A SOUTH-AFRICAN PERSPECTIVE OF TEACHERS’ PRACTICE DUTY OF CARE THROUGH A DISTANCE EDUCATION PROGRAMME

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Summary

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Diversity in skills, abilities, competences, backgrounds and training of distance education students is a worldwide phenomenon. Many distance education programmes are delivered to address these challenges, as well as to enhance teachers’ skills and competences relating to specific learning areas (subjects). Only specific distance education programmes train students in the obligations and responsibilities regarding the duty of care of teachers. Although the main aim of schooling is to provide educational teaching and learning, education legislative aspects are indispensable in every area of effective education, irrespective management or educational actions. Empirical research was done through a quantitative investigation by means of a questionnaire to measure the extent to which the duty of care practices of teachers meet the requirements of education legislation and the relevance and importance of postgraduate training through inter alia distance education programmes in enhancing teachers’ practice of duty of care. It became clear in this research that the respondents who did receive specific postgraduate training in recent education legislation, demonstrate the highest standard in their professional conduct regarding their duty of care. Research conclusively determined that distance education can play an important and effective role in enhancing teachers’ skills and professional duties regarding education legislative aspects.
1. Abstract

Diversity in skills, abilities, competences, backgrounds and training of distance education students is a worldwide phenomenon. Many distance education programmes are delivered to address these challenges, as well as to enhance teachers’ skills and competences relating to specific learning areas (subjects).

In the contemporary South-African education system, it is important for teachers to evaluate, comprehend, use their position, and to apply the appropriate standard of practice of duty of care legally required to meet the relevant legislation, legal adage and common law principles. The current focus is on the professional conduct of teachers; the specific skills, and the care expected from a teacher as a professional person. Only specific distance education programmes train students on the obligations and responsibilities regarding the duty of care of teachers.

This paper focuses on teachers’ standard of practice regarding their duty of care and the role that distance education can play in improving the said standard.

Key words: duty of care, educator, teacher, negligence, accountability, delictual accountability, tort law, in loco parentis, schools, educator legal requirements, distance education.

2. Introduction

Teachers are the largest single occupational group and profession in South Africa with approximately 390 000 in public and private schools. Although the past years have shown an improvement of the qualification profile of teachers in general, the majority of reports on South African education indicate that a substantial number of teachers are not sufficiently equipped to meet the education demands of a growing democracy in a global environment (SA, 2006).

In order to develop a teaching profession in South Africa that is ready and able to meet the needs of a democratic South Africa in a contemporary global environment, teacher education must deliver teachers that are amongst others:

- a specialist in a particular learning area, subject or phase;
- a leader, administrator and manager, and
- a professional who plays a community, citizenship and pastoral role (SA, 2006).

The qualification routes for teacher education at South African universities are:

- a four-year Bachelors of Education (BEd) degree as the preferred standard initial professional education of teachers;
- a one-year postgraduate education diploma following an approved first degree;
- a National Professional Diploma in Education (NPDE), and
• an Advanced Certificate in Education (ACE).

According to the South African National Department of Education (SA, 2006) the majority of South African teachers need to enhance their subject knowledge, pedagogical knowledge and teaching skills while a large number of teachers need to improve in areas such as diversity management, classroom management and discipline. Reports have shown that at many schools there is a shortage of well qualified and competent teachers, and access to further development programmes is limited.

Distance education is regarded by the South African National Department of Education as an important path in addressing access to further education in order to enhance the teachers’ skills and qualifications in the above mentioned areas (SA, 2006). The School of continuing Teacher Education (SCTE) at the Northwest-University is responsible for the management and delivery of distance education programmes to under and unqualified teachers as well as for the further training of already qualified teachers. This is done through delivering
• a National Professional Diploma in Education (NPOD),
• an advanced certificate in Education (ACE), and
• a postgraduate Honours Degree in Education (HonsBEd)

In order to address the needs and circumstances of the prospective teacher-students, as well as to comply with the demands of qualitative and effective teaching, an open distance learning (ODL) approach or model of delivery was chosen at the SCTE. This model is a combination of contact and distance education, where students receive more contact classes than in the usual distance mode. Open distance learning is an approach in which the principles of the following aspects are combined: learner-centeredness, lifelong learning, flexibility of learning provision, removal of barriers to access learning, recognition of prior learning experience, provision of teacher-student support, construction of learning programmes in the expectation that teacher-students can succeed, and maintenance of a rigorous quality assurance of the design of learning materials and supports systems. The open distance learning model provides a framework for the provision of large-scale distance education as it is applied at the SCTE. This model of programme delivery consists of four sub-systems, namely student-focused interactive materials, pro-active student support and advice, research and reflection, and effective logistics.

The purpose underpinning the programmes delivered by the SCTE is to provide continuing education through the ODL approach to teachers in order to enable them to develop their
competencies as professional teachers. The ACE programmes delivered at the SCTE are
developed in such a way that they not only enhance the teachers’ expertise in a specific
subject area but also in areas related to their professional conduct through generic modules
e.g. education law, management and administration. (For practical reasons here after
collectively referred to as education legislation).

3. Focus of this paper
This paper focuses on the duty of care of teachers and heads of departments in South
African secondary schools and to what extent the duty of care practices of teachers meets
the requirements of educational law. Findings on the effect of undergraduate and
postgraduate courses in Education Law on teachers’ duty of care will be analysed. The
relevance and importance of distance education programmes on this contemporary issue will
be addressed.

3.1 Research aims
With a quantitative empirical investigation the aim of this research was to establish:

- the insight, perceptions and knowledge of the teachers regarding key legal questions
  with reference to their care of duty practice;
- the extent to which the duty of care practices of the teachers meet with the
  requirements of educational law, and
- the relevance and importance of postgraduate training through inter alia distance
  education programmes in education law and education management.

3.2 Research method
Empirical research was done through a quantitative investigation by means of a
questionnaire (based on relevant National and International literature) to teachers and heads
of departments in South African secondary schools. It measured the extent to which the duty
of care practices of teachers meets the requirements of education legislation.

3.3 Results and interpretation of results
In a recent research project by Schouwstra (2008) it was determined that although the main
aim of schooling is to provide educational teaching and learning, education legislative
aspects are indispensable in every area of effective education, irrespective of management
or educational actions.

In terms of section 28(2) of the South African Constitution (SA: 1996) the best interest of the
child is of paramount importance in all issues regarding the learner under the age of 18. “In
the best interest of the child” (as contemplated in Section 28 (2) of the SA Constitution, 1996(a)) is one of the fundamental principles of the South-African education system. According to Jacobs (2002:1) parents send their children to school every day with the confidence that their children will be cared for, and will be involved in teaching and learning in the classroom. It is important for the teacher to evaluate, comprehend and apply his position and the accompanying standard of the practice of duty of care legally required in the light of relevant legislation, legal adage and common law principles (Lugg, 2000:84, Wenham, 1999:365). In fact, according to Bennett en Meredith (2000:229) teachers are obliged by law to demonstrate a high standard of care and skills in the executing of all their educational duties.

In order for a teacher’s duty of care to be in the best interest of both the learner and teacher and to enhance teachers’ professionalism, productivity and effectiveness within and outside the classroom, it is important that teachers possess a reasonable level of knowledge regarding the legislative requirements applicable to their position as teacher (Roos & Oosthuizen, 2005:67).

The research indicated that 25.3% of the respondents were under the impression that tea

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chers in general possess a reasonable level of knowledge regarding the legislative requirements of a teacher’s duty of care although the results have shown that 50% of the respondents in fact have a reasonable knowledge of relevant education legislation. More than two thirds of the respondents (72.4%) of the respondents indicated that they (as individuals) have an inadequate level of knowledge of relevant education legislation and regulations in order to fulfil their duty of care as expected by law.

The importance of adequate knowledge in education legislative aspects is stressed by the fact that 56.7% of the respondents indicated that the possibility of delictual accountability has negatively influenced in a lesser or greater extent their spontaneous interaction with the learners. More than 58% of the respondents hold the view that their interaction with the learners has changed during the past ten years due to their concern about liability for damages. The assumption can be made that is due to the fact that the Constitution of South Africa and other relevant education legislation have been implemented since 1996 and that teachers have been made more aware of the rights of learners and relevant legislation. According to Mgolego (2004:68) teachers are increasingly becoming more concerned about possible legal actions from parents who feel that their child has been prejudiced in one way or another. This concern and, inter alia inadequate knowledge and interpretation of education legislation, are possible reasons for respondents’ change in their interaction with the learners.

However, theoretical questions related to education legislative aspects concerning a teacher’s practice of duty of care, showed a correct response of just more than 50% from the respondents. Nevertheless, in a case study (as part of the questionnaire) the respondents demonstrated an average of 41.7% correct application of their education legislative knowledge in a practical scenario. The 41.7% can’t be regarded as a satisfactory standard of use of education legislation understanding as expected from professional teachers. The assumption can be made that although the respondents showed a reasonable level of education legislative knowledge, it seems that in general they lack the skill to apply their theoretical knowledge to their practice of duty of care.

The respondents’ apparent lack of knowledge regarding general education legislative aspects comes to the fore in various aspects of the respondents’ standard of practice of duty of care. The majority (69.6%) of the respondents’ practice regarding supervision of learners
is not executed according to the standard of supervision of learners as expected by law. More concerning is the fact that 61.5% of the respondents indicated that they will carry out an order from their principal irrespective if they are qualified or not to perform the specific order.

With the accent currently on the professional conduct of the teacher, they should keep in mind that they, like any other professional person, will be evaluated by stricter measures. In establishing negligence from a teacher, skills and care are expected from the teacher as a professional person, an expert in the field of teaching with specialised knowledge. Thus, the conduct of a teacher is measured by the elevated standards as expected from the reasonable expert. To determine whether a teacher’s conduct was reasonable the court will use the reasonable person test which will determine if the teacher discovered which e.g. possible damage was readily apparent (foreseeable) and therefore preventable (McCarthy et al., 1998:444). Although 63.6% of the respondents indicated that they are aware of the aspect of foreseeability only 38.5% of the respondents indicated that they are familiar with all aspects of the reasonable person test.

Considering the fact that all the respondents are qualified teachers it is fair to expect that the respondents will demonstrate a reasonably high level in the standard of their practice of duty of care. However, the respondents achieved an average of 54.7% correct response on practical aspects related to their practice of duty of care as legally required. The 54.7% correct response can not be regarded as a high level of practice of duty of care from professional teachers. Research of national and international literature and case law clearly suggests that it is a worldwide phenomenon that teachers in general do not possess the necessary skills to apply their education legislation knowledge into their practice duty of care (Schouwstra, 2008).

Regarding training in education legislation, the results indicated that 61.5% of the respondents have acquired some sort of training in education legislative aspects. Less than half (40.4%) of the respondents received education legislation training as part of their undergraduate studies. Only 6.7% of the respondents received postgraduate training in education legislation while 14.4% received education legislation training by means of in service training workshops. Although the majority of respondents received some form of training in education legislation aspects, it seems that their training has not equipped them sufficiently enough to display a high level of practice in their duty of care.

As mentioned previously it is important that teachers have adequate training in recent and relevant education legislation. The results indicated that only 42.7% of the respondents have been trained in education during the past 10 years. This can imply that the majority of respondents probably do not possess the necessary training in current education legislation
regarding their duty of care. It became clear in this research that the respondents who did receive specific postgraduate training in recent education legislation, demonstrate the highest standard in their professional conduct regarding their duty of care.

“Life long education” is a necessity for survival due to huge changes in society made by economics and technology. Hence the education providers are facing new demands and challenges to deliver efficient training to a greater variety of learners (Rowntree, 1992:38). According to the South Africa White Paper on Education and Training of 1997 (SA, 1997) distance education have a crucial role to play in addressing the challenge of expanding access to education. In a contemporary South African education system the SCTE (as an education provider) aims to address these challenges through ODL programmes delivered at the SCTE. Therefore the different ACE programs delivered at the SCTE do not only equip the teachers with subject knowledge but also aim to address the development of teachers’ professional conduct regarding education legislation aspects. This is done by incorporating generic education legislation aspects modules in the ACE programs. These modules equip teachers for the management and leadership challenges of the teaching profession, both inside the classroom and in the external environment and community.

The success of this approach was highlighted by a recent impact research study done at the (SCTE, 2008). This research focused on the effectiveness of an ACE program (Curriculum and Professional development) delivered by means of the ODL approach. This ACE programme concentrates amongst others on the development of aspects related to the professional conduct of teachers. Data for this research was collected by means of a survey questionnaire as well as semi-structured group and individual interviews with alumni of the mentioned ACE. Results indicated that various aspects of the participants’ conduct related to education legislation aspects were enhanced to a great extent. The ability to manage diversity improved to a large extent as indicated by 71.79% of the participants while 82.06% of the participants indicated that their management skills were improved to a great extent.

The research conclusively determined that the teachers’ skills in professional duties regarding education legislative aspects are effectively enhanced and developed by means of the ACE programme (SCTE, 2008).

4. **Recommendations**
   - Distance education providers must make an effort to enhance more teachers’ knowledge of relevant education legislative aspects through distance education programmes.
   - Current designs of distance education programmes curriculum can be reviewed for possible incorporation of education legislation aspects.
• Close collaboration between distance education providers and their respective National Departments of Education can be used to ensure that distance education programmes address possible needs regarding teachers’ practice of duty of care.

5. Conclusion
The research established *inter alia* that although teachers generally seem to possess reasonable knowledge of education legislation regarding the practice of their duty of care most teachers seem not to be able to apply this knowledge as legally required from a professional teacher. It seems that post graduate specialised training in education legislation can have a significant effect on teachers’ practice of duty of care.

Open distance learning programmes can just be as effective and useful as contact education and therefore can play a vital role in improving teacher training, especially regarding education legislative aspects pertaining to their practice of duty of care.

As stated by Maile (2002:327), education at school level can only be effective if all role players (consequently the teacher) understand all their responsibilities and act accordingly.

References


SA see South Africa


SCTE see School of Continuing Teacher Education


