Authors: E de Waal and EM Serfontein

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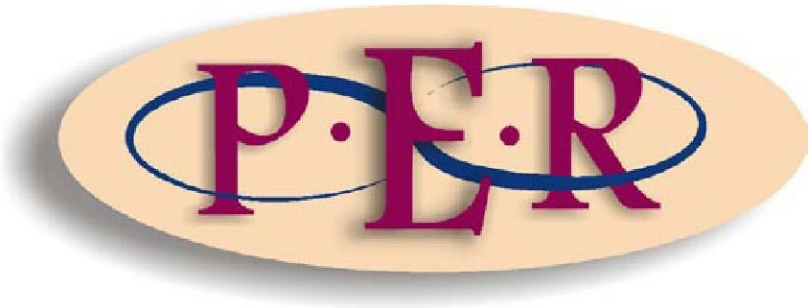

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THE ROLE OF LAW IN PROMPTING PARENTS TO PARTICIPATE ACCOUNTABLY WITH EDUCATION PARTNERS

E de Waal*

EM Serfontein**

> We want our teachers, learners and parents to work with government to turn our schools into thriving centres of excellence.[1]

1 Introduction

The above quotation from the 2009 State of the Nation Address clearly points towards expecting parents[2] to accept relevant joint accountability for turning schools into first-rate settings. Moreover, Mokonyane[3] refers to a *collective* accountability that learners, teachers, and parent communities have towards safeguarding excellence in teaching and learning. At least two questions arise: Where do these references to accountability come from? Why would accountability be seen to make a significant difference?

In order to address the first question, the functioning of a legal system needs to be analysed. The supremacy of the *Constitution of the Republic of South Africa*, 1996 (*Constitution*) has brought about a fundamental change in the way the noation functions, in that the usual business has been turned on its head and has become decisively transformed business,[4] with the *Constitution* always demanding first focus. In this regard, under the section of the *Constitution* on founding values, accountability

* Elda De Waal. Associate-Professor in Education Law, OPTENTIA focus area, North-West University (Vaal Triangle Campus), elda.dewaal@nwu.ac.za.

** Erika Serfontein. Associate-Professor in Law, North-West University (Vaal Triangle Campus), erika.serfontein@nwu.ac.za.

1 Zuma "State of the Nation Address".

2 In this article the terms "parent/s" and "parental" are used in the sense defined in s 1 of the *South African Schools Act* 84 of 1996: (a) biological or adoptive parent or legal guardian; (b) person legally entitled to custody; or (c) person who undertakes to fulfil obligations of the person referred to in (a) and (b) towards learner education at school.

3 Mokonyane *Address.*

4 *Centre for Child Law v Minister of Justice and Constitutional Development* 2009 2 SACR 477 (CC) para 107.

is specified as being safeguarded by a multi-party system of democratic governance.[5] Moreover, accountability is implied where fulfilling constitutional obligations is imposed,[6] and being subject to accountability[7] is set out as equivalent to being entitled to fundamental rights, as features of citizenship.[8] Sadly, the equivalence between accountabilities and rights is often overlooked in practice, leading to an inclination to inflate the latter while snubbing the former.

The second question requires reflection on democracy's not only needing to be the exact and envisioned result of living according to the rights and accountabilities specified by the *Constitution*, but that "making accountability matter"[9] must also be an obligation of both the democratic State and of civil society. To the same degree that government is perceived as failing society, so too civil society fails the State when it does not embrace the skills and channels that are available to it to make accountability matter.[10] Thus, when wrong things happen, society will bear most of the blame for not having knowledgeable, involved, attentive and responsive citizens. In a nutshell, civil society taints the purpose of democracy when the imposed constitutional obligations and the accountabilities of citizenship are not fulfilled.

2 Problem statement and objectives

As early as thirty-five years ago, concern was expressed about the twisted relationship between family units and schools, in that schools considered parents to be an irritation and parents considered schools to be hostile places in which they had no valid interest.[11] What was needed was "shared responsibility" between family members and schools to generate answers to the intractable problem of exactly how to deliver education, so that public schools could be made the locus of accountability.[12]

5 Section 1(d) of the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*).
6 Section 2 of the *Constitution*.
7 Section 3(2)(b) of the *Constitution*.
8 Section 3(2)(a) of the *Constitution*.
9 De Villiers 2013 http://www.ifaisa.org/Making_accountability_matter.html.
10 De Villiers 2013 http://www.ifaisa.org/Making_accountability_matter.html.
11 Hobbs 1978 *Teachers College Record* 758.
12 Hobbs 1978 *Teachers College Record* 763-764.

If all learners behaved as expected, the stress level of meeting the expected standard of performance by the educators would decrease, leading to a mutual understanding that, if both parties worked at meeting the expectations, schooling would advance.[13]

While reflecting on the role of law in nudging parents toward dancing accountably with education partners, the aims of this article are to:

- present a clarification of concepts;
- investigate parental accountability concerning school-related matters by commenting on international law, considering explicit constitutional pointers, and indicating applicable statutory and subordinate indicators; and
- examine and review relevant case law in order to gauge the current position of courts on parental accountability.

3 Research framework

Supported by Green and Browne,[14] Rapley[15] and McMillan,[16] this paper follows a documentary design with a comparative perspective: the authors chose accessible documentary resources and, by way of having an investigative approach, strove to gain insight and assess the investigated documents by comparing and evaluating both primary and secondary sources. In addition, what was implicit or not printed was equally important to what was printed and how a specific concept was extended.[17]

4 Concept clarification

4.1 Law

The law encapsulates rules and provisions regulating human interactions and orders a society while ensuring certainty. To guarantee legitimacy, the law needs to take

13 Mitchell in De Waal 2011 *SAJE* 176.
14 Green "Research Design" 38.
15 Rapley *Doing Conversation* 111.
16 McMillan *Educational Research* 189.
17 De Waal 2011 *SAJE* 177-178; Serfontein and De Waal 2013 *De Jure* 47.

cognisance of the values underscored by the majority of a society's inhabitants.[18] South African law always necessitates cognisance being taken of the supreme *Constitution*, which governs the constitutionality and thus the legitimacy of all other legislation and conduct. One must realise, however, that the law creates a legal and administrative framework for the standard of behaviour required from people and consequently holds accountable those who do not comply. The law cannot fulfil legislative provisions – for this, people must take responsibility.

4.2 Accountability

In general, accountability is showing responsibility to someone or for some action, being answerable, being obliged and willing to accept responsibility for one's actions, being able to understand and react within one's circle, and taking action founded on one's sense of answerability to oneself and others.[19] Accountability is also described as the obligation of individuals or organizations to account for their activities, to accept responsibility for them, and to disclose the results of one's actions in a transparent manner.[20] An all-purpose, consolidated definition of accountability[21] would be appreciating the effect of one's activities, accepting blame for one's choices, and proposing means by which to mend the harm caused by one's actions.

In legal terms, Van der Walt and Midgley[22] point out that accountability amounts to having the mental capacity to recognize the nature and consequences of certain behaviour and the capability to take preventative or avoiding action. Having the ability to know right from wrong and the ability to act accordingly – vital traits leading to a sense of accountability – are personal traits that signify the attainment of a certain level of maturity and mental development.

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18 Kleyn and Viljoen *Beginner's Guide* 2-3.
19 Van der Walt and Midgley *Delict* 124.
20 Business Dictionary 2013 http://www.businessdictionary.com/defintion/accountability.html.
21 Reyneke 2011 *PELJ* 140-141.
22 Van der Walt and Midgley *Delict* 126.

With specific reference to parental accountability, the High Court of *In re XN*[23] referred to section 231(2) of the *Children's Act* 38 of 2005 in determining whether a prospective adoptive parent was indeed fit to adopt a child and therefore to take responsibility for such a child. This was to be assessed solely in terms of the best interests of the child.[24] Emphasis was placed, in accordance with the legislation, on the fact that such a person must be fit and proper to be entrusted with full parental responsibilities and rights in respect of the child, and be willing and able to undertake, exercise and maintain those responsibilities and rights. Such parental responsibilities and rights, as alluded to in *J v J*,[25] include the right to have a child with them, to regulate his/her life and to decide all questions concerning education, training and religious upbringing. Such rights should, as stated in *PD v MD*,[26] always be exercised jointly by parents in the best interests of the child.

Holding parents accountable would therefore imply expecting them to accept responsibility for positively participating in all school-related activities. It must be acknowledged, however, that accountability as a constitutional value is by its very nature universal and timeless, requiring constant attention.[27] In this regard, cognisance must be taken of the fact that it is not only parents who have a responsibility towards their children, but that they also need to demand accountability, transparency and responsiveness from the Department of Basic Education, especially when their child's right to a basic education is not being realised. The challenge of parental accountability lies in its being not only a thought-provoking puzzle, but also problematic to unravel. It demands that one think outside the box.

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23 *In re XN* 2013 6 SA 153 (GSJ) para 3, also referred to as *In re Ndala*.
24 Section 240(2)(a) of the *Children's Act* 38 of 2005.
25 *J v J* 2008 6 SA 30 (C) para 31.
26 *PD v MD* 2013 1 SA 366 (ECP) para 12.
27 Kruger 2013 http://www.cfcr.org.za/index.php/docs-articles?download=161:freedom-requires-responsible-citizens.

5 Background

It was Bronfenbrenner[28] who indicated the origins of the estrangement between parents and learners as related to an overall collapse since World War II of the institutions that were crucially responsible for the growth of young people: the school, the family, the neighbourhood and the community. Siman[29] underscores the heart of the problem as lying in the fact that many parents of 12-17 year-old teenagers have become ineffective forces in their children's lives.

A USA report for the White House Conference on Children[30] tabulated rising rates of youthful drug abuse, delinquency and violence The main concern arising from the data was that society imposed pressures and priorities on families that allowed no time or place for the performance of meaningful activities and the development of meaningful relationships between children and their parents, effectively downgrading the role and functions of parents and preventing them from doing things that would allow them to be guides and companions to their children. Children were consequently growing up without access to valuable parenting attributes such as emotional support, insistence on high standards of behaviour, guidance in their development of a sense of autonomy, and the explicit, two-way communication that has been proven to assist children to develop an instrumental competence distinguished by the balancing of societal and personal needs and responsibilities.

Unexpectedly, 41 years ago the opinion was offered that for families that could cope, the rats were gone, but the rat-race continued.[31] The prevalence of the rat-race is especially evident in contemporary South Africa, as judges Bertelsmann and Tolmay pointed out in 2013 in the matter of *S v CKM*,[32] where they expressed the opinion that most of the children who come into conflict with the law appear to have suffered parental neglect, as indeed was the case with the 14-year old boy in the case, anonymised as CKM. Judge Erasmus similarly reminded the appellant and respondent

28 Bronfenbrenner "Roots of Alienation" 659.
29 Bronfenbrenner "Roots of Alienation" 661-662.
30 Anon "Profiles of Children" 78-79.
31 Anon "Children and Parents" 242.
32 *S v CKM* 2013 2 SACR 303 (GNP).

in *J v J*,[33] two divorced parents involved in a school placement quarrel about their 12-year old son, that children cannot fail to be aware of and influenced by what is happening between their parents. Such parents would therefore be well advised "to show some reasonableness in their dealings" and also to hold the best interests of the child in regard rather than their own.[34]

Correspondingly, in *Swanepoel v Fourie*[35] the court relied on the fact that section 30 of the *Children's Act* 38 of 2005, which deals with co-holders of parental responsibilities and rights, makes no reference to the right of any person to have children. The application of the parent for custody of his child was accordingly dismissed on the basis that he had barely shown an interest in his child in the past and had not visited her for almost three years. Moreover, the court expressed the thought that there was no merit in speculating about the future — the best interests of the child[36] would always be given the highest priority.

One of the solutions to the problem of the failure of familiar involvement in a child's development would be to introduce changes in the system of educating the young so that they could become open, not only to societal principles, but also to experiencing the implementation of these principles through observing examples and personal participation,[37] which would result from involving youths in honest accountabilities. This is especially necessary in South Africa, where the *Children's Act*[38] recognises the need for children to often assume the role of a parent in child-headed households. The evidence indicates that young people acquire the capacity to cope with difficult situations when given the opportunity to take on consequential responsibilities in relation to others and when they "are held accountable for them",[39] thus developing children's qualities as persons and their patterns of social response.

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33 *J v J* 2008 6 SA 30 (C) para 39; originally stated by Judge Davidson in *Ressel v Ressel* 1976 1 SA 289 (W) 294A.
34 *J v J* 2008 6 SA 30 (C) para 39.
35 *Swanepoel v Fourie* (OPD) Unreported Case No 142/94 of 31 August 1995 17.
36 Section 28(2) of the *Constitution*.
37 Bronfenbrenner "Roots of Alienation" 666-670.
38 Section 137(1)(a) of the *Children's Act* 38 of 2005.
39 Anon "Children and Parents" 247.

This approach is consistent with the decision taken in *S v M.*[40] The majority of the court recognized the approach that children are individual rights-bearers rather than mere extensions of their parents or miniature adults waiting to reach full size – that they are not destined to sink or swim with their parents. Judge Sachs endorsed the fact that every child has his/her own dignity and distinctive personality. It was accordingly held that section 28 of the *Constitution* presupposes that the sins and traumas of parents should not be visited on their children. In this regard it was emphasised that all children have the right to express themselves as independent social beings, to imagine and explore in their own way, and above all to learn as they grow how they should conduct themselves and make choices in the wide social and moral world of adulthood. These remarks were subsequently referred to and underscored by the Constitutional Court in *Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development.*[41] It was stated that human dignity recognises the inherent worth of all individuals (including children) as members of a society, as well as the value of the choices that they make.

Martin[42] pleads for constructive interactions which recognize the significance of parents and schools as components of the learner's surroundings, and for parents and schools to relate productively in order to be able to see the importance of each other's relationship with the learner. The appeal is for the interacting forces of the parents and the school to mould learners' development positively and constantly, eventually resulting in learners behaving accountably. However, Forsyth[43] cautions that parents need to be empowered to determine the purpose and accessibility of educational solutions, rather than simply seeking to implement pre-existing solutions to pre-defined problems. Education partners should take responsibility for organizing ample opportunities to create awareness among parents about the crucial place they occupy in the educational success of their children.

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40 *S v M* 2008 3 SA 232 (CC) paras 18-19.

41 *Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development* 2014 2 SA 168 (CC) paras 40 and 52.

42 Martin *Examination of Poverty-Level Parents' Potential* 11.

43 Forsyth "Cooperative Environmental Governance" 3.

Singh, Mbokodi and Msila[44] similarly indicate that the principle of parental participation in education is frequently juxtaposed to problematic practice, such as problems that arise from the social class (the socio-economic status) of parents. These factors cannot be ignored, as parental involvement may be prejudiced by advantaging wealthier parents while prejudicing parents from the working class. Such an imbalance was clearly identified by these authors in historically disadvantaged secondary schools, where most of the parents lack the literacy levels essential to productive participation. In addition, many of these parents are unemployed, consequently reducing their opportunity to negotiate from a position of strength.

Parents remain the primary care-givers and little can be achieved unless they become and remain directly involved in their children's development.[45] For instance, parents can play a leading role by assisting the child to develop habits from birth which could help the child to automatically act in a disciplined manner when at school. This would assist the child to understand the difference between proper and improper behaviour as well as the consequences attached thereto.[46]

No constitutional injunction can of itself isolate children from the surprises and dangers of harsh family and neighbourhood environments. The influences of family relationships and the environment on the success of children at schools are well documented. Much research has already been conducted on the negative effects *inter alia* of affective and spiritual insecurity, family disharmony, and the absence of parental care. Section 28 of the *Constitution* requires of the State to go to great lengths to create the conditions to protect children from exploitation and maximise their opportunities to lead productive lives. The State cannot itself repair disrupted family life; it can merely endeavour to create positive conditions for repair to take place, and diligently seek to avoid conduct in its schools which may have the effect of placing children in peril.[47] The fact that the State also incurs obligations towards children even if they are being cared for by their parents or other members of the

44 Singh, Mbokodi and Msila 2004 *SAJE* 302.
45 Donald, Lazarus and Lolwana *Educational Psychology in Social Context* 290.
46 Kapp "Education of the Handicapped Child" 463.
47 *S v CKM* 2013 2 SACR 303 (GNP) para 20.

family was emphasised by Judge Yacoob in *Government of the Republic of South Africa v Grootboom.*[48] He stated that the State must provide the legal and administrative infrastructure necessary to ensure that children are accorded the protection contemplated in section 28. Normally that obligation would be fulfilled by enacting legislation and implementing enforcement mechanisms for children's maintenance, protection from maltreatment, neglect or degradation, and the prevention of other forms of child abuse. It is important to recognize that over and above the rights afforded to everyone, children's interests have been given independent appreciation in section 28 of the *Constitution*, which is appropriate for children's needs and interests. The duties that these rights impose operate within an uneasy triangular relationship between the child, the parents and the State. The primary duty of care rests on the parents, and it passes to the State only when the parents are unable to perform their duties. Children's rights would therefore mostly apply horizontally between the child and parent before applying vertically between the child and the state. The result hereof, as set out by the High Court in *Wheeler v Wheeler* and underscored by an author,[49] is that the twentieth century has been characterised by a vivid shift in the law regarding the relationship between parents and their children, from the emphasis being placed on the rights and powers of parents to the emphasis being placed on their responsibilities and duties towards their children. This is due to more weight being assigned to a child-centred approach with the interests of children at the forefront.

With regard to children's rights and the best interests of the child in particular, Devenish[50] cautions that they were mainly inspired by western cultures in which the welfare of the extended family predominates. African traditions pertaining to children differ in so far as children are not recognised as having a special or favoured position in relation to their parents. Children's best interests could, to the contrary, indeed be subordinated to those of the family at large. Children are often given over to distant relatives to provide companionship for them, or to labour in the fields. Given the fact

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48 *Government of the RSA v Grootboom* 2001 1 SA 46 (CC) paras 77-78.
49 *Wheeler v Wheeler* 2011 2 All SA 459 (KZP); see also Bekink 2012 *PELJ* 178-212.
50 Devenish *Commentary on the South African Constitution* 75.

that section 31 of the Constitution protects cultural identity,[51] children's rights and parental accountability should be interpreted taking cognisance of these cultural differences.

This article now addresses its second and third aims by considering international law, the *Constitution*, and applicable legislation and its subordinate indicators, while indicating how these indicators of parental accountability are reflected in case law. Bearing in mind that legislation such as the *Schools Act* is not even remotely perfect, Serfontein[52] points out that it lays a foundation for education partners to collaborate and agree to share accountability. Moreover, Serfontein argues that, like other principles, accountability remains a complex ideal that will have to face up to challenges.

6 The role of international law

This article's interpretation of the role of law in convincing parents to partake accountably in their children's education is fortified by the formulation of the right in international law, which we are bound by section 39(1)(b) of the *Constitution* to consider. The *African Charter on the Rights and Welfare of the Child* (ACRWC) provides that "[e]very child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents", while the *United Nations Convention of the Rights of the Child* (UNCRC) guarantees every child's right "to know and be cared for by his/her parents", and "to preserve his or her identity, including ... family relations as recognised by law without unlawful interference".

7 Explicit indicators in the *Constitution*

Providing for majority rule as well as the protection of minority and individual rights, the *Constitution* can be pronounced to have originated not only from "the native

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51 Culture includes the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a social group. Songa "Theorising Children's Rights" 151.

52 Serfontein 2010 *TD* 109.

African soil, but indeed from the soul of the land".[53] Section 1, which is described as influential,[54] indicates four fundamental, associated values, of which the fourth is that of the democratic government's being aimed at ensuring accountability (responsibility).[55]

We submit that section 3(2)(b), which subjects all citizens to equal duties and responsibilities, if read together with section 28(1)(b) on a child's right to parental or family care, could be regarded as pointing to parental duties and responsibilities where they would be relevant. In this regard the words of Judge Sachs in *S v M* that "parenting from a distance ... places serious limitations on the parent-child relationship [and might have] severe negative consequences"[56] sound a warning concerning parents who shirk their duties.

Moreover, in the same case[57] the Constitutional Court pointed out the standing of parental accountability by referring to one of the resolutions of section 28(1)(b) as ensuring that parents act as "the most immediate moral exemplars" for their children. Fulfilling this responsibility would entail parents not only demonstrating how to face problems, but also guiding their children in making difficult decisions and dealing with stumbling blocks. In the words of the Constitutional Court, "children have a need and a right to learn from their primary caregivers that individuals make moral choices for which they can be held accountable".[58] It would be a mischaracterization to maintain that parental accountability consists merely of taking care of children's daily needs, being with them, and buying them the consumer society's accessories such as branded clothing and cell phones.[59]

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53 Devenish *Commentary on the South African Constitution* 32.
54 Devenish *Commentary on the South African Constitution* 31.
55 Section 1(d) of the *Constitution*.
56 *S v M* 2008 3 SA 232 (CC) para 42.
57 *S v M* 2008 3 SA 232 (CC) para 34.
58 *S v M* 2008 3 SA 232 (CC) para 34.
59 *S v M* 2008 3 SA 232 (CC) para 34.

That section 28 creates distinct rights that are not subject to a single internal qualification is also apparent from the Constitutional Court's decision in *Minister of Welfare and Population Development v Fitzpatrick*:[60]

> Section 28(2) requires that a child's best interests have paramount importance in every matter concerning the child. The plain meaning of the words clearly indicates that the reach of section 28(2) cannot be limited to the rights enumerated in section 28(1) and section 28(2) must be interpreted to extend beyond those provisions. It creates a right that is independent of those specified in section 28(1).

In the words of the Constitutional Court in the case of *S v M*,[61] "the paramountcy principle does not necessarily override all other considerations". This principle instead "calls for appropriate weight to be given in each case to a consideration to which the law attaches the highest value, namely, the interests of children who may be concerned".[62]

8 Legislation, subordinate indicators and parental accountability

Legislation is a forceful legal source. In principle, it binds society at large.[63] The legislative authority often provides the executive authority with the necessary power to promulgate subordinated or delegated legislation in order to ensure that the unique needs of modern society are effectively addressed.[64]

8.1 Schools Act

In the preamble of the *Schools Act*,[65] the notions of advancing society's "democratic transformation" and of promoting parents' acceptance of responsibility for the organization and control of schools in partnership with the State are reminiscent of the democratic imperatives of the *Constitution*[66] and the injunctions expressed in the State of the Nation Address.[67]

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60 *Minister of Welfare and Population Development v Fitzpatrick* 2000 3 SA 422 (CC) para 17.
61 *S v M* 2008 3 SA 232 (CC) para 25.
62 *S v M* 2008 3 SA 232 (CC) para 42.
63 Kleyn and Viljoen *Beginner's Guide* 46.
64 Rautenbach *Constitutional Law* 63.
65 Section 1 of the *South African Schools Act* 84 of 1996.
66 Section 1(d) of the *Constitution.*
67 Zuma "State of the Nation Address".

As stated in the case of *Governing Body, Rivonia Primary School v MEC for Education, Gauteng Province*,[68] the Preamble records that schools would henceforth be governed democratically, with parents, learners and educators assuming accountability in partnership with the State. Public school governance, in the words of the Education White Paper[69] which preceded this Act, would become part of the country's new structure of democratic governance. This would represent a radical departure from the model of the authoritarian control of education of the pre-constitutional era. With regard to the practical implementation of the *Schools Act*, the Constitutional Court indicated in *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo*[70] that its provisions for a uniform system of the organisation, governance and funding of schools are carefully crafted in order to strike a balance between the duties of these various partners in ensuring an effective education system.

In this regard, Justice Sachs indicated, on behalf of the Constitutional Court in *Doctors for Life International v Speaker of the National Assembly*,[71] that an active and continuous public (parental) involvement in government (education) is a constitutional obligation and not just "a matter of legislative etiquette or good governmental manners". In giving effect thereto, Justice Mhlantla[72] pointed out that a partnership entails meeting the educational needs and best interests of children; it does not countenance parties becoming more absorbed in staking out the power to have the final say. Such power relationships have thus far resulted only in disadvantaging particular groups in society thus far.[73]

While section 3(1) of the *Schools Act* indicates that parents are responsible for ensuring that children of school-going age attend school regularly, parents are also held accountable for not preventing others of school-going age from attending

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68 *Governing Body, Rivonia Primary School v MEC for Education, Gauteng Province* 2013 1 SA 632 (SCA) para 27.

69 DoE *Education White Paper* 2 para 3.17.

70 *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC) para 55.

71 *Doctors for Life International v Speaker of the National Assembly* 2006 6 SA 416 (CC) para 234.

72 *Governing Body, Rivonia Primary School v MEC for Education, Gauteng Province* 2013 1 SA 632 (SCA).

73 Donald, Lazarus and Lolwana *Educational Psychology in Social Context* 201.

school.[74] Moreover, that parental accountability relating to learners' education is both held in high regard and confirmed is supported by two sections specifically: section 5(9), that grants them leave to appeal against a decision to refuse their children admission to a public school; and section 8(1), that indicates that parental participation in the consultation process for developing a Code of Conduct is deemed to be significant.

The stipulation that nothing in the *Schools Act* exempts learners from complying with their school's Code of Conduct indicates that accountable behaviour is expected of them,[75] which could be seen to be pointing to parents setting the moral tone for their offspring, as referred to above.[76] An indicator of parental support is found is found in section 8(2), which refers to the Code of Conduct's aim to establish a school environment that is disciplined and supportive of an enhanced quality of learning. Although the term Code of Conduct is not defined in the *Schools Act*, the Constitutional Court in *Head of Department of Education, Free State Province v Welkom High School*[77] indicated that section 8(2) is formulated broadly enough to include a disciplinary policy.

Sections 8A(1)-(3) and 8A(8) of the *Schools Act* imply the need for the exercise of parental accountability in that learners are warned not to bring unauthorised dangerous objects or drugs to school, as they would on reasonable suspicion be subject to searches of their person and/or property. The warning that learners are not to use illegal drugs and that they may be subjected to random group urine or other non-invasive tests is reminiscent of the placement of the obligation on parents to be "the most immediate moral exemplars" who need to teach their children that they could be held accountable for their own moral choices.[78]

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74 Section 3(6)(b) of the *South African Schools Act* 84 of 1996.
75 Section 8(4) of the *South African Schools Act* 84 of 1996.
76 Section 3(2)(b) of the *Constitution*; Strydom and Kivedo 2009 *Acta Criminologica* 99; Roper 2006 *Article 19* 1-2; see also Nyarko 2011 *JETERAPS* 182 and Bronfenbrenner "Roots of Alienation" 666-670.
77 *Head of Department of Education, Free State Province v Welkom High School* 2014 2 SA 228 (CC) paras 41, 45 and 58-59 at 242D-E, 243C and 246I–247B-D.
78 *S v M* 2008 3 SA 232 (CC) para 34.

In this regard, Bester[79] indicates that even if misconstructions happen between parents and their children occasionally, the children would be naive to think that their parents will never understand them. At the same time it is a fallacy that children's circumstances are so complex and exceptional that their parents would never be able to understand them. Such misconceptions will have to be reformed within the family structure, if they exist, since they cannot be addressed at schools only. Parents may even need empowerment or counselling in this regard, particularly in serious situations where the self-centred nature of youths gives rise to thrill-seeking behaviour or conflict with their parents.

8.2 Policy on Learner Attendance

As a subordinate indicator, this policy not only calls on parents to ensure learners' regular and punctual attendance of school as prerequisites for an educated nation,[80] but also indicates that learners need to "accept and act" on their own accountability for punctual, regular attendance.[81] This is reminiscent of the regulation that indicates parents' duty to support their children's regular school attendance.[82]

8.3 Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (Code of Conduct Guidelines)

The Code of Conduct Guidelines[83] is aimed at supporting schools in generating consensual learner Codes of Conduct that involve everyone, including parents.[84] School Governing Bodies are guided to have the components of a "disciplined … purposeful … order[ed]" school setting[85] foremost in their minds as they endorse the schools' civic responsibilities of increasing their leadership.[86] A successful Code of Conduct should lay down a standard of moral behaviour that aspires to guide learners'

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79 Bester 2011 *Acta Academica* 164.
80 Item 9 in Gen N 361 in GG 33150 of 4 May 2010.
81 Item 15 in Gen N 361 in GG 33150 of 4 May 2010.
82 Item 40 in Gen N 2432 in GG 19377 of 19 October 1998.
83 Gen N 776 in GG 18900 of 15 May 1998.
84 Item 1.5 in Gen N 776 in GG 18900 of 15 May 1998.
85 Items 1.1, 1.2, 1.4, 1.6 and 7.1 in Gen N 776 in GG 18900 of 15 May 1998.
86 Item 1.4 in Gen N 776 in GG 18900 of 15 May 1998; see also De Waal 2011 *SAJE* 180.

future behaviour in civic society, where they need to become commendable, accountable citizens who have accomplished "self-discipline and exemplary behaviour".[87] At the same time, the guidelines indicate that learners are to learn from experience and by observation,[88] accordingly pointing not only to educators setting correct examples at school, but also to parents setting moral examples at home. While investigating the relationship between parenting involvement practices and children's academic performance, Nyarko[89] found a direct link between the two: the ability of children to attain the necessary capabilities, psychological maturity and educational success which they need to flourish in society is attained mostly by being able to follow the example set by their parents. Of course, the behaviour of the parents depends on the goals and values they hold.

Roper[90] similarly points out that the effect of parents' influence on their children's progress, often due to commonplace, everyday, unintentional behaviour is noteworthy. For example, babies have the ability to imitate facial expressions even from the first day of their lives. Furthermore, children have a powerful capacity to perceive, experience and emulate adults in ways that are not always intended. The importance of parents setting virtuous examples is emphasised by Strydom and Kivedo,[91] as children too often become the accidental secondary victims of parents' criminal behaviour.

Parental accountability is referred to in several instances in the Guidelines,[92] from their responsibility to be part of their children's education by supporting the inculcation of the morals and principles stated in the Code of Conduct, by acknowledging their co-accountability with the state, the schools and their children, and by being held liable for the damage caused intentionally by their children.

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87 Items 1.4, 1.6 and 1.9 in Gen N 776 in GG 18900 of 15 May 1998.
88 Item 1.6 in Gen N 776 in GG 18900 of 15 May 1998.
89 Nyarko 2011 *JETERAPS* 182; see also Bronfenbrenner "Roots of Alienation" 666-670.
90 Roper 2006 *Article 19* 1-2; see also Nyarko 2011 *JETERAPS* 182 and Bronfenbrenner "Roots of Alienation" 666-670.
91 Strydom and Kivedo 2009 *Acta Criminologica* 99.
92 Items 1.5, 1.7, 1.9, 1.10, 2.2, 4.1, 5.3, 5.4, 6.2 and 10.1(e) in Gen N 776 in GG 18900 of 15 May 1998; also see De Waal 2011 *SAJE* 181.

Inferred parental accountabilities are indicated in the sense that learners must be supported in playing the roles specified in learner Code of Conduct, to cultivate "a proper learning environment, for example by attending their classes without unsettling fellow learners or educators".[93] At the same time, parental accountability is implied by the item that provides a list of wrongdoings that could lead to suspension,[94] indicating that parents need to guide and support their children in behaving positively, especially at school. The list of behavioural injunctions includes not behaving in a manner that encroaches upon others' rights; not behaving immorally; and not exhibiting offensive, disrespectful or verbally abusive behaviour.[95] In this context we submit that parents need to support their children as they prepare to become responsible citizens who are committed to "self-development … [during their] education and learning" while developing their academic, sporting and cultural possibilities at school.[96]

The Code of Conduct Guidelines propose an educator-learner relationship based on "mutual trust and respect",[97] that is built on both parties understanding the significant roles of intervention and collaboration,[98] and that indicates the possibility of a link being established between educators and learners so that disagreements can be settled amicably.[99] In this instance, learners and educators are held partly accountable[100] for solving disputes, which suggests the need for parents to support the educators and guide their children to partake in a mutually trusting educator-learner relationship in order to advance education.

Indicating that concern about school discipline is not something new, Curwin, Medler and Mendler[101] define respectable school discipline as democratic discipline that results from in-house controls aimed at respecting the rights and dignity of individuals,

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93 Items 1.10 and 4.7.5 in Gen N 776 in GG 18900 of 15 May 1998.
94 Item 11 in Gen N 776 in GG 18900 of 15 May 1998.
95 Item 11(a), (e) and (j) in Gen N 776 in GG 18900 of 15 May 1998.
96 Items 1.4, 1.6, 2.2, 4.7.4, 5.1(b), 5.1(f), 5.2, 5.3, 5.4 and 5.5 in Gen N 776 in GG 18900 of 15 May 1998.
97 Item 5.6 in Gen N 776 in GG 18900 of 15 May 1998.
98 Item 4.4.1 in Gen N 776 in GG 18900 of 15 May 1998.
99 Items 5.8 and 9 in Gen N 776 in GG 18900 of 15 May 1998.
100 De Waal 2011 *SAJE* 180.
101 Curwin, Mendler and Mendler *Discipline with Dignity* 36.

improving individual self-esteem and inspiring collaboration. The concept of a trusted educator-learner partnership is therefore supported, calling on both parties to act accountably in respecting each other as being worthy of equal value.[102]

We submit that a previous indication of the clear warning that "learners ... are not in charge of schools"[103] and portraying them as collaborators in forming learning sites favourable for successful teaching and learning[104] emphasises the need for accountable parental support in assisting schools in their endeavour to create and maintain successful learning sites. Moreover, the specific references that point out the need for learners to develop self-discipline[105] could be seen to assign accountability to parents in guiding their children and supporting the educators in this regard.

8.4 White Paper for Social Welfare: Principles, Guidelines, Recommendations, Proposed Policies and Programmes for Developmental Social Welfare in South Africa (White Paper for Social Welfare)

Pointing out the importance of parental accountability, the White Paper for Social Welfare highlights the fact that children's well-being hinges on "the capacity of families to function effectively", which involves setting boundaries to behaviour; instilling concepts of discipline; and communicating life skills and values.[106] These aspects that implicate parental accountability would, among others, help safeguard their children's development and involvement in social life. The significance of families' functioning effectively was referred to in *S v M*,[107] where the Constitutional Court considered the importance of maintaining the integrity of family care.

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102 *MEC for Education, KwaZulu-Natal v Pillay* 2008 1 SA 474 (CC) para 185.
103 De Waal 2011 *SAJE* 180.
104 Item 7.4 in Gen N 776 in GG 18900 of 15 May 1998.
105 Items 1.6 and 7.1 in Gen N 776 in GG 18900 of 15 May 1998.
106 Department of Welfare *White Paper for Social Welfare* ch 8 s 1 para 15.
107 *S v M* 2008 3 SA 232 (CC) para 38.

8.5 National Education Policy Act 27 of 1996

The prominence of section 3.4(h), which makes provision for compulsory school education, can never be overemphasised. The practical realisation thereof, however, depends on the direct involvement of parents who should make sure that their children do indeed attend schools. This requires parental involvement in their children's learning processes as well as supervision and assistance with homework and lots of encouragement and motivation. It also requires of parents to attend parent-teacher meetings, and together with schools to set high performance standards for their children.[108]

Section 3.4(n), on the control and discipline of learners at education institutions, indicates that no learner should be subjected to corporal punishment and/or any psychological or physical abuse at any education institution, and parents therefore need to act appropriately in cases where such inexcusable practices occur.

While a sound dose of spontaneous behaviour must be encouraged, setting limits is equally important.[109] The necessity of such limits is underscored by the perception that freedom without limits often results in worry, hostility, a lack of restraint and a weak sense of responsibility. Children who grow up lacking limits do not cultivate the ability to face frustration and therefore fare poorly in relationships, at school, and eventually at work. Yet imposing unwarranted limits is not encouraged, as they hamper personal growth, weaken children's self-regard, and thwart their development of an inner sense of accountability. Children who experience excessive control and who are constrained may struggle with learning to think for themselves and become reliant on being directed by authority figures.[110]

Like everyone else, children have the right to personal autonomy. Bekink and Brand[111] raise the question of whether or not children have a constitutionally composite right to individual self-determination. If this is the case, it would enable them to choose

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108 Nyarko 2011 *JETERAPS* 184.
109 Roper 2006 *Article 19* 2.
110 Roper 2006 *Article 19* 1-2;
111 Bekink and Brand "Constitutional and International Protection" 181.

their own way of life, religion, friends and beliefs, irrespective of parental authority. In this regard, the importance of children upholding their independence should, nevertheless, be appreciated against the background of the bond of dependency that exists of necessity between children and their parents. Although absolute control over children might have been the norm in the past, Bester[112] emphasizes the fact that children's relationships with their parents and educators need to be characterized by support and protection. In this regard, optimal development of children is linked to society's providing the necessary support both to the children and to their parents.[113]

Parents and educators thus need not only to safeguard children from the difficult demands made on them by society and their peers, but also to support them as they go into the adult world. This illustrates the close association between healthy parental and school environments and the psychological well-being of young people which is one of the prerequisites as per section 3.4(o), concerning education support services which include health, welfare, career and vocational development, counselling and guidance, within the functional responsibility of a Department of Basic Education.

8.6 South African Council for Educators Act 31 of 2000

In terms of this Act, a Code of Professional Ethics was developed that sets out the ethical standards that must be satisfied when educators register with the South African Council for Educators.

8.7 Code of Professional Ethics

Item 3.3 under the sub-heading *Conduct – the educator and the learner*[114] points to learners' accountability for developing a set of values in line with the fundamental rights contained in the *Constitution*. Item 3.14 clearly recognises the need for a partnership between educators and learners, is therefore supportive of learners' responsible participation in their own education, and thus clearly implies that their parents need to be accountable in supporting and guiding them in this regard.

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112 Bester 2011 *Acta Academica* 146.
113 Roper 2006 *Article 19* 3.
114 *South African Council for Educators Act* 31 of 2000.

Having considered the relevant legislation and subordinate indicators on parental accountability with short references to applicable case law, the focus now turns to the third aim of the article, which is to examine case law specifically to gauge the position of the courts on parental accountability.

8.8 Children's Act and case law indicators pertinent to parental accountability

Before accountability can be addressed, it is necessary first to "clarify the rights and obligations of each of the parties". In *M v Minister of Police*[115] the High Court made it clear that the right of a child to family care or parental care is a constitutional right,[116] thus deserving constitutional protection and enforcement. With regard to the ambit of the right to parental care, the High Court underlined the fact that it extends beyond the need for financial support; there is a never-ending list of parental care duties that are to be executed to assist a child in preparing for life's challenges.[117] This is mainly due to the fact that the duty of a parent to support a child is no longer ruled by the common law, but by statute.[118]

In referring to the fact that section 1 of the *Children's Act*[119] does not provide for a need "to show love and affection to the child" as one of the duties that a parent must perform (despite its importance), the High Court explained that actions on behalf of minor children for constitutional damages in compensation for infringement of their constitutional right to parental care arise out of section 28 of the *Constitution*. Such an action is thus not based on the child's deprivation of parental love and affection, as is the case in other jurisdictions.[120] Section 1(e) of the *Children's Act* expands the definition of "care" to guiding, directing and securing the child's education and upbringing, including religious and cultural education and upbringing, in a manner

115 *M v Minister of Police* 2013 5 SA 622 (GNP) paras 17, 43 and 52 at 628G-H, 634I-635A and 637G-H.
116 Section 28(1)(b) of the *Constitution*.
117 *M v Minister of Police* 2013 5 SA 622 (GNP) paras 19-20, 22 and 52 at 629B-H, 630C-E and 652G-H.
118 *M v Minister of Police* 2013 5 SA 622 (GNP) paras 43 and 53 at 635B-C and 638A-C.
119 Section 1 of the *Children's Act* 38 of 2005.
120 *M v Minister of Police* 2013 5 SA 622 (GNP) para 23 at 630E-F.

appropriate to the child's age, maturity and stage of development. To this, section 1(f) adds guiding, advising and assisting the child in decisions to be taken by the child in a manner appropriate to the child's age, maturity and stage of development.

Under these circumstances, Judge Mothle indicated that the *Children's Act* expands the content of the right to parental care beyond the basic need for financial support. The need of children and the corresponding duty of parents are not limited to financial matters. Teaching a child to eat, to dress, to tie shoelaces, to use ablution facilities, to walk, to talk, to respect, to express appreciation, to do homework and perform household chores is important, and so is being present and supportive of the child during his/her participation in sport and art activities.[121] As such, it was decided that parental care duties could be referred to as parental guidance, advice, assistance, responsibility, or simply parenting or child nurturing. The primary task of parents is thus to make children feel at home in the world and to prepare them for the demands of life which will be made on them.[122]

With specific reference to parents fulfilling their duty towards their children's education, parental guidance is closely linked to parent-teacher cooperation.[123] However, in practice the contrary is often found. Research conducted by Ngidi and Qwabe[124] is, for example, indicative of schools blaming parents and parents blaming schools for the delivery of poor education services due to their different perceptions of the roles they need to play. White Paper 6[125] identifies a lack of parental recognition and involvement in schooling as one of the most critical factors which creates barriers to learning and development.

Recent case law, however, indicates that some parents are taking a positive interest in their children's education. In *Madzodzo v Minister of Basic Education*[126] three parents with children in different secondary schools brought an application for an order

121 *M v Minister of Police* 2013 5 SA 622 (GNP) para 22.
122 Kapp "Education of the Handicapped Child" 455.
123 Du Toit "Orthopedagogical Aid" 63.
124 Ngidi and Qwabe 2006 *SAJE* 530.
125 DoE *Education White Paper 6* 18.
126 *Madzodzo v Minister of Basic Education* 2014 JDR 0304 (ECM).

declaring the Department of Basic Education to be in breach of their children's rights to education, equality and dignity based on a failure by the State to provide essential school furniture, in the form of desks and chairs, to public schools throughout the Province, and in particular in impoverished rural areas. In *Section 27 v Minister of Education*,[127] Msipopetu together with educators brought an application in her capacity as a parent of two learners aged 12 and 18 who had not been provided with textbooks for the 2012 academic year. The Court indicated her direct and material interest in the relief sought.[128]

The Court then emphasised the fact that a collaborative effort by schools, educators, parents and learners is needed in order to address the gaps in teaching and learning that may compromise the delivery of quality education to learners.[129] In this regard the court stressed that the provision of quality education cannot be the sole responsibility of schools, nor can it be formulated on the basis of only the school's assessment of the gaps and issues around quality. The engagement of parents and learners in the identification of gaps in the quality of teaching, and in providing the support and creating the framework and environment for those gaps to be filled was equally important.[130]

Another example of positive cooperation between educators and parents can be found in the matter of *Governing Body, Rivonia Primary School v MEC for Education, Gauteng Province*.[131] In this case the governing body employed 22 additional educators to ensure the adequate supervision of each learner. In order to guarantee that their children would have a solid foundation to equip them for their later school years, the parents — not the department — spent R3 251 036 on construction projects, including building nine additional classrooms during the period of 2000 to 2009.

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127 *Section 27 v Minister of Education* 2013 2 SA 40 (GNP).
128 *Section 27 v Minister of Education* 2013 2 SA 40 (GNP) para 9.
129 *Section 27 v Minister of Education* 2013 2 SA 40 (GNP) para 39.
130 *Section 27 v Minister of Education* 2013 2 SA 40 (GNP) para 38.
131 *Governing Body, Rivonia Primary School v MEC for Education, Gauteng Province* 2013 1 SA 632 (SCA).

According to Visser,[132] School Governing Bodies have an obligation to raise additional funds through the active involvement of the parents, who in return for their financial contributions are given a direct and meaningful say in school governance and the employment of school funds. It is in fulfilment of this obligation that Rivonia Primary School's governing body has been able to reduce its learner-educator ratio by building extra classrooms and employing additional educators.

The introduction of the *Children's Act*, as set forward by the High Court in *PD v MD*,[133] marked a significant development of the law relating to the protection of children's rights in South Africa as contained in the *Constitution*. The fundamental purpose of the Act is to bring about the development of the law affecting children in accordance with the fundamental values enshrined in the *Constitution* and society's obligations in terms of international law, and to provide for the establishment of structures and services which promote the development of children. As such, this Act [13] does not refer to the common-law concepts of "custody" and "access", but rather to "parental rights and responsibilities". The latter are defined as those responsibilities that refer to the right to care (custody) for the child; to maintain contact (access) with the child; to act as a guardian of the child; and to contribute to the maintenance of the child.[134]

With reference to the statutorily endorsed educational partnership involving the State, the parents of learners, educators, learners and members of the community, the Constitutional Court in *Head of Department of Education, Free State Province v Welkom High School*[135] specified that each partner represents a particular set of relevant interests and bears corresponding rights and obligations in the provision of education services to learners.

The interactions between these partners — the checks, balances and accountability mechanisms — are closely regulated by the *Schools Act*, as pointed out in *Head of*

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132 Visser 2006 *TSAR* 360.
133 *PD v MD* 2013 1 SA 366 (ECP) para 10.
134 *PD v MD* 2013 1 SA 366 (ECP) para 13.
135 *Head of Department of Education, Free State Province v Welkom High School* 2014 2 SA 228 (CC) para 49.

Department, Mpumalanga Department of Education v Hoërskool Ermelo.[136] While the State is represented by the Minister for Basic Education, whose primary function is to set uniform norms and standards for public schools, the MEC for Education is obliged to establish and provide public schools, and exercises executive control over public schools through principals. Parents and the community at large, on the other hand, are represented in the School Governing Body, whose primary function is to look after the interest of the school and its learners.[137] Parents and educators should thus assume responsibility for the governance of public schools.

According to the court in *Schoonbee v MEC for Education, Mpumalanga*,[138] the cooperative education mandate created by the Schools Act envisages that greater responsibility and accountability is assumed, not just by the learners and educators, but also by parents, towards the advancement of specified objectives pertaining to schooling and education. In *MEC for Education, KwaZulu-Natal v Pillay*,[139] *however,* Judge O'Regan acknowledged that quality education can only be enhanced if parents, learners and educators accept their responsibilities concerning continued growth and success.

Children are not mere mini adults. Cognisance must be taken of the fact that they are extremely vulnerable both physically and psychologically, and therefore in constant need of protection.[140] This protection is qualified in the sense that all parental responsibilities and rights must be exercised jointly, in the best interests of children.[141] This, as in the matter of *Ex Parte: Saincic*,[142] is unfortunately frequently not the case. In this instance the High Court realised that the young child in question was indeed the innocent victim of the adults' inability to subject their own interests, wishes and emotions to those of the child. Serious concern also existed regarding the father's

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136 *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC) para 56.

137 The effective power to run schools is accordingly indeed placed in the hands of the parents and guardians of learners through the School Governing Body.

138 *Schoonbee v MEC for Education, Mpumalanga* 2002 4 SA 877 (T) para 883E-G.

139 *MEC for Education, KwaZulu-Natal v Pillay* 2008 1 SA 474 (CC) para 185.

140 *Le Roux v Dey* 2011 3 SA 274 (CC).

141 *PD v MD* 2013 1 SA 366 (ECP).

142 *Ex Parte: Saincic* 2012 JDR 1257 (GNP).

parental style and skills, as well as the unstable composition of his personality. The fact that the father insisted on the custody of his child and refused to share this responsibility with the grandparents after his mother had been murdered, on the basis that he wanted to "win" the court case at all costs, was regarded as a clear indication of the father's putting his own interests before that of his child. It also indicated according to the court a misconception on the father's side regarding the role of a responsible and accountable parent.

As the main guardian of minors, the High Court regarded itself to be bound, regardless of the father's wishes and even the child's wish to be with his father, to consider only what was in the best interests of the child under the prevailing circumstances to ensure his future well-being.

9 Conclusion and points of contention

The two research questions, namely where references to accountability come from and why accountability is regarded as making a significant difference, were addressed by indicating that the South African legal framework makes provision for shared responsibilities and collective accountability by all education partners in the matter of the education of the young. The importance of parental accountability was highlighted against the democratic principles of cooperation between these partners, and especially in setting examples for children to follow. This was underscored by cautioning against a reciprocal tendency of blaming others instead of taking accountability for one's own actions. It became clear that the State, parents or educators cannot individually guide learners to responsible adulthood – a collaborative effort is indeed required.

The aims of this article were met by:

- presenting clarification of the concepts law, accountability and parental rights and duties;
- comparing parental accountability concerning school-related matters in the light of relevant constitutional pointers, applicable legislation and subordinate

indicators such as the Schools Act, applicable White Papers, Codes of Conduct Guidelines, the *National Education Policy Act*, the Code of Professional Ethics and the *Children's Act;* and

- referring to significant case law throughout, to measure the current position of the courts on parental accountability. It was found that the courts are willing to interfere and demand accountability from all education partners, especially from parents. Although it became apparent that parents are slowly but surely coming to the fore to ensure that the State is held accountable, it was also evident that much must still needs to be done pertaining to parents realising and giving effect to their own accountability.

Case law has indicated that high standards are being set for adults who aim at adopting a child and thus undertaking the right and responsibilities towards children which, among others, include accepting responsibility for their positive and constant participation in all school-related activities. At the same time, emphasis was placed on the need for parents to demand accountability from the State concerning their children's right to a basic education.

In addition, case law emphasised the important fact that adults do not have the right to have children, thus implying that those who indeed have children should aspire to be accountable for them in the best manner possible. This, according to the *Constitution*, entails always acting in the best interests of those children to which parental interests should be subjected.

The reciprocal apportioning of blame, a lack of mutual cooperation, socio-economic factors and illiteracy, as well as numerous cultural determinants were amongst the problems identified as hampering the full, practical realisation of the legislative provisions pertaining to parental accountability. The solutions proposed under these circumstances are that parents should:

- take the forming of a partnership with the State and educators seriously, thus accepting joint accountability for the education of their children;

- recognize and take up the responsibility of guiding and educating children to be accountable for their own destiny;
- set upright examples for their children by behaving in an accountable manner;
- become aware of the consequence of the *Constitution*, namely that parents no longer control or dictate the lives of their children, but that emphasis is placed instead on parents' rights and obligations towards their children; and
- accept a child-centred approach, always placing their children's interests above their own.

In order for these solutions to be implemented practically, the following recommendations are put forward:

- Parents must be empowered to perform their roles as partners in education.
- Mutual respect between education partners must be evident, with educators being especially aware of the valuable inputs of parents as the primary care-givers.
- Parents must be made aware of the enormous impact on their children of parental examples, circumstances and household arrangements, since the State cannot repair each dysfunctional family. At its best, the State can make efforts to create conditions to protect children from exploitation and maximise the opportunities given to them to lead productive adult lives.

Although a clear legal standard has yet to be defined to determine the parameters of parental accountability, case law has indicated that the courts have been indicating the need for parents to become more actively involved in the education of their children. The fuzzy edges, cracks and divisions between schools and homes must be elided in order for quality teaching and learning to take place, and to advance the development of exemplary citizenship in the nation's schools.

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LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
JETERAPS	Journal of Emerging Trends in Educational Research and Policy Studies
PELJ	Potchefstroom Electronic Law Journal
SAJE	South African Journal of Education
TD	Journal for Transdisciplinary Research in Southern Africa
TSAR	Tydskrif vir die Suid-Afrikaanse Reg
UNCRC	United Nations Convention of the Rights of the Child

THE ROLE OF THE LAW IN PROMPTING PARENTS TO PARTICIPATE ACCOUNTABLY WITH THE PARTNERS IN EDUCATION.

E de Waal*

EM Serfontein**

SUMMARY

Bearing in mind the previous Gauteng Education MEC's recent indication that "discipline starts at home",[1] our article focuses on what South African law has contributed during the past 20 years to prompt parents participate accountably with partners in public school education, and how case law has defined parent accountability in this regard. Examples of relevant legislation would be those which assign the ultimate responsibility for learner conduct to parents, and call for a harmonious relationship between parents and educators. In line with the South African Schools Act's requiring that parents partner with the State, educators and learners in accepting responsibility for their children's schooling, this article highlights the need for a shared vision of the way forward. The importance of having such a shared vision to bring these disparate stakeholders' aspirations together around the common goal, namely to develop all learners' talents and capabilities, is underscored. The authors argue that factors such as reciprocal blame and a lack of cooperation are among the problems that hamper the full realisation in practice of the legislative provisions pertaining to parental accountability. Our article identifies solutions to this challenge, such as parents' setting upright examples by behaving in an accountable manner, and recommendations, such as empowering parents for their roles as partners in education.

KEYWORDS: Education Law, parental responsibility, participation, accountability, learner discipline, partners in education.

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* Elda De Waal. Associate-Professor in Education Law, OPTENTIA focus area, North-West University (Vaal Triangle Campus), elda.dewaal@nwu.ac.za.

** Erika Serfontein. Associate-Professor in Law, North-West University (Vaal Triangle Campus), erika.serfontein@nwu.ac.za.

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