

Educator misconduct: Why legislation needs to be amended now

South Africa's education legislation lacks teeth when it comes to regulating the misconduct and incompetence of some of our educators in the public basic education system, says Dr Cecile de Villiers. De Villiers was recently awarded her doctorate in Mercantile Law at Stellenbosch University (SU) with her thesis focusing on the regulation of the performance of departmental and other educators in public basic education.



Image source: Brad Calkins – 123RF.com

De Villiers believes we need legislative amendments to regulate educators performance so that our children can receive a quality basic education as stipulated in our Constitution.

“Any improvement in the delivery of quality basic education starts with the clear regulation of the expected standard of performance of educators – including their conduct (professionalism and attitude) and capacity (qualifications, competence, content knowledge and skills),” she says.

“Proper legislative regulation can help to address poor performance, absenteeism, mismanagement of finances, dishonesty, improper conduct, sexual misconduct and assault, which directly or indirectly impact learners’ experience at school and/or the quality of education they receive.”

According to De Villiers, the current legislative regulation of educator performance remains weak because the legal framework is complex, incohesive and confusing. This is despite several legislative amendments since the enactment of the Employment of Educators Act [1998] (EOEA), the South African Council for Educators Act [2001] and the South African Schools Act [1996].

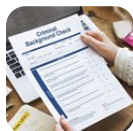
Lack of disciplinary measures

She says her study shows that despite the sometimes-egregious nature of the misconduct in schools, there aren't many disciplinary inquiries, and the ones that do take place don't lead to the dismissal of educators.

"This is often due to bad decision-making and poor commitment of those involved in carrying out disciplinary procedures, which ranged from inappropriate categorisation or description of misconduct to simply not being present at arbitrations at the Education Labour Relations Council.

"A particularly worrying aspect of the disciplinary procedure is that requests for postponement (and resultant delays) of disciplinary inquiries are sometimes unduly accommodated, often where trade unions represent educators at these inquiries."

De Villiers points out that there is an absence of detailed statistics about the prevalence of precautionary suspensions and their duration and cost.



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"Precautionary suspensions are not always used in conjunction with even serious misconduct (such as assault). They are used in only a fraction of disciplinary cases. Particularly concerning is that in several instances precautionary suspensions were found to be unfair, typically because of the undue delay in disciplinary proceedings, which often originates in a lack of commitment from specific Provincial Departments of Education (PDEs) to pursue the matter.

"Fines and suspensions without pay are often used as alternatives to dismissal in cases of serious misconduct and where a learner is the victim.

"There is also an absence of statistics about the actual reasons for dismissal, which makes it difficult to analyse how effectively PDEs view and deal with specific types of misconduct."

Amendments

De Villiers proposes amendments to the EOE that can help address the shortcomings in the current regulation of educator performance.

Some of the proposed legislative amendments include "an obligation that should be placed on School Governing Bodies (SGBs) and PDEs to do a pre-employment check and to inform the South African Council of Educators (SACE) (and vice versa) should the pre-employment check reveal that the names of prospective educators appear on the National Child Protection Register, the National Register for Sex Offenders or that they have been convicted of a relevant offence.

“The reporting obligation between the SACE and PDE should be strengthened, and the basic standards of performance of all educators in the public basic education system should be included. The principal’s authority to impose informal discipline such as verbal or written warnings also needs to be clarified.”

De Villiers adds that the current provisions dealing with misconduct should be repealed and replaced with a new provision which also amends the description of misconduct as well as the possible sanctions. This will help to address challenges around the substantive fairness of discipline.

“Amendments should also be made to address challenges around the procedural fairness of discipline, the undue delay in finalising disciplinary inquiries, and the use of precautionary suspension.

“Amendments to address incapacity by including a performance standard for educators and principals and expressly providing that the procedure to address incapacity (poor work performance) should be seen as guidelines which may be deviated from for good reason.”

De Villiers says these amendments could help to improve accountability and transparency in basic education.

“Where the standards for educator capacity and conduct are contained in legislation, there may be greater accountability to enforce these standards and they may serve as an important guideline to decision makers, including principals, on how to address incapacity and misconduct in schools.”

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