



Legal requirements for school rules and disciplinary sanctions

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Abstract

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The new educational dispensation has created some uncertainty regarding the application and formulation of school rules, lawful disciplinary measures and procedural requirements for discipline in schools. This contribution is aimed at providing a legal framework for lawful school rules, as well as for the interpretation and application of school rules. The legal framework is assessed from a reformatory frame of reference, which includes taking a stand regarding the state and its functions. The discussion focuses on phenomena such as education, discipline and order. The requirements for lawful disciplinary measures are also addressed. The conclusion is that the drastic changes to the system afford Christian governing bodies and educators the opportunity to promote true discipleship within the parameters of the law.

Opsomming

Regsvereistes vir skoolreëls en dissiplinêre maatreëls

Die nuwe onderwysbedeling het 'n mate van onsekerheid meegebring aangaande die toepassing en formulering van skoolreëls, regmatige dissiplinêre maatreëls en die prosedurele vereistes vir die handhawing van dissipline in skole. Hierdie bydrae is gerig op die verskaffing van 'n regsraamwerk vir regsgeldige skoolreëls, asook vir die uitleg en toepassing van skoolreëls. Die regsraamwerk word geëvalueer vanuit 'n reformatoriese verwysingsraamwerk, wat inhou dat standpunt ook ingeneem word aangaande die staat en staatsfunksies. Die bespreking fokus op verskynsels soos onderwys, dissipline en ordelikheid. In die proses word die vereistes vir regsgeldige dissiplinêre maatreëls aan die orde gestel. Die gevolgtrekking is dat die

drastiese wysigings tot die stelsel Christelike beheerliggame en opvoeders die geleentheid bied om binne die parameters van die reg ware dissipelskap te bevorder.

1. Introduction

The adoption of the *Schools Act* in 1996 (SA, 1996(2)) introduced a new era in education. One of the stated aims of the new system is to give effect to the provisions of the supreme *Constitution*, containing a *Bill of Rights*, adopted in 1996 (SA, 1996(1)).

Many educators and governing bodies still grapple with the implications of the new approach to education. The envisaged system is “a migration from a system where schools are entirely dependent on the largesse of the State to a system where greater responsibility and accountability is assumed” (*Schoonbee and others v MEC for Education, Mpumalanga and Another*, 2002:883). The new system is also regarded as “a radical break with an authoritarian past” (*Christian Education South Africa v Minister of Education*, 2000:par 50).

One of the key problem areas in the new dispensation is the maintenance of discipline in schools. Educators, parents and learners seem to be uncertain exactly what is permitted or prohibited by the new laws. The discussion that follows aims to address some of these uncertainties by providing a legal framework for lawful school rules, disciplinary measures and disciplinary procedures. This will be accompanied by a critical reflection on the philosophical embeddedness of the rules or sanctions and on the implications of the legal position for education, discipline, order and the development of a Christian society. The aim is to establish whether the procedures and legal stipulations regarding discipline and school rules are compatible with a Christian paradigm (with special reference to the Christian view of man, education and societal life).

In legal terms, the current legal position is relatively new. The courts have not yet had the opportunity to deal with all the new requirements for school rules and disciplinary measures – exceptions being the prohibition of corporal punishment and rules on appearance. For the rest, regard must be paid to the provisions of the *Constitution* (SA, 1996(1)), *Schools Act*, *Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners* (SA, 1998) (henceforth referred to as *Guidelines*) and any provincial notices that may exist. These should be interpreted in accordance with the general guidelines provided by the courts in the few

decisions dealing with school rules and their application. They should also be interpreted against the backdrop of a reformational view of the competencies of the state as well as of education, order and discipline.

Christians, irrespective of the societal environment in which they find themselves, have a duty and calling, that is to live to the honour and glory of God. The ultimate goal of a Christian is to live, both in word and deed, according to the intentions of God (Van Dyk, 1997:41). “Legal compliance” should, therefore, be seen in context with “obedience to God’s ordinances for creation and for man as the crown of creation” (Ps. 8).

2. Points of departure

2.1 Philosophical hypothesis

The legal requirements referred to in this discussion have been promulgated by various bodies, all branches of the state. According to Van der Walt (1994:487), Romans 13:1-7 is *the* central point of departure from which one should understand the apostle Paul’s ideas about the Christian attitude towards the state. Christians should owe nobody – not even the state – anything other than love. The submission in obedience to government should spring from love – love for God and for one’s neighbour (not from justice or fear). These verses from the Romans letter underscore that every person should honour the government, even a non-Christian one. Submission to the ordinances of government should not be unconditional, however, since both government and its subjects are all responsible and accountable to God. God ordains authority, and the state is there for the welfare of everyone. The existence of authorities such as government was ordained by God, but not how they execute their power.

The state does not have the task of combating religious indifference, of struggling against moral decadence, or to promote a specific religion or certain moral standards (Van der Walt, 1994:491). This does not imply that the state plays no role in these matters; reality is too complex for that. From a Biblical perspective the criterion for public justice is love for one’s neighbour, which can only grow from love of God. The state (as all authority) should be seen as a servant of God, its aim being the creation of conditions that enable people to live in peace and order. The government has to rule for the public good, the good of mankind (Fowler, 1988:6) and the welfare of its subjects. If the state fails in executing this duty, Christians might find

themselves in a position where they might find it necessary to be more obedient to God than to man (Acts 4:19; 5:29) (Van der Walt, 1994:490). It is obvious that the state cannot do as it pleases (Fowler 1988:6). As God's servant, it is bound to the norms of God's Word, both in its relations with other societal structures and in its own internal structure. In Fowler's opinion (1988:8), Romans 13 cannot be quoted in support of any view that extends the power of the sword in the hands of the state beyond the requirements of justice among men.

This view of the state and its functions, especially the obligation of Christian citizens, compels them to be critical of the state. It begs the question whether the legal requirements regarding order, discipline and school rules comply with the norm that the state should act for the welfare of mankind.

The term "discipline" is often understood to refer to punishment and chastisement (Heb. 12:11 and Prov. 13:24; also see the article titled "A classical approach to the restoration of discipline in South African schools" elsewhere in this volume). The verses quoted above are frequently used to justify corporal punishment. True discipline should, however, be approached from a more positive angle (refer to the introductory article to this volume titled "n Beginnelgrondslag vir gesag, vryheid, orde en dissipline in die onderwysopset van die vroeg 21ste eeu"). Christian educators have one overarching goal: to equip their learners for works of service and to lead them to discipleship. A disciple, in other words a disciplined person, is one who hears and does the Word of God.

People were created to be stewards of God in creation, with the task of caring for creation but also healing the wounds inflicted by sin (Van Dyk, 1997:36). To be a disciple is, according to Van Dyk (1997: 39), to participate in this task of renewing and redeeming work. Complete discipleship is equivalent to doing what humans were created in the first place to do in the world – to honour and glorify God. Discipleship in the full, restored sense of the word implies explicitly following Jesus Christ (Van Dyk, 1997:41).

True discipleship or discipline depends on whether a person has acquired wisdom. Wisdom is to hear the Word (the will) of God (Ps. 111). "Hearing" does not mean that one merely understands the language of God's commandments – it is nothing less than experiencing God's presence in one's life. According to Van Dyk (2000:65), "when we aim for discipleship as an educational goal, we aim to create situations in our classroom in which our students

actually experience the authoritative, yet comforting presence of God". Discipleship is also to *do* the will of God. A disciplined person "does" the Word of God. Doing refers to loving servanthood: to love God and neighbour is to serve God and neighbour (Van Dyk, 2000:66).

Although a learner may have to be punished from time to time, discipline should not be equated to punishment or chastisement. Discipline, from a Biblical point of view, means to guide, equip, enable and help learners to become followers of Jesus Christ. This view raises the question whether the legal requirements promulgated by a particular state or government can indeed contribute to the education of true disciples. The inculcation of discipleship is not a duty of the state or of the courts. Christian educators, parents and teachers have to ascertain for themselves, therefore, whether the legal requirements and court decisions are indeed conducive to the inculcation of true discipline (followership), especially in Christian communities. The same test should be applied to the codes of conduct formulated by school authorities: do they indeed enable learners to become true followers of Jesus Christ?

2.2 Legal assumptions

A number of legal assumptions have been made as basis for this discussion. These legal assumptions as well as the discussion regarding their acceptability from a reformational point of view, will be found in the contribution elsewhere in this issue – "The legal nature of schools, codes of conduct and disciplinary proceedings in schools".

The assumptions and principle-based questions include the following:

- Public schools are legally classified as organs of state, but is this view acceptable in terms of a reformational view of societal structures?
- Governing bodies that adopt codes of conduct for learners perform administrative acts. The provisions of the *Promotion of Administrative Justice Act* (SA, 2000a) apply to these acts. In view of what has just been said above regarding discipline it can be asked whether the formulation of a code of conduct indeed amounts to a mere "administrative act". Should the basic justification for formulating a code of conduct not be to promote true discipline in learners – as defined from a reformational viewpoint?

- Governing bodies and educators employed by the provincial departments of education perform administrative acts when disciplining learners in terms of a code of conduct. This assumption can be questioned on the same grounds as the above-mentioned question.

3. School rules

3.1 General requirements for school rules

The view of “discipline as true discipleship” discussed above, places the role and function of school rules in a “new” perspective. School rules are not merely intended to promote order in schools, but indeed to assist learners to become better followers of Jesus Christ. Learners must be enabled not only to hear the Word (the will) of God but also to do it – to serve Him and their neighbour (including other learners, their teachers, their parents and society in general). The discussion that follows will not address the question whether religious observances and religious instruction should be allowed in schools – instead the focus will be on how school rules and the disciplinary system can promote true discipleship.

Every aspect of school rules in the following discussion, as well as all stipulations in a school’s rules or code of conduct should be viewed from this vantage point of “true discipline”. The same applies for the Christian’s evaluation of court decisions and expressions such as “positive discipline”, “constructive learning”, “the fact that the disciplinary system is based on human dignity and on respect and consideration of others and not on fear or assault” (see 3.2 below). This view of discipline also applies to the ideal of establishing moral values and a constructive, positive learning environment, punishment for deviant behaviour (as discussed in 4.2), a principial-oriented disciplinary system, the recognition of human dignity, the different forms of freedom that learners are entitled to (4.1), the best interests of learners and the values and principles underlying learners’ rights (4.2 below).

A new principle is that learners must be involved during the drafting and formulation of school rules (SA, 1998:1.5, 5.1(b)). In practice, school rules will not be re-drafted each year, but learners should be encouraged to reconsider the rules and submit proposals for amendments. Learners should realise that their input will be considered, but that the governing body has the final authority to approve a school rule or amendment (SA, 1996:8(1), 20(1)(d); SA, 1998:1.5). The governing body consists mainly of representatives of

parents and thus the community. The duty of a Christian community and representatives on a governing body is therefore to ensure that school rules are drafted in such a way that it promotes (or at least accommodates) true discipleship.

The general point of departure that all rules should make provision for fair warning (SA, 1998:5.1(c)) is in accordance with the Christian view on positive discipline.

School rules should not, as indicated before, be viewed as negative mechanisms to prohibit certain behaviour. Positive formulation to encourage positive learner behaviour will be in line with a reformatory view of discipline. The legal provisions on school rules accommodate this approach. From a legal point of view it is virtually impossible to provide for a prohibition of every possible negative occurrence. It may be possible to formulate exact rules on certain matters, for example that school commences at 07:30. It is more difficult to formulate rules prohibiting erotic contact between learners, due to the vast number of ways such contact may take place. A rule stipulating that physical contact between learners shall always reflect decency and respect for one another's physical dignity and privacy, may be more appropriate. However, it is important that learners should know what is expected from them. Any rule that is formulated in such a way that a learner cannot establish with reasonable certainty whether certain behaviour is prohibited or allowed, will be legally void. Although this requirement is not contained in the *Promotion of Administrative Justice Act* (SA, 2000a), it forms part of the common law and still applies. The person affected by any provision, in this instance the learner, must be able to establish with reasonable certainty what is prohibited (Burns, 1999:156-157). The *Guidelines* also provides that rules should be "clear and understandable" (SA, 1998:5(1)(c)). This will require that learners are continually informed and reminded of the proper interpretation of certain school rules, for example the Christian view on sexual behaviour.

3.2 Formulation, application and interpretation of school rules

School rules regulate all aspects of behaviour at school. However, the discussion that follows will focus on the formulation, application and interpretation of rules on appearance, as a recent High Court decision sheds light on how these should be legally interpreted. The omission of reference to other types of rules should thus not be regarded as an "elevation" of appearance rules as particularly

important or as a disdain for other school rules. The approach followed, also applies to other types of school rules.

All codes of conduct include rules on appearance and uniforms. Very often, a great deal of attention is paid to ensure that these rules are drafted as precisely as possible and to limit learners' choices as far as possible. Although this strict approach was lawful under (and one would venture to say even encouraged by) the previous educational regime, this is no longer the case.

The *Guidelines* recognises the learners' right to freedom of expression, which is broader than mere freedom of speech.

The freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles. However, the learners' rights to enjoy freedom of expression are not absolute. Vulgar words, insubordination and insults are not protected speech. When the expression leads to a material and substantial disruption in school operations, activities or the rights of others, this right can be limited as the disruption of schools is unacceptable (SA, 1998:4.5.1).

It is accepted that the established practice to prescribe school uniforms is not outlawed by this provision, as it is not explicitly done. The broad formulation in the *Guidelines* unfortunately creates uncertainty as to the extent of the learner's right to self-expression. It appears as if the only limitations to this right are the prohibition of vulgarity, disruptive consequences or the infringement of rights of others.

The Cape High Court has considered this right in the context of a learner who insisted upon wearing dreadlocks and a cap to school, as expression of her Rastafarian religion. During the internal disciplinary hearing, it was alleged that the learner's behaviour was disruptive, that it amounted to a defiance of authority and that it created uncertainty. The governing body found that the learner was guilty of serious misconduct and imposed a five-day suspension. The learner contended that she enjoyed the freedom of religious expression and individuality and that she was neat and tidy at all times. The allegations that her behaviour caused disruption were denied (*Antonie v Governing Body, Settlers High School*, 2002:740-741; henceforth referred to as *Antonie*).

The applicable *Provincial Notice* determines that a learner is guilty of serious misconduct if he or she "conducts himself or herself, in the opinion of the governing body, in a disgraceful, improper or

unbecoming manner” (SA, 1997:2(1)(e)). The court held that a proper interpretation of this provision has to include reference to the preceding provisions, where a number of specific transgressions are listed. The court concluded that the behaviour referred to had to be “something akin to immoral, promiscuous or shockingly inappropriate behaviour”. It held that the learner’s behaviour could not be classified as such. In addition, the court found that the learner’s behaviour would not amount to serious misbehaviour, even if dreadlocks or the wearing of a cap were prohibited by the school rules (the court held that it was not), or her behaviour was disruptive or led to uncertainty, or amounted to a defiance of authority. The governing body’s decision was therefore set aside on the basis that it failed to properly apply its mind to the meaning and scope of the term “serious misconduct” (Antonie, 2002:742-743).

The main importance of the judgment is the guidelines for implementation and interpretation of school rules that it offers.

The court found that the learner’s behaviour as such was not explicitly prohibited by the rules in the code. Having considered other forms of behaviour classified as serious misbehaviour; the court in essence found that the transgression of an appearance rule does not in this instance constitute serious misconduct in terms of the *Provincial Notice*. It should be added that if non-compliance would amount to immoral, promiscuous or shockingly inappropriate behaviour, the matter would obviously be approached differently.

The court held that a rigid application of school rules would be inconsistent with the *Constitution* and would not reflect respect for the learner’s rights. When interpreting and applying a code of conduct, the principles and spirit of the *Constitution*, *Schools Act*, *Guidelines* and *Provincial Notices* must be taken into account, even in instances where the code does not refer to it at all. The emphasis should fall on positive discipline that will conform to the requirements set by the various laws (Antonie, 2002:742).

In this regard, the *Guidelines* provides the following:

The Code of Conduct must inform the learners of the way in which they should conduct themselves at school in preparation for their conduct and safety in civil society. It must set a standard of moral behaviour for learners and equip them with the expertise, knowledge and skills they would be expected to evince as worthy and responsible citizens. It must promote the civic responsibilities of the school and it must develop leadership. The main focus of the Code of Conduct must be positive discipline; it must not be

punitive and punishment oriented but facilitate constructive learning (SA, 1998:1.4).

Although not formulated in the Christian idiom, this approach conforms with the reformational paradigm.

When applying school rules, it must be borne in mind that a code of conduct has to strive to create a “culture of reconciliation, teaching, learning and mutual respect and the establishment of a culture of tolerance and peace” (SA, 1998:2.3). Again, these values are not phrased in typical Christian vernacular, but formalise fundamental concepts that are in line with the Christian view on discipline.

Appearance (and other) rules have to accommodate learners’ rights to freedom of expression and should reflect tolerance for differences in opinion, religion and culture. Rigid rules and rigid application of rules in disregard of these principles are unlawful. This approach accommodates the Christian learner’s right to express his or her religion, which should be welcomed. However, it does not empower a Christian governing body to expressly prohibit expressions of other religions. The law requires tolerance on this matter.

Learners also enjoy the constitutional right to equality, that *inter alia* provides that discrimination based on gender, race, culture, ethnic origin or religion, is regarded as unfair unless the contrary is proved (SA, 1996:(1):9). Any distinction made in school rules, for example between male and female learners, may be tested against this right.

The Constitutional Court has held that this enquiry will amount to three basic enquiries:

... first, whether the provision under attack makes a differentiation that bears a rational connection to a legitimate governmental purpose. If the differentiation bears no such rational connection, there is a violation of section 9(1). If it bears such a rational connection, the second enquiry arises. That enquiry is whether the differentiation amounts to unfair discrimination. If the discrimination does not amount to unfair discrimination, the enquiry ends there and there is no violation of section 9(3). If the discrimination is found to be unfair, this will trigger the third enquiry, namely, whether it can be justified under the limitations provision (*Hoffman v South African Airways*, 2001:par 24; henceforth referred to as Hoffman).

If the discrimination measure is not contained in a law of general application, section 36 of the *Constitution* is not considered and the enquiry will be limited to the first two steps. In the case of Hoffman, it

was held that the appointment policy of the South African Airways did not amount to a law of general application and it is submitted that the same will hold true for school rules drafted by a governing body (Hoffman, 2001:par 41). Although a relatively large number of persons may be affected by the policy or school rule in this instance, it does not enjoy application outside the structure itself.

The factor that will determine whether discrimination is unfair is the impact on the person who bears the brunt of the discrimination. The court will take into account the person's position in society (whether the person forms part of a vulnerable group), the goal of the discriminatory provision, the extent to which the discrimination affects the person's rights and interests and whether the person's human dignity has been infringed (Hoffman, 2001:par 27). Discrimination based on either race or gender is more difficult to justify as fair, than discrimination on other grounds (Pienaar, 2003:582). It should also be taken into account that the *Guidelines* states: "The philosophy of the disciplinary system is based on human dignity and on respect and consideration for others and not on fear or assault" (SA, 1998: 4.4.3).

The promulgation of the *Promotion of Equality and Prevention of Unfair Discrimination Act* (SA, 2000b) has introduced a procedural change in the discrimination-enquiry. Section 13(1) provides that a complainant merely has to establish a *prima facie* case of discrimination. The defendant then bears the onus to prove that the discrimination either did not take place, that it was not based on a prohibited ground or that it was indeed fair.

Governing bodies should therefore take care to ensure that any differentiation on the listed grounds (for example gender) will serve a legitimate governmental purpose, will have a rational connection to this purpose and will not amount to unfair discrimination (according to the considerations discussed above). It is clear that any differentiation should be carefully considered. One could pose the question whether, for example, rules allowing female learners to wear some jewellery but prohibiting any jewellery for male learners, would survive this scrutiny. The same holds true for rules requiring male learners to shave their hair but allowing female learners to wear long hair or rules requiring learners to wear symbols expressing their religious beliefs or cultural heritage under their school uniforms.

Voicing a conclusive, authoritative reformational Christian view on gender differentiation is impossible – the ongoing debate on the role of women in church and society (which will not be discussed here)

underlines the existence of divergent opinions on gender issues within the Christian community (Pieterse & Van Deventer, 2002:691-716).

3.3 Conclusion

The adoption of a code of conduct is the task of governing bodies. The inference is that this representative body will draft a code reflecting the needs, values and aspirations of that particular community, such as a Christian one. The Christian community forms part of the broad heterogeneous South African society, and this composition is also reflected in many South African schools. Provision should, therefore, be made for the accommodation of diversity, including religious and life-view diversity.

4. Disciplinary measures

4.1 Requirements for lawful disciplinary measures

The discussion that follows will be limited to substantive requirements for disciplinary measures. An analysis and critical evaluation of legal requirements pertaining to a fair procedure warrants a separate discussion. Likewise, the administrative law requirements regarding proper consideration, absence of bias, reasonableness and reasons will not be discussed.

The ratio for imposition of disciplinary or corrective measures is described as the maintenance of the “orderly society at school” (SA, 1998:8.1). The code of conduct should not be aimed at punishment; it should rather aim to establish moral values and a constructive, positive learning environment – learners should learn from their mistakes (SA, 1998:1.4, 1.6, 8.1). Lawful procedures should be followed to maintain discipline (SA, 1998:4.4.1). The basic requirement is that disciplinary measures (the term is preferred to “punishment”) be proportionate to the learner’s misbehaviour and as far as possible, similar disciplinary measures should apply to similar transgressions, bearing in mind that more serious measures are allowed when misbehaviour is repeated (SA, 1998:4.2, 7.6; SA, 1996(1):9).

These basic points of departure are in accordance with the Christian view on discipline, although discipleship will amount to more than mere legal compliance, as discussed earlier. Although the *paideia* ideal should be accepted, it is inherent in the legal nature of sanctions that they are retrospectively applied (as discussed by

Oosthuizen *et al.* elsewhere in this volume). This does not exclude a critical evaluation of measures that are legally allowed. The evaluation is done at the end of the discussion, under 4.4.

The prohibition of corporal punishment is still debated. In Namibia it has been judicially observed that corporal punishment is often retributive in nature, that the practice is susceptible to abuse and that the procedure is degrading to the learner (*Ex parte Attorney-General, Namibia: In re Corporal Punishment by Organs of State*, 1991:93).

In the *Christian Education* case, the Constitutional Court unanimously held that the prohibition on corporal punishment in schools does not constitute an unjustified infringement of a parent's right to freedom of religion, privacy, independent education or cultural rights and that no parent may lawfully authorise or grant an educator permission to administer corporal punishment to a child (*Christian Education*, 2000:par 1-3, 52).

The Court is of the opinion that the adoption of uniform standards in all schools is vital – the *Schools Act* embodies a break with the previously fragmented system and aims to create a uniform educational system within the state. A coherent and principle-oriented disciplinary system forms an integral part of this development (*Christian Education*, 2000:par 39). The state is obliged, in terms of the *Constitution*, to reduce and limit violence in the public sphere and to protect all persons, but especially children, against abuse, humiliation, injury and violence, since it has adopted the *United Nations' Convention on Rights of the Child* (*Christian Education*, 2000:par 15, 40, 47).

It was argued that the use of physical violence to discipline violates the core constitutional value of human dignity (*Christian Education*, 2000:par 43). Although the court did not deliver judgment on this argument, it can be inferred from the tenor of its judgment that this contention is supported. It was held that the prohibition of corporal punishment was aimed at the protection of children against physical and emotional abuse as part of the process to eliminate all forms of state-sanctioned violence. It was therefore a principial decision by government to promote respect for the dignity and physical and emotional integrity of all children. The drastic departure from the former approach was deliberate (*Christian Education*, 2000:par 50).

The court did not regard the independent Christian schools that noted the appeal, as organs of state, but it did find that they functioned in the public domain to the extent that they prepare

learners for life in the broader community. These schools are thus also required to adhere to the *Constitution* and other laws (*Christian Education*, 2000:par 51). The judgement did not address the rights of parents to personally administer corporal punishment, as it was only concerned with corporal punishment in schools.

The following rights of learners are therefore of particular importance when the lawfulness of possible disciplinary measures is considered:

- No disciplinary measure may infringe a learner's right to human dignity. The Constitutional Court has repeatedly held that human dignity is the core value against which any actions or infringements of rights will be measured (SA, 1996(1):10; SA, 1998:4.3; Currie & De Waal, 2001:362).
- Learners have the right to freedom and security of their person and have the right not to be subjected to violence from any private or public source. They also have the right not to be tortured, i.e. not to endure pain or suffering. No learner may be punished in a cruel, inhuman or degrading manner (SA, 1996(1): 12(1); SA, 1998:4.4.1, 4.4.3).
- The right to privacy is also protected and the right of educators or others to search a learner and seize possessions is limited to a search based on a reasonable suspicion and according to reasonable methods (SA, 1998:4.3).
- The protection of the rights of children *inter alia* entails that a court will always consider the best interests of the child in any matter where a child is involved (SA, 1996:28).

4.2 Disciplinary measures explicitly authorised

Suspension by the governing body (to a maximum of one week) or a recommendation by the governing body that a learner be expelled, are the most invasive and severe disciplinary measures that are explicitly authorised (SA, 1996(2):9). These measures are only available if a learner is found guilty of serious misconduct, after a procedurally fair hearing has been conducted (SA, 1998:12.1). Suspension or expulsion is not reserved for repeated offences – if the seriousness of the misbehaviour warrants it, suspension or expulsion may follow a first offence (SA, 1998:7.6).

The type of conduct that will constitute a serious offence should be determined on provincial level. Transgressions that may lead to suspension is listed in the *Guidelines*, with the express provision

that it is not a closed list (SA, 1998:11). If certain misbehaviour is not explicitly listed as serious (in either the *Guidelines* or provincial legislation), the nature of other types of misbehaviour classified as serious should be taken into account (Antonie, 2002:743, par 19).

The *Guidelines* provides for a number of other disciplinary measures that may be imposed in the case of minor transgressions (SA, 1998:10). It is inferred that educators may impose these measures. It includes:

- A verbal warning or written reprimand;
- additional school work, but with the *proviso* that it has to contribute to the learner's progress at school, there is supervision, the security of learners are assured and parents are properly notified in advance;
- tasks in support of an offended person;
- compensation that is affordable and agreed upon;
- replacement of damaged property;
- suspension from certain school activities – reference is made to extra-curricular activities like sport and culture.

Disciplinary measures as a result of the transgression of a school's code of conduct can only be lawfully enforced against learners (SA, 1998:1.9). Care should be taken that measures like compensation or replacement of property do not amount to enforcement against parents.

Educators may also restrain learners who pose a threat to themselves or others (SA, 1998:7.3). Restraint has to be reasonable and aimed at preventing damage – it is proposed that the removal of the learner from the situation (for example the classroom) or seizure of any object under control of the learner, would be acceptable forms of restraint.

Learners who do not adjust to the school or who infringe the rights of others have to be referred to the principal, who will handle the situation in consultation with educators and parents. Efforts should be made to assist the learner to adjust and he or she may be referred to educational support services. Ultimately the governing body may take a decision in the best interests of the learner and other learners, if all efforts fail (SA, 1998:7.7). It is assumed that the objectionable behaviour referred to in this context only refers to minor infringements of rights of others, as "conduct which endangers

the safety and violates the rights of others” is listed as serious misconduct that may warrant suspension (SA, 1998:11(a)).

Placement of learners in an alternative school environment may be considered whenever suspension is considered. This should be done in consultation with a school psychologist or social worker. Examples of ensuing action are reassignment to a different class, correctional education after school hours or referral to a special school for learners with behavioural disorders (SA, 1998:4.7.3). Parents should be involved with any such process.

4.3 Other lawful disciplinary measures

A number of other disciplinary measures may also conform to the legal requirements, depending on the manner in which they are implemented. These may include telephone calls, meetings or discussions with parents, “time out” for a disruptive learner, limitation of classroom privileges, reassignment of seats, seizure of a prohibited item, limitation of social contact with other learners or a system of merits and demerits.

4.4 Conclusion

All forms of disciplinary measures have to be consistent with learners’ rights and the values and principles discussed. The measures provided for in the *Guidelines* and provincial legislation do not form a closed list; educators and governing bodies are left some discretion regarding suitable measures, as long as its practical application conforms to the general legal requirements. Disciplinary measures that are inconsistent with the requirements, principles and objectives, are prohibited.

Disciplinary measures should also comply with values and principles associated with a Biblically-founded view of education, discipline and order. If possible, disciplinary measures should be applied in such a way that these objectives are reached. The Christian community, in the form of governing bodies, parents and educators, should avail themselves of the space created by the applicable laws to realise, as far as possible, its own values with respect to education, discipline and orderly behaviour. Christians should, on the one hand, be critical of legal provisions, but on the other, avail themselves of the latitude given to different communities to realise their own value systems.

5. Concluding remarks

Research on learner discipline illustrates one aspect beyond doubt: the intended flexibility of legal provisions on school rules and disciplinary measures unfortunately also tend to create uncertainty among its users. It is expected of governing bodies, often consisting of persons with no legal training, to draft rules that conform to intricate legal requirements. The approach seems to favour the free hand of governing bodies and to leave the decision as to the legality of rules to the courts. Although this apparent freedom of choice may be welcomed as recognising the importance and involvement of the broader school community, one consequence may be the adoption and implementation of rules and disciplinary measures that do not comply with current legal requirements. The fact that the validity and lawfulness of these rules and measures are not regularly contested in the courts does not serve as evidence that they do not exist and are not applied.

The “new approach” to school rules does not merely entail, however, naive acceptance of the new legal requirements that have been discussed. It also implies a profound understanding of the goals of education from a Biblical perspective, that is as guidance, enabling and equipping learners to become fully prepared for their task as stewards of God on earth, equipped to care for themselves, their neighbour and creation in general, but also prepared to combat the ravages of the sin that has tarnished all people. It also implies insight into discipline in the sense of discipleship, of being a follower. Learners have to be guided and enabled to understand the will (the Word or laws for creation) given by God and also to be prepared to do His will. It also implies insight into the fact that codes of conduct and school rules are not drafted merely for the purpose of ensuring “law and order” in schools and in classrooms, but that they are useful instruments in the hands of educators to guide learners to true discipleship.

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Key concepts:

code of conduct

lawful disciplinary measures

lawful school rules

legal requirements

Schools Act

Kernbegrippe:

gedragskode

regsgeldige dissiplinêre maatreëls

regsgeldige skoolreëls

regsvereistes

Skolewet