# Characterising the Right to Education: Psychosocial Support in Schools

KK Damonse*

Online ISSN
1727-3781

P·E·R
Pioneer in peer-reviewed, open access online law publications

**Author**

Kyla K Damonse

**Affiliation**

University of Cape Town, South Africa

**Email**

dmnkyl002@myuct@ac.za

**Date Submitted**

16 April 2024

**Date Revised**

17 March 2026

**Date Accepted**

17 March 2026

**Date Published**

22 May 2026

**Editor**

Prof Natasha Ravyse

**Journal Editor**

Prof Wian Erlank

**How to cite this contribution**

Damonse KK "Characterising the Right to Education: Psychosocial Support in Schools" *PER/PELJ* 2026(29) - DOI http://dx.doi.org/10.17159/1727-3781/2026/v29i0a18461

**Copyright**

**DOI**
http://dx.doi.org/10.17159/1727-3781/2026/v29i0a18461

## Abstract

Can the scope of section 29 of the Bill of Rights include provisioning for psychosocial support to learners? This article examines the development of the law as it relates to the interpretation and application of the right to basic education contained in section 29(1)(a) of the *Constitution*. It argues that there is a jurisprudential approach that lends a dynamic quality to the right to basic education. It is this capacity for dynamism that makes section 29 an incredible tool for transformative change. Importantly, the right to basic education has a quality dimension that allows it to be responsive to learning needs, including those learning needs that are of a social and psychological nature. As such, claims to psychosocial support for learning can be grounded in section 29(1)(a). For the purposes of the provisioning of psychosocial support, this article also comments on the close relationship between section 29(1)(a) and the rights of the child as contained in section 28(1)(c). Section 28 entitles children to a wide range of services that are critical to their welfare, and where the delivery of psychosocial support for learning requires technical knowledge, resources, and infrastructure that fall beyond the capabilities of primary caregivers, the state is obliged under both provisions to provide psychosocial support. Importantly, the right to education cannot be fully realised where the social and psychological needs of the child are unmet.

## Keywords

Psychosocial support; right to education; inclusive education; children's rights; South Africa; transformational constitutionalism.

.....

## 1 Introduction

Education is regarded as integral to the promotion of human rights, democracy, and social transformation. As put by Moseneke DCJ, education is "primordial and integral to the human condition".[1] Denial of access to education and the withholding of quality education were hallmarks of oppression and marginalisation under the apartheid regime.[2] At the beginning of the democratic era, it was hoped that education would unlock opportunities to disrupt and undo deeply entrenched patterns of privilege and socio-economic disadvantage.[3] The Constitutional Court has declared the transformation of education a central feature of radical social transformation and redress.[4] However, the transformational project remains incomplete, and the legacy of severe social inequality and poverty continues to scar South African society today.[5]

South African youth are especially vulnerable to the social conditions borne out of a protracted history of racial segregation and oppression.[6] Children from poor and previously disadvantaged backgrounds face considerable challenges in overcoming barriers to development and social mobility.[7] This fact has not been lost on South African courts in their approach to interpreting and applying socio-economic rights. In fact, the judiciary has exhibited a keen willingness to give a substantive account of what is entailed by the right to basic education in terms of section 29(1)(a) of the *Constitution*,[8] as well as the child's rights to basic nutrition, shelter and, basic health care services under section 28(1)(c). Guided by the court's purposive and content-based approach to defining socio-economic entitlements under section 29(1)(a) and section 28(1)(c), this article will argue that there exists a right to psychosocial support in schools. For the purposes of this paper, psychosocial support encompasses those educational inputs that combat barriers to learning that are psychological and social in nature, and promote the development of learners' personality,

---

* Kyla Khanyi Damonse. BCom (UCT) BCom (Honours) (UCT) MCom (UCT) LLB (UCT). Kramer Law School, University of Cape Town, South Africa. E-mail: dmnkyl002@myuct.ac.za. ORCiD: https://orcid.org/0000-0001-5625-4681. Special acknowledgement to the Centre for Law and Society at the University of Cape Town for supporting this research.

1 *Federation of Governing Bodies for South African Schools v Member of the Executive Council for Education, Gauteng* 2016 4 SA 546 (CC) para 1.

2 Perold and Butler *Right to Learn* 11-17.

3 Simbo 2013 *LDD* 477.

4 *Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC) para 47.

5 UNDP 2014 https://www.undp.org/sites/g/files/zskgke326/files/migration/za/UNDP-Inequality-South-Africa.pdf 11.

6 De Lannoy, Leibbrandt and Frame "Focus on Youth" 22.

7 Moses, Van der Berg and Rich *A Society Divided* 13.

8 *Constitution of the Republic of South Africa*, 1996 (hereafter the *Constitution*).

talents, and mental and physical abilities beyond outdated notions of disability and remediation.

First, the article traces the role of education in South African society and the ways in which the court has imputed meaning into the right to basic education. This paper relies on a close reading of the existing jurisprudence on section 29 and makes use of interdisciplinary research on school social work in South Africa. It argues that the right to basic education must be responsive to those learning needs that are social and psychological in nature for it to have meaning for those learners who face multiple and overlapping barriers to learning, such as socio-economic deprivation, discrimination, experiences of violence, and inequality, amongst many others. Finally, the article will give an overview of the existing recognition of the need for psychosocial support to learners, albeit in limited circumstances and will comment on pathways towards greater recognition of the right to psychosocial support in schools.

## 2 The right to education: Responding to learning needs

### *2.1 Education in South Africa: Reforming for transformation*

The classroom is a central institution in human society.[9] In the pre-democratic era, the classroom was a primary site for oppression and disenfranchisement.[10] Racially stratified and discriminatory education policy was a cornerstone of Apartheid policy, and differential programmes of education based on race and ethnicity functioned to restrict the Black population from participating freely and fully in the economy and society.[11] To arrest the development and agency of Black peoples, the delivery of education necessarily came to be characterised by inferior facilities, shortages in books and equipment, poor curriculum design, and chronic underinvestment.[12] As recognised by the Ministry of Education, the purpose of education under Apartheid was to protect and entrench white supremacy and interests, to the exclusion and disadvantage of Black and other population groups.[13]

With the advent of the democratic era, the state has directed efforts to repurpose the classroom for the achievement of social goals such as redress, social development and reintegration. Efforts since the early 1990s have been described as among the most radical and far-reaching in the

9 Apple *Can Education Change Society?* 158.
10 Johnson 1982 *Anthropology & Education Quarterly* 214.
11 Johnson 1982 *Anthropology & Education Quarterly* 214.
12 Johnson 1982 *Anthropology & Education Quarterly* 214.
13 Department of Education 2000 https://unesdoc.unesco.org/ark:/48223/pf0000219518.locale=en 6-7.

world.[14] Racialised and fragmented administrative systems were restructured and formed anew, funding models have been adjusted for more equal distribution of finances along the principle of equitable shares, and curricula have been reformed for free and integrated cohorts of learners, among many other changes.[15] There has been much attention and policy development in the area of education, and this speaks to its perceived power for socio-economic transformation.[16] In the South African context, there is evidence that suggests that differences in education — specifically in the quality of education — lie at the root of deeply entrenched conditions of socio-economic inequality and deprivation.[17] As such, it was imperative that the doors of learning and culture be thrown open to all South African people.[18]

In pursuing a policy for educational transformation, the State has been guided by the provisions of the Bill of Rights. However, the scope and content of the State's obligations are not always so clearly demarcated. This is particularly the case as it relates to the meaning of section 29(1)(a), the text of which, on its own, fails to define precisely what a basic education entails.[19] Citizen-led and public interest litigation have played a critical role in nudging courts to interpret and give substantive meaning to the right to basic education.[20] As will become clear from the discussion below, the content of section 29(1)(a) is dynamic and, most importantly, is informed by the needs of learners.

### *2.2 The multifaceted nature of the right to education: More than just a book and a blackboard*

Several challenges arise from the inexplicit text of section 29(1)(a). For instance, the government itself struggles to appreciate the exact requirements for compliance with the *Constitution*.[21] The legislature, too, has failed to give direction on the precise inputs which are substantively required by section 29(1)(a). To illustrate, the *South African Schools Act* fails to define basic education but does allow for the empowerment of the Minister of Basic Education to prescribe minimum norms and standards for

14 Crouch and Hoadley "Transformation of South Africa's System of Basic Education" 27-49.
15 Crouch and Hoadley "Transformation of South Africa's System of Basic Education" 27-49.
16 Allais, Cooper and Shalem 2019 *Transformation* 111.
17 Moses, Van der Berg and Rich *A Society Divided* 13.
18 ANC date unknown https://www.anc1912.org.za/the-freedom-charter-2/. The *Freedom Charter* as adopted at the Congress of the People, Kliptown on 26 June 1955.
19 Simbo 2012 *LDD* 164.
20 Brickhill and Van Leeve "Basic Education Provisioning" 282-283.
21 Simbo 2012 *LDD* 164.

infrastructural and capacity inputs.[22] Classrooms, electricity, water and other kinds of facilities are identified as elements of school infrastructure.[23] Capacity inputs are identified as teaching staff, the quality of performance, and the choice of curriculum and extra-curricular activities, as well as the size and utilisation of classrooms.[24] The state also identifies a responsibility to provide teaching and learning support materials such as stationery and equipment.[25] These inputs are not discussed in any kind of "minimum core" framework, as norms and standards must be determined by the Minister. It must be noted that section 5A is by no means a closed list of necessary components for a quality basic education.

A different perspective of basic education is offered in the 2017 *Draft Policy on Rural Education,* wherein it is asserted that developmental outcomes, such as learning, are less aligned with economic abundance and resources and more aligned with functional services.[26] A functional school is thus one in which learners and educators have access to basic developmental services that include health services, social development, libraries and transport.[27] These attempts to define the duty of the state towards learners are few and less than precise. As such, there is a general incompleteness in the understanding of and certainty in the content and scope of the right to basic education.

In the absence of guidance from the text of the *Constitution* and a lack of direction from the legislature, the courts have not hesitated to engage and give substance to the positive obligations on the state to make provision for basic education. In the landmark case, *Governing Body of the Juma Masjid Primary School v Essay*,[28] the Constitutional Court recognised that section 29(1)(a) is a right that is immediately realisable and free from internal constraints, such as the availability of resources and progressive realisation. The Court also identified access to school as an integral and necessary requirement for the realisation of section 29(1)(a).[29] Attendance is made

22 Section 5A of the *South African Schools Act* 84 of 1996 (the *Schools Act*). See the recent *Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure* in GN 3416 in GG 53120 of 6 August 2025.

23 Section 5A of the *Schools Act*.

24 Section 5A of the *Schools Act*.

25 Section 5A of the *Schools Act*.

26 Department of Basic Education 2017 https://www.education.gov.za/Portals/0/Documents/Policies/Draft%20Policy%20on%20Rural%20Education%200218.pdf?ver=2018-02-09-105713-28 13-14.

27 Department of Basic Education 2017 https://www.education.gov.za/Portals/0/Documents/Policies/Draft%20Policy%20on%20Rural%20Education%200218.pdf?ver=2018-02-09-105713-287 14.

28 *Governing Body of the Juma Masjid Primary School v Essay* 2011 8 BCLR 761 (CC) (hereafter *Juma Masjid*) para 37.

29 *Juma Masjid* para 43.

compulsory.[30] Anyone who prevents, without just cause, a learner from attending school shall be guilty of an offence and liable on conviction to a fine or imprisonment.[31] This sanction, while not without its critiques, is aimed at incentivising the taking up of available educational resources. Non-provision of a school with the appropriate capacity for learners constitutes a failure to discharge the constitutional obligation contained in section 29(1)(a).[32] At the very least, basic education comprises an education from Grades 1 to 12 and the matric examinations.[33] But access to and compulsory attendance at school over some period of time is not the entirety of the right to basic education. Basic education must take on a certain kind of quality — one that "promotes and develops a child's personality, talents, and mental and physical abilities to his or her fullest potential".[34]

This was at least the character ascribed to basic education by the Constitutional Court, having regard to the *Convention on the Rights of the Child*, in *Juma Masjid*.[35] The Court was accurate in its discernment between mere provision of a school and the quality of the schooling provided. It is important and necessary that the basic education imagined in the *Constitution* take on a standard and quality that is both a rejection of and a response to the poor quality and exclusionary education of the pre-democratic era. In his concurring opinion in the matter of *Gauteng Provincial Legislature In Re Gauteng School Education Bill of 1995*, Sachs J wrote that the *Constitution* requires acknowledgement of the fact that each child is unique and that children's interests deserve a place of paramountcy; that each of them is entitled to a good education.[36] A good basic education, then, must, as Theron J accepted in *AB v Pridwin Preparatory School*,[37] be an education that is flexible and responsive to the learning needs, age, and experiences of the learner.[38] What then can be said to give basic education its capacity to respond appropriately to learning needs?

While the building of a school is not the limit of the state's positive obligations under section 29(1)(a), it cannot go unappreciated that physical infrastructure and the provision of proper facilities are integral and necessary components of section 29(1)(a).[39] School buildings, sanitation,

30 *Schools Act* s 3.
31 *Schools Act* s 3(6)(b).
32 *Juma Masjid* para 51.
33 *Moko v Acting Principal of Malusi Secondary School* 2021 3 SA 323 (CC).
34 *Juma Masjid* para 43 wherein the Constitutional Court expresses a notion of basic education that is based on Art 29(1) of the *Convention on the Rights of the Child* (1989).
35 *Juma Masjid* para 43.
36 *Gauteng Provincial Legislature In re Gauteng School Education Bill of 1995* 1996 3 SA 165 (CC) para 53.
37 *AB v Pridwin Preparatory School* 2020 5 SA 327 (CC) paras 160-166.
38 *AB v Pridwin Preparatory School* 2020 5 SA 327 (CC) para 162.
39 *Equal Education v Minister of Basic Education* 2019 1 SA 421 (ECB) para 170.

lighting, heating, recreational spaces and sufficient classrooms are all infrastructural elements that are key in the delivery of a safe and functional learning environment.[40] In the 2018 case of *Equal Education v Minister of Basic Education*, failure to provide such basic infrastructure in public schools was held to be inconsistent with the *Constitution*, regardless of any fiscal constraints faced by the state.[41] Where learners are forced to occupy unsafe and dilapidated structures, facing off against the natural elements and other hazards, it is inconceivable that any learning can occur optimally.[42] There can be no realisation of a basic education without the provision of a physical environment that respects the inherent dignity of learners. The courts have even considered this to mean that the learning environment must also have the necessary age and grade-appropriate furniture.[43] Goosen J, writing for the Eastern Cape High Court in *Madzodzo v Minister of Basic Education*, deemed the delayed response to the dire furniture shortage in the Eastern Cape to be "wholly inadequate" and an obstruction of learners' rights to basic education.[44]

The courts have not stopped at physical infrastructure and furniture. In the last decade, a wide range of educational resources has been recognised as necessary components of the right to basic education as guaranteed under section 29(1)(a). South African courts have indicated that they find arguments for the inclusion of other less traditional elements, such as learner transport, security services in schools, nutrition, and other "such related matters" compelling.[45] Litigation on these less traditional components falling outside of the more obvious capacity inputs of education is rare, but they are highly instructive on the potential for section 29(1)(a) to be imbued with a progressively deeper and wider scope.[46] In the Eastern Cape High Court, the bench heard for the first time an argument that an entitlement to transport to and from school was also included in the right to basic education.[47] Plasket J accepted this argument, and held that the right to education is "meaningless without teachers to teach, administrators to keep schools running, desks and other furniture to allow scholars to do their work, textbooks from which to learn and transport to and from school at

40 Petherbridge, Linderboom and Harding "School Infrastructure and Equipment" 303-323.

41 *Equal Education v Minister of Basic Education* 2019 1 SA 421 (ECB) paras 195-196, 199.

42 *School Governing Body, Makangwane Secondary School v MEC Limpopo Department of Education* (unreported) case number 3158/2018 of 26 June 2018 paras 11-13.

43 *Madzodzo v Minister of Basic Education* 2014 3 SA 441 (ECM) para 36.

44 *Madzodzo v Minister of Basic Education* 2014 3 SA 441 (ECM) para 36.

45 *Section27 v Minister of Education* 2012 3 All SA 579 (GNP) para 22.

46 Simbo 2012 *LDD* 183.

47 *Tripartite Steering Committee v Minister of Basic Education* 2015 5 SA 107 (ECG) paras 12-19.

State expense in appropriate cases".[48] The court in this case gave consideration to the great physical and psychological burden on learners travelling on foot over long distances to reach their schools. There was an appreciation that such a burden, having a psychological effect, would inhibit learning and have negative effects on attendance and overall dropout rates.[49] This reasoning presents a very clear and obvious link between the disadvantageous conditions faced by vulnerable learners and educational outcomes, such as low attendance and poor academic performance. It appears that the court is willing to recognise certain inputs as entitlements under section 29(1)(a) if it is the case that the input can be shown to facilitate learning in school.

A similar approach was taken in the 2020 matter of *Equal Education v Minister of Basic Education*.[50] The question to be answered by the court was whether the duty to provide basic nutrition was included in the constitutional duty to provide basic education. The right to basic nutrition is contained in section 28(1)(c), and as argued by the Minister of Education, fell well outside the ambit of the right to basic education.[51]

The implication of both section 29 and section 28 in this matter presented the court with a unique opportunity to characterise the close relationship between the right to basic education and the other socio-economic rights of the child. The National School Nutrition Programme (NSNP) aims to raise the quality of basic education and improve learning outcomes. The court affirmed that, in the context of high poverty and severe food insecurity, the provision of meals in schools is "lifesaving".[52] Any suspension of the in-school feeding scheme would infringe on children's right to basic nutrition as well as their right to basic education. As children are categorically vulnerable, and hungry children even more so, the court viewed the infringement as an egregious one. In this case, the court was guided in its interpretation of the obligations in section 29(1)(a) by both international law and the policy documents and directives published by the state.[53] It was very plainly the policy of the state that the provision of basic nutrition forms

48 *Tripartite Steering Committee v Minister of Basic Education* 2015 5 SA 107 (ECG) para 18.

49 *Tripartite Steering Committee v Minister of Basic Education* 2015 5 SA 107 (ECG) para 14.

50 *Equal Education v Minister of Basic Education* 2020 4 All SA 102 (GP) (hereafter *NSNP*).

51 *NSNP* para 8.

52 *NSNP* para 19.

53 See paras 55 and 57 of *NSNP*. The court acknowledges the importance of child nutrition and education in the wider national policy framework of the Reconstruction and Development Programme, aimed at addressing poverty, inequality and economic transformation in post-apartheid South Africa. The court further places the rights of children, especially indigent children, and the state's obligations to realise children's rights in the context of Art 4 of the *Convention on the Rights of the Child*.

part of the right to basic education, and thus informs the quality and content of a basic education described in section 29.

Like the provision of scholar transport services, the provision of nutrition is deemed to be an entitlement under the right to basic education because it adds a qualitative dimension to section 29(1)(a). This case supports the notion that the jurisprudential approach to the conceptualisation of basic education is one that is receptive and inclusive of factors that can be shown to be determinative of a learner's capacity to perform and thrive in the learning environment. As acknowledged by the courts, learners are unable to learn effectively and develop their full potential when they are hungry,[54] where there is no adequate infrastructure,[55] where there is an absence of learning materials or workspaces in which to use them,[56] where there are no means to get to school,[57] or where the school lacks functionality due to a shortage of teaching and non-teaching staff.[58] Where such components are lacking, there is a serious violation of the right to a basic education.

## 3 Provision of psychosocial support resources: basic education and social care

### *3.1 Psychosocial needs in the classroom*

Encouragingly, the courts have shown an appreciation of the fact that teaching and learning are optimal in environments that are safe and supportive.[59] As illustrated by the above-mentioned cases, the presence of school-based feeding programmes, school transport systems, basic infrastructure or grade-appropriate furniture are all said to enhance the physical safety and well-being of learners. Within this understanding of learner wellbeing, there are also grounds for a claim to psychosocial support in schools that encourages learning and protects and enhances learners' sense of belonging, connection and comfort to develop their personality, talents and creativity to the fullest potential.[60]

That education takes on this quality is especially necessary because children are the most vulnerable demographic in South African society.[61] Children comprise almost a third of the South African population, and almost

54 *NSNP* para 40.
55 *Equal Education v Minister of Basic Education* 2019 1 SA 421 (ECB) para 182.
56 *Section27 v Minister of Education* 2012 3 All SA 579 (GNP) para 25.
57 *Tripartite Steering Committee v Minister of Basic Education* 2015 5 SA 107 (ECG) para 18.
58 *Centre for Child Law v Minister of Basic Education* 2012 4 All SA 35 (ECG) para 32.
59 Themane "Creating Rights-based and Inclusive Schools" 38; Themane and Osher 2014 *SAJE* 1.
60 *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* 2011 5 SA 87 (WCC) paras 20-23.
61 De Vos 1997 *SAJHR* 88.

20 per cent of children live in homes without parents.[62] In 2020, over a million children indicated that they had been subjected to experiences of violence.[63] This estimate is relatively conservative in comparison to an estimated 2.6 million children who are recorded to have been subjected to violence just within the school environment.[64] The conditions facing children are further exacerbated by high inequality and poverty, with over 11 million children living below the poverty line.[65] These stress factors experienced by school-going children continue to present along the lines of race and socio-economic class.[66] Therborn writes that children of poor and previously disadvantaged groups face a double set of burdens.[67] Firstly, these vulnerable children bear the burden of the social conditions that contribute to ill-health, stunted growth and development, and deficient emotional security.[68] Secondly, they are burdened by the negative impacts on self-esteem and confidence arising from their socio-economic marginalisation.[69] These factors contribute to poor performance in school, low attendance and high drop-out rates.[70] These outcomes, in turn, prolong and aggravate cycles of poverty and deprivation.[71] These social and psychological barriers faced by South African learners critically undermine effective learning and development, and impair learners' capacity to participate and thrive in society.

### *3.2 Support in schools: An overreliance on formalised care*

These systemic barriers to learning have received considerable attention from policymakers and legislators tasked with devising education policy for a free and integrated cohort of learners in post-apartheid South Africa. Questions of how to provide adequately safe and enabling environments in which to learn and develop have required interventions in the spheres of both education and social development and welfare.[72] Initially, it was envisioned that schools would function as sites for the delivery of both

62 Statistics South Africa 2021 https://www.statssa.gov.za/publications/92-02-01/92-02-012021.pdf 10.
63 Statistics South Africa 2021 https://www.statssa.gov.za/publications/92-02-01/92-02-012021.pdf x.
64 Department of Basic Education 2011 https://www.gov.za/sites/default/files/gcis_document/201409/generalhouseholdsurvey2011focusonschooling.pdf 28.
65 Hall "Income Poverty, Unemployment and Social Grants" 170.
66 Therborn "Racism, Existential Inequality and Problems of Categorical Equalization" 35-52.
67 Therborn "Racism, Existential Inequality and Problems of Categorical Equalization" 38.
68 Therborn "Racism, Existential Inequality and Problems of Categorical Equalization" 38.
69 Therborn "Racism, Existential Inequality and Problems of Categorical Equalization" 38.
70 Prinsloo "Socio-economic Barriers to Learning" 27-59.
71 Prinsloo "Socio-economic Barriers to Learning" 28.
72 Pretorius 2020 *Social Work* 114.

education and social care. This is not surprising as the delivery of both social welfare and education seeks to address the development of the social, emotional, and intellectual abilities of children and to foster a capable, engaged, and responsible citizenry.[73] While the delivery of social services and the integration of child protection in school settings is not a new idea in education policy, there is very little agreement on the defined function of social care in schools.[74]

Vergottini defines school social work as the application of principles and methods within the education system in order to render social services to learners, parents, educators, and the school as a community.[75] The main goal of social care in schools is to address personal, emotional, socio-economic and behavioural barriers to learning, and to create an environment where learners are able to reach their full potential.[76] It is clear from this definition that the objective of school social work supports the conceptualisation of the right to basic education as considered in the case of *Juma Masjid* and *Pridwin Preparatory*.[77] In other words, support in schools should contribute to the meeting of learners' needs in a manner that promotes and develops learners' personalities, talents, and mental and physical abilities to their fullest potential.[78]

This was exactly the position held by the National Commission on Special Needs in Education and Training (NCSNET) and the National Committee on Education Support Services (NCESS) in a 1997 report on education, support services and barriers to learning.[79] The report identified multiple and compounding barriers to learning, such as racial discrimination, violence, substance abuse, AIDS, socio-economic deprivation and inequality,[80] as well as inaccessible curricula.[81] By recognising the many variables and overlapping systemic barriers to learning, it became necessary that conceptualisations of psychological and social support for learning reach beyond outdated notions of ability and disability.[82] Under the inclusive, rights-based agenda of the new government, education was to take into

---

73 Huxtable 1998 *Social Work in Education* 96.
74 Vergottini and Weyers 2020 *Social Work* 127.
75 Vergottini and Weyers 2020 *Social Work* 127
76 Vergottini and Weyers 2020 *Social Work* 127.
77 *Juma Masjid* para 43; *AB v Pridwin Preparatory School* 2020 5 SA 327 (CC) paras 163-166.
78 *Juma Masjid* para 43.
79 Department of Education 1997 https://www.education.gov.za/Portals/0/DoE%20Branches/GET/Inclusive%20Education/Overcoming%20barriers%20to%20learning%20and%20development.pdf; Muthukrishna 2002 *IJSE* 4.
80 Engelbrecht *et al* 2016 *International Journal of Inclusive Education* 520.
81 Daniels 2010 *School Psychology International* 634.
82 Department of Education 1997 https://www.education.gov.za/Portals/0/DoE%20Branches/GET/Inclusive%20Education/Overcoming%20barriers%20to%20learning%20and%20development.pdf 46-47.

account and respond to diversity in the classroom.[83] In other words, an inclusive education would be one that is sensitive to questions of power, equity and the myriad identities of learners that involve a consideration of class, gender, sexuality, race, ethnicity, language, and religion.[84] Educational support must then be directed at the entire education system, so that all learners and staff are supported. [85] This support for learning is no longer defined in terms of "deficits" and remediation.[86]

But education support services have previously been defined mostly in terms of professional psychosocial services provided by educational and other psychologists and social workers.[87] While the deployment of social workers was envisioned to be a key part of the transformational and developmental social agenda in post-apartheid South Africa, the profession is still failing to translate bold developmental aspirations into service delivery.[88]

A 2017 survey done on the state of school social work recorded that approximately 268 social school workers were employed by district offices, special schools and school governing bodies.[89] This limited pool of social care workers was also found to be inequitably distributed across the country. While some provinces employ quite high numbers of school social workers, provinces such as the Northern Cape, Mpumalanga and the North West employ fewer than five school social workers.[90] Within the current structure and organisation of school social work, it is often the case that a single school social worker has to support numerous schools at any one time — this no doubt has a negative impact on the quality of service delivery.[91] In the Free State districts, just seven school social workers support 1117 ordinary schools.[92] Those schools that are better equipped to provide educational support to learners in need are often located in wealthy, formerly Whites-only suburbs, and are not fee-free schools.[93] The provincial departments of education are the main employers of school social workers, but there is little to suggest that the management, expectations, and responsibilities of school social workers are standardised across

83 Nel *et al* 2016 *Koers* 4.
84 Phasha, Mahlo and Dei *Inclusive Schooling and Education* 3.
85 Hay 2003 *SAJE* 136.
86 Department of Education 2014 https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371 15.
87 Vergottini and Weyers 2020 *Social Work* 130.
88 Gray and Lombard 2008 *International Journal of Social Welfare* 140.
89 Vergottini and Weyers 2022 *Southern African Journal of Social Work and Social Development* 7.
90 Vergottini and Weyers 2022 *Southern African Journal of Social Work and Social Development* 7.
91 Reyneke 2020 *Social Work* 164.
92 Reyneke 2020 *Social Work* 165.
93 Juan, Harvey and Hannan "Pursuit of Social Justice" 84.

departments.[94] In the wake of the COVID-19 pandemic, more than 50 per cent of school principals indicated that there was a high need for psychosocial support for both teachers and learners, but availability and access to such support services from the Department of Education remain inadequate.[95] Worse still, there appears to be confusion amongst schools and social workers alike about the core roles and functions of support staff deployed by the department under the new regime of inclusive education.[96]

### *3.3 Provision of psychosocial support in schools: Obligations to care*

This overreliance on a severely limited supply of formalised social care workers has the implication that the psychosocial needs of learners are not met. It is not just that there is an infringement of the right to basic education; there is also an infringement of children's right to access support services that are necessary for their health and well-being. As described by Dutschke, section 28(1)(c) entitles children to the provision of social workers and other services that are critical to their welfare.[97] A purposive reading of section 28 would reveal that social services include a wide range of social provisioning delivered by the state to ensure the physical, mental, emotional, and moral development of every child.[98] As argued in *NSNP*, the developmental needs of the child implicate multiple intertwined and interdependent socio-economic rights. Thus, a denial of certain necessary inputs for education creates, as described by Plasket J in *Centre for Child Law v Minister of Basic Education*,[99] a "knock-on" effect on the right to basic education, the right to dignity, as well as the protection of children's developmental interests, as contained in section 28 of the *Constitution*.[100]

Within this understanding, the provisioning of psychosocial support in schools implicates both section 29(1)(a) and section 28(1)(c). To date, there has been little litigation on the substantive meaning of section 28(1)(c). What little engagement has been had with the provision has largely been characterised as relatively conservative.[101] In *Government of the Republic of South Africa v Grootboom*[102] the Constitutional Court held the view that the obligations contained in section 28(1)(c), that is, the obligation to provide

94 Vergottini and Weyers 2022 *Southern African Journal of Social Work and Social Development* 2.
95 Namome, Winnaar and Arends 2021 *Human Sciences Research Council Policy Brief* 2.
96 Vergottini *Towards the Establishment of Practice Standards* 185.
97 Dutschke *Defining Children's Constitutional Right* 2.
98 Liebenberg *Socio-economic Rights* ch 5.
99 *Centre for Child Law v Minister of Basic Education* 2012 4 All SA 35 (ECG*)* para 21.
100 Arendse 2020 *AHRLJ* 293-295.
101 Mbazira and Sloth-Nielsen 2007 *Speculum Juris* 152.
102 *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) (hereafter *Grootboom*) para 77.

basic nutrition, shelter, basic health care services and social services, rest primarily on parents. An important implication of this decision is that the state bears a primary constitutional duty to provide in terms of section 28(1)(c) only where that child is removed from the family environment and is under the care of the state.[103] Critically, *Grootboom* restricts a child's claim to the provision of social services under section 28(1)(c).[104] However, the state was still deemed to be responsible for providing the legal and administrative frameworks to facilitate families' fulfilment of children's rights under section 28(1)(c).[105]

While *Grootboom* is criticised for minimising the role of the state in safeguarding the welfare of children,[106] the state is not excused from its responsibilities to children, even where they are under the care of their parents or families. For instance, in *Minister of Health v Treatment Action Campaign*[107] the Constitutional Court recognised that where the implementation of entitlements under section 28(1)(c) is lacking on the part of parents and family, the state is obliged, under the Constitution, to accord the necessary protection to the rights held by children. It was appreciated that an indigent parent cannot bear the primary obligation to provide health care to his/her child. Similarly, in *NSNP* the court found that it is the state that is burdened with a direct duty to provide appropriate care to learners whose parents cannot provide sufficient nutrition to their children.[108]

However, regardless of the indigency of the primary caretakers, certain aspects of care identified in section 28 will necessarily mean that parents would likely lack the capacity to implement sufficient provisioning. A key difference between *Grootboom* and *Treatment Action Campaign* is that, while parents could be capable of providing basic shelter, their ability to provide appropriate medical treatment, such as neviraprine, is considerably constrained.[109] Where care involves technical knowledge, expensive treatment and infrastructure, the provision of such care cannot realistically be provided by parents or family.[110]

Thus, if children are to have meaningful access to and benefit from their socio-economic rights, it is necessary to recognise the distinct personality

103 *Grootboom* para 77.
104 Sloth-Nielson 2001 *SAJHR* 226.
105 *Grootboom* para 78.
106 Sloth-Nielson 2001 *SAJHR* 224-227. Sloth-Nielson contends that an implication of the Court's interpretation in *Grootboom* is that children have no *a priori* claim to social services in terms of s 28 of the *Constitution*.
107 *Minister of Health v Treatment Action Campaign* 2002 5 SA 721 (CC) (hereafter *Treatment Action Campaign*) para 79.
108 *NSNP* para 50.
109 Skelton 2012 *SAPL* 398.
110 Mbazira and Sloth-Nielsen 2007 *Speculum Juris* 161.

and dignity of all children,[111] and to affirm their independent right to claim provisioning to certain forms of care in terms of section 28.[112] As described in *Centre for Child Law v MEC for Education*,[113] section 28 contains no internal limitations and is immediately realisable. Section 28 entitles every child to family care, parental care or appropriate care when removed from the family, and to be protected from maltreatment, neglect, abuse, or degradation. The state is thus obliged to ensure that every child is able to enjoy immediate and effective access to social services and resources. The court appears to accept that the care of the child in terms of section 28 involves a wide range of services and interventions.[114] One such service or intervention is the provision of psychosocial support in schools. Children enter schools with diverse social experiences that range from poverty and malnutrition to abuse, exploitation and loss. As recognised by the court in *NSNP*, schools are critical points of contact for reaching vulnerable children; nowhere else is the state able to connect with children on such a grand scale.[115] This makes it possible for schools to be active sites for targeted interventions that can positively influence children during the years of critical development, thus improving their capabilities to participate effectively in a free society. Much like a child suffering from hunger and undernutrition, a child burdened with psychosocial stressors is likely to be severely impaired in cognitive functioning and development.[116] However, unlike the delivery of nutrition, the delivery of appropriate psychosocial support may require knowledge, expertise, and a level of care that many primary caregivers may not be equipped to give. The school is thus a space in which the interrelated and interdependent relationship between section 28(1)(c) and section 29(1)(a) is clearly visible — especially when they are viewed as dual protections for the educational and developmental interests of the child. The result is that the right to basic education cannot be fully realised where the child's social and psychological needs are not met.

## 4 Judicial recognition of psychosocial support in schools

The courts have thus far engaged to some degree on the place of psychosocial support within the school context. However, support, as contemplated by the courts, has been confined to those instances in which learners displayed either misconduct or "behavioural problems", displayed severe disability, or were under the care of the state in terms of section 15(1)(d) of the *Child Care Act*.

111 *S v M* 2008 3 SA 232 (CC) para 18.
112 Liebenberg *Socio-economic Rights* 232.
113 *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T).
114 Mbazira and Sloth-Nielsen 2007 *Speculum Juris* 158.
115 *NSNP* para 33.
116 Winicki and Jemison 2003 *Contemporary Economic Policy* 145; Schilbach, Schofield and Mullainathan 2016 *Am Ec Rev* 438.

For instance, in the 2008 matter of *Queens College Boys High School v MEC*, the High Court affirmed that schools must provide proper support and counselling as part of any disciplinary procedures in terms of section 8(5)(b) of the *Schools Act*.[117] While counsel for the school argued that schools are not rehabilitation institutions and that student counselling was not an appropriate sanction for misconduct in this matter,[118] the state was of the view that sanctions on learners for misconduct must be rehabilitative.[119] The MEC declined to confirm the expulsion of learners found with prohibited substances on school premises and recommended counselling for the learners instead. While this case presented an opportunity for meaningful reflection on psychosocial support in schools and the ways in which an absence of such support endangers rights to basic education, the court refrained from engaging with the role of schools in administering support for learner rehabilitation.

The 2008 decision of *Centre for Child Law v MEC for Education, Gauteng,* dealt with the duties of the state to provide care to learners at a school of industry.[120] The matter was decided in terms of section 28(1)(c) of the *Constitution,* as the learners in question had been placed under the care of the state in terms of section 15(1)(d) of the *Child Care Act*.[121] As such, the state was the primary caregiver and responsible for providing proper access to psychological support and therapeutic services at the school.[122] The school had no resources to administer social and psychological care, and the learners had been subjected to poor living conditions in the school hostels. The conditions in the school were found to violate children's rights under section 28 of the *Constitution*, as well as the right to dignity and security of the person under sections 10 and 12.[123] But it was entirely possible to launch an argument on the basis of section 29(1)(a), too. While the learners in question were wards of the state, the provision of education at schools of industry and youth care centres remains the responsibility of the Department of Education and its provincial arms.[124] Under the model of inclusive education, it is necessary that the education provided be responsive to the needs of learners. In this case, the education provided should have taken account of and responded to learners' histories or experiences of maltreatment, neglect, abuse or degradation. Staff at JW

117 *Queens College Boys High School v MEC, Department of Education, Eastern Cape Government* (454/08) [2008] ZAECHC 165 (21 October 2008) (hereafter *Queens College Boys High*) para 8.
118 *Queens College Boys High* para 21.
119 *Queens College Boys High* para 20.
120 *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T).
121 *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T).
122 *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T).
123 *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T).
124 Section 196(2) of the *Children's Act* 38 of 2005.

Luckhoff High School had written to the provincial department of education pleading for assistance, citing evidence of learners experiencing depression, becoming "disturbed" and even suicidal.[125]

Many learners across the country experience these same psychosocial health risks despite not having been formally diagnosed.[126] In fact, it is thought that almost 20 per cent of children and adolescents are likely to have a diagnosable mental disorder.[127] The right to basic education would have been made more substantive had the court taken the next step to affirm the constitutional duty to provide the psychosocial support owed to all learners.

In 2010, the Cape High Court considered a delictual matter involving a violent attack on a teacher by a 13-year-old learner who had been known to have been experiencing behavioural, personal and social problems.[128] The learner had, in confidence, shared with a teacher that he was unhappy at home, that his father was in prison, that he had been left to provide for himself and his mother, and that he aspired to become a gangster like his father.[129] The court found that the school had neglected its duties to refer the learner urgently and timeously for counselling with the school counsellor or a social worker.[130] In *Jacobs v Chairman* the court lamented the fact that the child responsible for the attack had failed to receive the appropriate support services. The child ultimately was charged and convicted of attempted murder in terms of the *Criminal Procedure Act* 51 of 1977.[131] The handling of the matter by the High Court illustrated the tragic fact that schools are reflective of the social realities of the communities in which they exist. The school environment is thus one capable of being a site for reconstruction.[132] In this instance, the school was a site for the reconstruction of systems of violence, marginalisation and deprivation, as is illustrated by the exclusion and criminalisation of the grade 8 learner.

There is no doubt as to the fact that schools are integral institutions in societies and important settings for the development of children. While the bulk of litigation for the right to basic education relates to physical safety, infrastructure and capacity inputs, it is encouraging that courts are also receptive to considering emotional and psychological learning needs in schools. However, there is good cause to suspect that the judiciary is yet to

125 *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T).
126 Simelane *et al* "Health Services and Systems" 99.
127 Simelane *et al* "Health Services and Systems" 99.
128 *Jacobs v Chairman of the Governing Body of Rhodes High School* 2011 1 SA 160 (WCC) (4 November 2010) (hereafter *Jacobs v Chairman*) para 29.
129 *Jacobs v Chairman* para 32.
130 *Jacobs v Chairman* para 34.
131 *Jacobs v Chairman* para 3.
132 Thomas 2013 *British Educational Research Journal* 485.

fully embrace the philosophical shift entailed by the model of inclusive education. Educational support under a model of inclusive education is not only required by a certain type of learner (troubled learners, disabled learners, non-conforming learners); educational support services have to be directed at all learners.[133] But, more than this, the model of inclusive education invites the community to contribute to the support of learners. In these matters, it appears that courts predominantly give recognition to formalised sources of support only. For instance, in *Centre for Child Law v MEC* the court was of the view that psychological and social support must be accessed through the psychological-services unit of the Department of Education; in *Jacobs v Chairman* the court said that the school ought to have contacted the Department of Education and/or the Department of Social Services for intervention; in *Queens College Boys High School v MEC*, the court briefly mentioned the provision of counselling services only insofar as section 8(5)(b) of the *Schools Act* was implicated as a result of learner misconduct. Sources of support ought not to be restricted to specialised social workers and other professionals.[134] In *Jacobs v Chairman*, expert testimony confirmed that the capacity of the state to intervene and assist with support needs was "alarmingly inadequate".[135] It would have been highly valuable for the court to have heard and considered arguments for the recognition of other alternative avenues that are available for the provision of psychosocial support in schools.

The *Policy on Screening, Identification, Assessment and Support* (SIAS) identifies educational support as all activities which increase the capacity of a school to respond to diversity.[136] Broad and community-centred conceptualisations of education in South Africa are encouraging, but social and educational transformation will not be achieved by policy visions and legislation alone.[137] As Woolman and Fleisch write, courts have a role to play in the disruption of existing social structures and the setting of new norms.[138] As such, courts themselves, when presented with matters of education law, must make full use of opportunities to develop a right to basic education that is transformative, inclusive, and responsive to diverse and dynamic social conditions.

## 5 Conclusion

133 Hay 2003 *SAJE* 136.

134 Department of Education 1997 https://www.education.gov.za/Portals/0/DoE%20Branches/GET/Inclusive%20Education/Overcoming%20barriers%20to%20learning%20and%20development.pdf 3.

135 *Jacobs v Chairman* para 40.

136 Department of Education 2014 https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371 15.

137 Engelbrecht 2006 *EJPE* 261.

138 Woolman and Fleisch *The Constitution in the Classroom* 151-153.

The right to education has seen extensive development in the constitutional era. This article has discussed how increasingly deeper meaning has been given to section 29(1)(a) by the judiciary's use of purposive interpretation. The courts have evidently understood and appreciated the primary goals of societal development and transformation in the post-apartheid era.[139] Importantly, the courts have also recognised the role of adjudication in securing those goals.

Section 29(1)(c) has been interpreted to include provision of adequately safe and appropriate classrooms, textbooks, school staff, furniture, transport, and school meals. All of these inputs were found to be necessary components for the purposes of effective learning and teaching, and for the development of learners' potential. This article has also discussed the significant barriers to effective learning and teaching that are of a social and psychological nature. Such barriers include disability, socio-economic deprivation and inequality, violence and trauma. While these challenges may be systemically rooted in the social environment of learners, they nevertheless impact learning and development at school. Psychosocial support in schools that assist and empower learners is necessary to ensure that all learners have the best possible opportunities to learn and thrive. Further, the provision of psychosocial support services in schools is capable of being interpreted as an essential and necessary input for the realisation of the right to basic education. It is necessary for policy and practice to shift away from an overreliance on a severely constrained pool of social workers and specialised professionals. Education departments and school principals must leverage teachers and other educators, parents, community leaders, civil society and education officials in leading inclusive change and transformation in education.[140] Pragmatic steps must be taken to protect the developmental interests of learners and to ensure that they receive the support they need in schools.

## Bibliography

### Literature

Allais, Cooper and Shalem 2019 *Transformation*
Allais S, Cooper A and Shalem Y "Rupturing or Reinforcing Inequality? The Role of Education in South Africa Today" 2019 *Transformation: Critical Perspectives on Southern Africa* 105-126 https://doi.org/10.1353/trn.2019.0039

Apple *Can Education Change Society?*
Apple MW *Can Education Change Society?* (Routledge New York 2013)

139 McConnachie and McConnachie 2012 *SALJ* 566.
140 Gen N 196 in GG 16312 of 15 March 1995 (*White Paper on Education and Training*).

Arendse 2020 *AHRLJ*
Arendse L "Slowly but Surely: The Substantive Approach to the Right to Basic Education of the South African Courts Post-Juma Musjid" 2020 *AHRLJ* 285-314 http://dx.doi.org/10.17159/1996-2096/2020/v20n1a11

Brickhill and Van Leeve "Basic Education Provisioning"
Brickhill J and Van Leeve Y "Basic Education Provisioning" in Section27 (ed) *Basic Education Rights Handbook* 2nd ed (Section27 Johannesburg 2022) 281-301

Crouch and Hoadley "Transformation of South Africa's System of Basic Education"
Crouch L and Hoadley U "The Transformation of South Africa's System of Basic Education" in Levy B *et al* (eds) *The Politics and Governance of Basic Education: A Tale of Two South African Provinces* (Oxford University Press Oxford 2018) 27-60 https://doi.org/10.1093/oso/9780198824053.003.0002

Daniels 2010 *School Psychology International*
Daniels B "Developing Inclusive Policy and Practice in Diverse Contexts: A South African Experience" 2010 *School Psychology International* 631-643

De Lannoy, Leibbrandt and Frame "Focus on Youth"
De Lannoy A, Leibbrandt M and Frame E "A Focus on Youth: An Opportunity to Disrupt the Intergenerational Transmission of Poverty" in De Lannoy A *et al* (eds) *Child Gauge 2015: Youth and the Intergenerational Transmission of Poverty* (The Children's Institute Cape Town 2015) 22-34

De Vos 1997 *SAJHR*
De Vos P "Pious Wishes or Directly Enforceable Human Rights? Social and Economic Rights in South Africa's 1996 Constitution" 1997 *SAJHR* 67-101 https://doi.org/10.1080/02587203.1997.11834938

Dutschke *Defining Children's Constitutional Right*
Dutschke M *Defining Children's Constitutional Right to Social Services* (The Children's Institute Cape Town 2007)

Engelbrecht 2006 *EJPE*
Engelbrecht P "The Implementation of Inclusive Education in South Africa After Ten Years of Democracy" 2006 *EJPE* 253-264

Engelbrecht *et al* 2016 *International Journal of Inclusive Education*
Engelbrecht P *et al* "The Idealism of Education Policies and the Realities in Schools: The Implementation of Inclusive Education in South Africa" 2016 *International Journal of Inclusive Education* 520-535 https://doi.org/10.1080/13603116.2015.1095250

Gray and Lombard 2008 *International Journal of Social Welfare*
Gray M and Lombard A "The Post-1994 Transformation of Social Work in South Africa" 2008 *International Journal of Social Welfare* 132-145 https://doi.org/10.1111/j.1468-2397.2007.00545.x

Hall "Income Poverty, Unemployment and Social Grants"
Hall K "Income Poverty, Unemployment and Social Grants" in Tomlinson M, Kleintjes S and Lake L (eds) *South African Child Gauge 2021/2022: Child and Adolescent Mental Health* (The Children's Institute Cape Town 2022) 169-176

Hay 2003 *SAJE*
Hay JF "Implementation of the Inclusive Education Paradigm Shift in South African Education Support Services" 2003 *SAJE* 135-138

Huxtable 1998 *Social Work in Education*
Huxtable M "School Social Work: An International Profession" 1998 *Social Work in Education* 95-109 https://doi.org/10.1093/cs/20.2.95

Johnson 1982 *Anthropology & Education Quarterly*
Johnson WR "Education: Keystone of Apartheid" 1982 *Anthropology & Education Quarterly* 214-237 https://doi.org/10.1525/aeq.1982.13.3.05x0983u

Juan, Harvey and Hannan "Pursuit of Social Justice"
Juan A, Harvey J and Hannan S "The Pursuit of Social Justice Through Educational Policy for Poor, Rural and Special Needs Learners in South Africa" in Pearson W and Reddy V (eds) *Social Justice and Education in the 21st Century: Research from South Africa and the United States* (Springer Cham 2021) 75-93

Liebenberg *Socio-economic Rights*
Liebenberg S *Socio-economic Rights: Adjudication Under a Transformative Constitution* (Juta Cape Town 2010)

Mbazira and Sloth-Nielsen 2007 *Speculum Juris*
Mbazira C and Sloth-Nielson J "Incey-wincey Spider Went Climbing Up Again – Prospects for Constitutional (Re)interpretation of Section 28(1)(c) of the South African Constitution in the Next Decade of Democracy" 2007 *Speculum Juris* 147-166

McConnachie and McConnachie 2012 *SALJ*
McConnachie C and McConnachie C "Concretising the Right to a Basic Education" 2012 *SALJ* 554-590

Moses, Van der Berg and Rich *A Society Divided*
Moses E, Van der Berg S and Rich K *A Society Divided: How Unequal Education Quality Limits Social Mobility in South Africa. Synthesis Report*

*for the Programme to Support Pro-Poor Policy Development (PSPPD)* (University of Stellenbosch Stellenbosch 2017)

Muthukrishna 2002 *IJSE*
Muthukrishna N "Inclusive Education in a Rural Context in South Africa: Emerging Policy and Practices" 2002 *IJSE* 1-10

Namome, Winnaar and Arends 2021 *Human Sciences Research Council Policy Brief*
Namome C, Winnar L and Arends F "Improving Psychosocial Support in SA Schools During and After COVID-19 as Part of a Recovery Plan" 2021 *Human Sciences Research Council Policy* Brief 1-5

Nel *et al* 2016 *Koers*
Nel NM *et al* "Teacher's Perceptions of Education Support Structures in the Implementation of Inclusive Education in South Africa" 2016 *Koers: Bulletin for Christian Scholarship* 1-14 https://doi.org/10.19108/KOERS.81.3.2249

Perold and Butler *Right to Learn*
Perold H and Butler D *The Right to Learn: The Struggle for Education in South Africa* (Ravan Press Braamfontein 2000)

Petherbridge, Linderboom and Harding "School Infrastructure and Equipment"
Petherbridge D, Linderboom S and Harding M "School Infrastructure and Equipment" in Section27 (ed) *Basic Education Rights Handbook* 2nd ed (Section27 Johannesburg 2022) 303-323

Phasha, Mahlo and Dei *Inclusive Schooling and Education*
Phasha N, Mahlo D and Dei GJ *Inclusive Education in African Contexts: A Critical Reader* (Sense Publishers Rotterdam 2017)

Pretorius 2020 *Social Work*
Pretorius E "A Collaborative Partnership Between School Social Workers and Educators: A Vehicle to Address the Social Contexts of Learners and Quality of Education in South Africa" 2020 *Social Work* 139-156

Prinsloo "Socio-economic Barriers to Learning"
Prinsloo E "Socio-economic Barriers to Learning in Contemporary Society" in Landsberg E (ed*) Addressing Barriers to Learning: A South African Perspective* (Van Schaik Pretoria 2005) 27-41

Reyneke 2020 *Social Work*
Reyneke R "The Legal and Ethical Obligations of School Social Workers" 2020 *Social Work* 157-174

Schilbach, Schofield and Mullainathan 2016 *Am Ec Rev*
Schilbach F, Schofield H and Mullainathan S "The Psychological Lives of the Poor" 2016 *Am Ec Rev* 435-440 http://dx.doi.org/10.1257/aer.p20161101

Simbo 2012 *LDD*
Simbo C "Defining the Term Basic Education in the South African Constitution: An International Law Approach" 2012 *LDD* 162-184

Simbo 2013 *LDD*
Simbo C "The Right to Basic Education, the South African Constitution and the *Juma Masjid* Case: An Unqualified Human Rights and a Minimum Core Standard" 2013 *LDD* 477-503

Simelane *et al* "Health Services and Systems"
Simelane SRN *et al* "Health Services and Systems for Child and Adolescent Mental Disorders in South Africa: Towards a Better Future" in *South African Child Gauge 2021/2022: Child and Adolescent Mental Health* (The Children's Institute Cape Town 2022) 99-112

Skelton 2012 *SAPL*
Skelton A "How Far Will the Courts Go in Ensuring the Right to a Basic Education?" 2012 *SAPL* 392-408

Sloth-Nielson 2001 *SAJHR*
Sloth-Nielson J "The Child's Right to Social Services, the Right to Social Security, and Primary Prevention of Child Abuse: Some Conclusions in the Aftermath of Grootboom" 2001 *SAJHR* 210-231

Themane "Creating Rights-based and Inclusive Schools"
Themane MJ "Creating Rights-based and Inclusive Schools in South Africa" in Phasha N, Mahlo D and Sefa GJ (eds) *Inclusive Education in African Contexts: A Critical Reader* (Sense Rotterdam 2017) 37-48 https://doi.org/10.1007/978-94-6300-803-7_3

Themane and Osher 2014 *SAJE*
Themane M and Osher D "Schools as Enabling Environments" 2014 *SAJE* 1-6 https://doi.org/10.15700/201412052055

Therborn "Racism, Existential Inequality and Problems of Categorical Equalization"
Therborn G "Racism, Existential Inequality and Problems of Categorical Equalization: Reflections on the South African Experience" in Jablonski N and Mare G (eds) *Effects of Race* (Sun Press Stellenbosch 2018) 35-52

Thomas 2013 *British Educational Research Journal*
Thomas G "A Review of Thinking and Research About Inclusive Education Policy, with Suggestions for a New Kind of Inclusive Thinking" 2013 *British*

*Educational Research Journal* 473-490 https://doi.org/10.1080/01411926.2011.652070

Vergottini *Towards the Establishment of Practice Standards*
Vergottini EM *Towards the Establishment of Practice Standards for South African School Social Work: A Mixed Method Study with Special Reference to the Free State Province* (PhD-thesis North-West University 2019)

Vergottini and Weyers 2020 *Social Work*
Vergotitini M and Weyers M "The Foundations and Nature of South African School Social Work: An Overview" 2020 *Social Work* 125-138

Vergottini and Weyers 2022 *Southern African Journal of Social Work and Social Development*
Vergottini M and Weyers M "The Department of Basic Education's Expectations of Social Workers at South African Schools" 2022 *Southern African Journal of Social Work and Social Development* 1-24 https://doi.org/10.25159/2708-9355/9423

Winicki and Jemison 2003 *Contemporary Economic Policy*
Winicki J and Jemison K "Food Insecurity and Hunger in the Kindergarten Classroom: Its Effect on Learning and Growth" 2003 *Contemporary Economic Policy* 145-157 https://doi.org/10.1093/cep/byg001

Woolman and Fleisch *The Constitution in the Classroom*
Woolman S and Fleisch B *The Constitution in the Classroom: Law and Education in South Africa 1994-2008* (Pretoria University Law Press Pretoria 2009)

**Case law**

*AB v Pridwin Preparatory School* 2020 5 SA 327 (CC)

*Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T)

*Centre for Child Law v Minister of Basic Education* 2012 4 All SA 35 (ECG)

*Equal Education v Minister of Basic Education* 2019 1 SA 421 (ECB)

*Equal Education v Minister of Basic Education* 2020 4 All SA 102 (GP)

*Federation of Governing Bodies for South African Schools v Member of the Executive Council for Education, Gauteng* 2016 4 SA 546 (CC)

*Gauteng Provincial Legislature In re Gauteng School Education Bill of 1995* 1996 3 SA 165 (CC)

*Governing Body of the Juma Masjid Primary School v Essay* 2011 8 BCLR 761 (CC)

*Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC)

*Jacobs v Chairman of the Governing Body of Rhodes High School* 2011 1 SA 160 (WCC)

*Madzodzo v Minister of Basic Education* 2014 3 SA 441 (ECM)

*Minister of Health v Treatment Action Campaign* 2002 5 SA 721 (CC)

*Moko v Acting Principal of Malusi Secondary School* 2021 3 SA 323 (CC)

*Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC)

*Queens College Boys High School v MEC, Department of Education, Eastern Cape Government* (454/08) [2008] ZAECHC 165 (21 October 2008)

*S v M* 2008 3 SA 232 (CC)

*School Governing Body, Makangwane Secondary School v MEC Limpopo Department of Education* (unreported) case number 3158/2018 of 26 June 2018

*Section27 v Minister of Education* 2012 3 All SA 579 (GNP)

*Tripartite Steering Committee v Minister of Basic Education* 2015 5 SA 107 (ECG)

*Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* 2011 5 SA 87 (WCC)

**Legislation**

*Child Care Act* 74 of 1983

*Children's Act* 38 of 2005

*Constitution of the Republic of South Africa*, 1996

*Criminal Procedure Act* 51 of 1977

*South African Schools Act* 84 of 1996

**Government publications**

Gen N 196 in GG 16312 of 15 March 1995 (*White Paper on Education and Training*)

GN 3416 in GG 53120 of 6 August 2025 (*Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure*)

**International instruments**

*Convention on the Rights of the Child* (1989)

**Internet sources**

ANC date unknown https://www.anc1912.org.za/the-freedom-charter-2/
African National Congress date unknown *The Freedom Charter* https://www.anc1912.org.za/the-freedom-charter-2/ accessed 4 April 2024

Department of Basic Education 2011 https://www.gov.za/sites/default/files/gcis_document/201409/generalhouseholdsurvey2011focusonschooling.pdf
Department of Basic Education *2011 General Household Survey (GHS) 2011: Focus on Schooling* https://www.gov.za/sites/default/files/gcis_document/201409/generalhouseholdsurvey2011focusonschooling.pdf accessed 3 April 2024

Department of Basic Education 2017 https://www.education.gov.za/Portals/0/Documents/Policies/Draft%20Policy%20on%20Rural%20Education%200218.pdf?ver=2018-02-09-105713-287
Department of Basic Education 2017 *Rural Education Draft Policy* https://www.education.gov.za/Portals/0/Documents/Policies/Draft%20Policy%20on%20Rural%20Education%200218.pdf?ver=2018-02-09-105713-287 accessed 3 April 2024

Department of Education 1997 https://www.education.gov.za/Portals/0/DoE%20Branches/GET/Inclusive%20Education/Overcoming%20barriers%20to%20learning%20and%20development.pdf
Department of Education 1997 *Quality Education for All: Overcoming Barriers to Learning and Development* https://www.education.gov.za/Portals/0/DoE%20Branches/GET/Inclusive%20Education/Overcoming%20barriers%20to%20learning%20and%20development.pdf accessed 3 April 2024

Department of Education 2000 https://unesdoc.unesco.org/ark:/48223/pf0000219518.locale=en
Department of Education 2000 *Education for All: The South African Assessment Report* https://unesdoc.unesco.org/ark:/48223/pf0000219518.locale=en accessed 3 April 2024

Department of Education 2014 https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371
Department of Education 2014 *Policy on Screening, Identification, Assessment and Support*

https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371 accessed 3 April 2024

Statistics South Africa 2021 https://www.statssa.gov.za/publications/92-02-01/92-02-012021.pdf
Statistics South Africa 2021 *Child Series Volume I: Children Exposed to Maltreatment, 2021* https://www.statssa.gov.za/publications/92-02-01/92-02-012021.pdf accessed 3 April 2024

UNDP 2014 https://www.undp.org/sites/g/files/zskgke326/files/migration/za/UNDP-Inequality-South-Africa.pdf
United National Development Programme 2014 *The Impacts of Social and Economic Inequality on Economic Development in South Africa* https://www.undp.org/sites/g/files/zskgke326/files/migration/za/UNDP-Inequality-South-Africa.pdf accessed 3 April 2024

## List of Abbreviations

| | |
|---|---|
| AHRLJ | African Human Rights Law Journal |
| Am Ec Rev | American Economic Review |
| ANC | African National Congress |
| EJPE | European Journal of Psychology of Education |
| IJSE | International Journal of Special Education |
| LDD | Law, Democracy & Development |
| NSNP | National School Nutrition Programme |
| SAJE | South African Journal of Education |
| SAJHR | South African Journal on Human Rights |
| SALJ | South African Law Journal |
| SAPL | Southern African Public Law |
| UNDP | United National Development Programme |