede Building, 247 Burger Street, Pietermaritzburg, 3201  
Tel: 033 392 1051

Email: Phindile.duma@kzndoe.gov.za

Enquiries: Mrs B.T. Ntuli

Ref.:214/8/7566

Mrs Teresa Anne MacKay  
Private Bag X2  
**PORT EDWARD**  
4295

Dear Mrs MacKay

### PERMISSION TO CONDUCT RESEARCH IN THE KZN DoE INSTITUTIONS

Your application to conduct research entitled: **"APPLYING THE DUTY OF CARE OUTSIDE THE FORMAL SCHOOL DAY AT PRIMARY SCHOOLS."**, in the KwaZulu-Natal Department of Education institutions has been approved. The conditions of the approval are as follows:

1. The researcher will make all the arrangements concerning the research and interviews.
2. The researcher must ensure that Educator and learning programmes are not interrupted.
3. Interviews are not conducted during the time of writing examinations in schools.
4. Learners, Educators, Schools and Institutions are not identifiable in any way from the results of the research.
5. A copy of this letter is submitted to District Managers, Principals and Heads of Institutions where the Intended research and interviews are to be conducted.
6. The period of investigation is limited to the period from **25<sup>th</sup> August 2023 to 31<sup>st</sup> December 2025**.
7. Your research and interviews will be limited to the schools you have proposed and approved by the Head of Department. Please note that Principals, Educators, Departmental Officials and Learners are under no obligation to participate or assist you in your investigation.
8. Should you wish to extend the period of your survey at the school(s), please contact Mrs Buyi Ntuli at the contact numbers above.
9. Upon completion of the research, a brief summary of the findings, recommendations or a full report/dissertation/thesis must be submitted to the research office of the Department. Please address it to The Office of the HOD, Private Bag X9137, Pietermaritzburg, 3200.
10. Please note that your research and interviews will be limited to schools and institutions in KwaZulu-Natal Department of Education.

**Mr GN Ngcobo**  
Head of Department: Education  
Date: 25 August 2023

GROWING KWAZULU-NATAL TOGETHER

## ADDENDUM C



Faculty of Education

### Letter to school governing body chairpersons requesting informed consent

Dear Mr/Ms/Dr .....

I am currently enrolled for a Doctor of Philosophy (PhD) degree in Education Management and Policy Studies at the University of Pretoria. Part of the requirements for the conferring of this degree is the successful completion of a significant research project in the field of education.

I consider it a privilege and a great honour to invite your school to become a voluntary participant in this research project. The title of my approved research study is **Applying the duty of care outside the formal school day at primary schools**. This study will be conducted at six primary schools across 2 districts of the KwaZulu-Natal Department of Education. The primary aim of this research study is to explore the application of the duty of care outside the formal school hours at selected schools in KwaZulu Natal.

I sought permission from the KwaZulu-Natal Department of Education to conduct this research. As part of this research, I need to conduct interviews with the school's principal, a deputy principal, a head of department, and Post Level 1 educators. Each interview should take approximately one hour. The interviews will be conducted after school hours at a time and venue convenient to the participant. Each of the participants has had different experiences within their education career. As participants in this project, their role will be to respond to questions put to them during the interview. The interviews will be recorded for data analysis purposes.

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The participants will not be asked to reveal information that will allow their identity or that of your school to be known. Neither the participant, nor your school, shall be mentioned by name or indeed be allowed to be identified by any manner or means whatsoever in the research report. Where appropriate, pseudonyms will be used. To ensure that the participants are comfortable with the information they give, they will be provided with a confidential electronic or written transcript of their own interview and will have final approval of both its accuracy and its content. The participants are requested to allow another hour for this process. Follow-up interviews might be required to clarify some matters, but this will also be voluntary, and confidentiality will be guaranteed. I have included herewith, for your information, a schedule of the interview questions as part of the information gathering process.

Please be assured that all the data collected from this study will be kept strictly confidential, with not even the Department of Basic Education having access to the raw data obtained from the interviews. In addition, the data collected will be used for research purposes only. Furthermore, should your school decide to participate in this study, the participants have the right to withdraw at any time during the data collection process without any penalty. Please understand that the choice for your school to participate is entirely voluntary.

At the end of the research study, the school will be provided with an electronic copy of the research report containing both the findings of the study and recommendations on the application of the duty of care outside of formal school hours. At no time will I be questioning or purposefully interacting with the teachers and learners at your school for either personal or research reasons. The research study presents a unique opportunity for you to get involved in the process of research to investigate the application of the duty of care in South African schools.

The findings of this study could be useful to education policy makers practitioners in future. The research study has the potential to provide insight into the manner in which duty of care is applied outside of formal school hours in South African schools.

We also would like to request your permission to use your data, confidentially and anonymously, for further research purposes, as the data sets will be the intellectual property of the University of Pretoria. Further research may include secondary data

analysis and using the data for school infrastructure management purposes. The confidentiality and privacy applicable to this study will be binding on future research studies.

If you decide to participate in this research study, kindly indicate this by completing the consent form at the end of this letter.

Yours sincerely

Teresa MacKay  
Student researcher  
073 513 3270  
Terrimackay2@gmail.com

Dr André du Plessis  
Supervisor  
(012) 4202929  
duplessis.andre@up.ac.za

**PERMISSION FOR RESEARCH PARTICIPATION**

I, \_\_\_\_\_, SGB chairperson of  
\_\_\_\_\_ hereby give permission to  
Teresa MacKay to include the school in her research study on **Applying the duty of care  
outside the formal school day at primary schools.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## ADDENDUM D



Faculty of Education

### Letter to the participating school principal requesting informed consent

Dear Mr/Ms/Dr .....

I am currently enrolled for a Doctor of Philosophy (PhD) degree in Education Management and Policy Studies at the University of Pretoria. Part of the requirements for the conferring of this degree is the successful completion of a significant research project in the field of education.

I consider it a privilege and a great honour to invite you to become a voluntary participant in this research project. The title of my approved research study is **Applying the duty of care outside the formal school day at primary schools**. This study will be conducted at six primary schools across 2 districts of the KwaZulu-Natal Department of Education. The primary aim of this research study is to explore the application of the duty of care outside of the formal school hours in primary schools.

I sought permission from the KwaZulu-Natal Department of Education to conduct this research. As part of this research, I need to conduct interviews which should take approximately one hour. The interviews will be conducted after school hours at a time and venue convenient to you. Each of the participants has had different experiences within their education career. As a participant in this project, your role will be to respond to questions put to you during the interview. You may also ask questions of your own to clarify any issue concerning the interview or a matter that may arise during the interview. The interviews will be recorded for data analysis purposes.

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Faculty of Education  
Fakulteit Opvoedkunde  
Lefapha la Thuto

As a participant, you will not be asked to reveal information that will allow your identity or that of your school to be known. Neither you as an individual, nor your school, shall be mentioned by name or indeed be allowed to be identified by any manner or means whatsoever in the research report. Where appropriate, pseudonyms will be used. To ensure that you are comfortable with the information you give, you will be provided with a confidential electronic or written transcript of your own interview and will have final approval of both its accuracy and its content. Please allow another hour for this process. Follow-up interviews might be required to clarify some matters but this will also be voluntary and confidentiality will be guaranteed. I have included herewith, for your information, a schedule of the interview questions as part of the information gathering process.

Please be assured that all the data collected from this study will be kept strictly confidential, with not even the Department of Basic Education having access to the raw data obtained from the interviews. In addition, the data collected will be used for research purposes only. Furthermore, if you decide to participate in this study, you have the right to withdraw at any time during the data collection process without any penalty. Please understand that the choice for you to participate is entirely voluntary.

At the end of the research study, you will be provided with an electronic copy of the research report containing both the findings of the study and recommendations of the application of the duty of care outside of the formal school hours. At no time will I be questioning or purposefully interacting with the teachers and learners at your school for either personal or research reasons. The research study presents a unique opportunity for you to get involved in the process of research to investigate the application of the duty of care outside the formal school hours for primary schools in KwaZulu-Natal.

The findings of this study could be useful to education policy makers and practitioners in the future. The research study has the potential to provide insight into the manner in which duty of care is applied to learners outside the formal school hours.

We also would like to request your permission to use your data, confidentially and anonymously, for further research purposes, as the data sets will be the intellectual property of the University of Pretoria. Further research may include secondary data

analysis and using the data for school infrastructure management purposes. The confidentiality and privacy applicable to this study will be binding on future research studies.

If you decide to participate in this research study, kindly indicate this by completing the consent form at the end of this letter.

Yours sincerely

Teresa MacKay  
Student researcher  
073 513 3270  
Terrimackay2@gmail.com

Dr André du Plessis  
Supervisor  
(012) 4202929  
duplessis.andre@up.ac.za

**PERMISSION FOR RESEARCH PARTICIPATION**

I, \_\_\_\_\_, principal of  
\_\_\_\_\_ hereby give  
permission to Teresa MacKay to include me as a participant in his research study on  
**Applying the duty of care outside the formal school day at primary schools.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## ADDENDUM E



Faculty of Education

### Letter to participants requesting informed consent

Dear Mr/Ms/Dr .....

I am currently enrolled for a Doctor of Philosophy (PhD) degree in Education Management and Policy Studies at the University of Pretoria. Part of the requirements for the conferring of this degree is the successful completion of a significant research project in the field of education.

I consider it a privilege and a great honour to invite you to become a voluntary participant in this research project. The title of my approved research study is **Applying the duty of care outside the formal school day at primary schools**. This study will be conducted at six primary schools across 2 districts of the KwaZulu-Natal Department of Education. The primary aim of this research study is to explore the application of the duty of care outside the formal school hours at schools which fall under the KwaZulu-Natal Department of Education.

I sought permission from the KwaZulu-Natal Department of Education to conduct this research. As part of this research, I need to conduct interviews which should take approximately one hour. The interviews will be conducted after school hours at a time and venue convenient to you. Each of the participants has had different experiences within their education career. As a participant in this project, your role will be to respond to questions put to you during the interview. You may also ask questions of your own to clarify any issue concerning the interview or a matter that may arise during the interview. The interviews will be recorded for data analysis purposes.

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Faculty of Education  
Fakulteit Opvoedkunde  
Lefapha la Thuto

As a participant, you will not be asked to reveal information that will allow your identity or that of your school to be known. Neither you as an individual, nor your school, shall be mentioned by name or indeed be allowed to be identified by any manner or means whatsoever in the research report. Where appropriate, pseudonyms will be used. To ensure that you are comfortable with the information you give, you will be provided with a confidential electronic or written transcript of your own interview and will have final approval of both its accuracy and its content. Please allow another hour for this process. Follow-up interviews might be required to clarify some matters, but this will also be voluntary and confidentiality will be guaranteed. I have included herewith, for your information, a schedule of the interview questions as part of the information gathering process.

Please be assured that all the data collected from this study will be kept strictly confidential, with not even the Department of Basic Education having access to the raw data obtained from the interviews. In addition, the data collected will be used for research purposes only. Furthermore, if you decide to participate in this study, you have the right to withdraw at any time during the data collection process without any penalty. Please understand that the choice for you to participate is entirely voluntary.

At the end of the research study, you will be provided with an electronic copy of the research report containing both the findings of the study and recommendations on the application of duty of care outside the formal school hours in KwaZulu-Natal. At no time will I be questioning or purposefully interacting with the teachers and learners at your school for either personal or research reasons. The research study presents a unique opportunity for you to get involved in the process of research to investigate the application of the extent of the duty of care outside the formal school hours.

The findings of this study could be useful to education policy makers practitioners in future. The research study has the potential to provide insight into the manner in which duty of care may be applied outside the formal school hours in primary schools.

We also would like to request your permission to use your data, confidentially and anonymously, for further research purposes, as the data sets will be the intellectual property of the University of Pretoria. Further research may include secondary data

analysis and using the data for school infrastructure management purposes. The confidentiality and privacy applicable to this study will be binding on future research studies.

If you decide to participate in this research study, kindly indicate this by completing the consent form at the end of this letter.

Yours sincerely

Teresa MacKay  
Student researcher  
073 513 3270  
Terrimackay2@gmail.com

Dr André du Plessis  
Supervisor  
(012) 4202929  
duplessis.andre@up.ac.za

**PERMISSION FOR RESEARCH PARTICIPATION**

I, \_\_\_\_\_, Deputy Principal/Departmental  
Head/P1 Educator of \_\_\_\_\_  
\_\_\_\_\_ hereby give permission to  
Teresa MacKay to include me as a participant in her research study on **Applying the  
duty of care outside the formal school day at primary schools.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## ADDENDUM F



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA

Faculty of Education

### CONSENT FORM

#### VOLUNTARY PARTICIPATION IN THE RESEARCH PROJECT ENTITLED **Applying the duty of care outside the formal school day at primary schools.**

I confirm that I have been informed about the nature of the research and that my rights have been explained to me. I have discussed the project with the researcher, Teresa MacKay, who is conducting the project for her PhD Education Management, Law and Policy Studies degree who is supervised by Dr André du Plessis in the Department of Education Management and Policy Studies at the University of Pretoria. I understand that if I consent to participate in this project, I will be interviewed.

I understand that I and my school's participation are dependent on granting permission for our participation by the School Governing Body and the Principal. I further declare that I understand, as they were explained to me by the researcher, the aim, purpose, scope, benefits, and methods of collecting information proposed by the researcher.

I understand that if I participate in this study my contribution will be kept confidential and will not be identifiable in any research report. I also understand that there are minimal risks associated with this study. I understand that I will remain anonymous and that my participation in this study is given voluntarily and willingly. I have the right to withdraw from the project at any time during the research project. My withdrawal will not affect me in any way.

I understand that by signing the consent form I am agreeing to participate in this study. I also understand that my contribution will be used primarily for a research project for the PhD Education Management and Policy Studies degree. I also understand that the data I provide can also be used confidentially and anonymously, for further research purposes,

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Fakulteit Opvoedkunde  
Lefapha la Thuto

as the data sets are the intellectual property of the University of Pretoria. Further research may include secondary data analysis using the data for research purposes. The confidentiality and privacy applicable to this study will be binding on teaching and future research studies.

Participant's name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## **ADDENDUM G**

### **INTERVIEW PROTOCOL** **SEMI-STRUCTURED INTERVIEWS**

#### **Before the interview:**

Prepare and familiarise myself with the interview questions.

Prepare verbal and written information about the research and consent.

Interviews to be conducted at the participant's school, in an office or in their classroom, where they feel comfortable, so that rapport may be developed with each participant being interviewed.

Interviews will be recorded (audio only). Notes may also be taken, especially where clarification is sought to the responses to questions.

All transcripts to be prepared within a reasonable time frame after the interview has been conducted.

#### **Interviewer:**

I will begin each interview by firstly thanking each participant for agreeing to participate in the research, will then provide a brief explanation to the study and explain the concept of informed consent to take part in the research. For audio purposes, I will once again request that the participant has given consent to participate and to the interview being recorded.

The topic will be introduced to each participant.

Time to be monitored to ensure that the interview does not take too long.

To be sensitive to body language and non-verbal cues.

If needed to provide prompts to help your interviewee to answer.

Ensure that key points are captured from the interview.

After the interview - consider if there is a need to provide a debrief to the participant.

## **ADDENDUM H**

### **INTERVIEW QUESTIONS**

Opening questions to develop rapport and get participant to relax:

How was your day?

How are you feeling?

- 1) What is your understanding of duty of care?
- 2) Where do you feel your duty starts and ends?
- 3) Do you often have learners who arrive at school before the gates open?
- 4) What is the usual procedure for these learners?
- 5) Describe what usually happens at the end of the formal school day – after all school activities end?
- 6) Do you have learners who regularly wait to be collected?
- 7) What is the usual procedure for these learners?
- 8) Do you think this may be affected by the parents having to work, or rely on others to collect their children due to work or financial pressure? Please explain.
- 9) Describe the procedures for educators when returning from an extra mural activity at another school, after formal school hours.
- 10) Are educators expected to wait for learners to be collected? Please explain.
- 11) Give examples of occasions when staff may have had to wait for learners to be collected.
- 12) Does the school have a specific policy in place for these learners who wait to be collected?
- 13) What procedures do you/ does your school have in place for learners who are not collected within a predetermined time frame after school?
- 14) Have you, personally, had to wait for learners to be collected? Please explain. (Time, how you felt, parents' response to being late, learners' response to being kept waiting, etc.)
- 15) How do you feel about this? (either expectation of waiting, or the response to waiting)
- 16) If you could make a decision on what to do with learners who are not collected on time, what would you do/say to parents?
- 17) Is there anything else you may want to add/ anything you feel may be relevant to this topic/ anything you feel I may not have asked?

18) If you had an imaginary boundary, where once the boundary is crossed learners are your responsibility or parent's responsibility, where would that boundary be?