

Can the Department of Education be held liable for a teacher sexually assaulting a learner?

Sending a child to school requires a parent or guardian to entrust not only the educational development of the child with the educators of the school, but also the general care of the child. From a legal perspective, it has been accepted that educators, and those in charge of schools, have a duty to take care of the children that have been entrusted to them, in the same manner, a reasonably careful father or mother would. The question then arises, what happens in the event of an educator not only failing to protect a child, but actively harming a child entrusted to their care? More importantly, who is liable for the damages suffered by such a child? This very question was recently considered by the Western Cape High Court.

The case before the court concerned a former pupil of the Vleiplaas Primary School who alleged that she was sexually assaulted approximately 10 years ago by the acting principal at the age of 12. The former student testified that Snyman, the perpetrator, took her to a staff bathroom, where he proceeded to lock the door, instructed her to remove her uniform, put on a condom and raped her. To some extent, her testimony was corroborated by two witnesses who saw the former student walk out of the bathroom, followed by Snyman in what they described as a dishevelled state. Based on these testimonies, the court accepted that Snyman had on a balance of probabilities, committed a sexual assault against the former student.

What was particularly concerning about this case, however, was the fact that Snyman had previously been convicted of indecently assaulting a girl under the age of 16 years old, yet he had been able to register as an educator. Snyman was able to do so as when asked to complete numerous standardized department application forms, he simply indicated that he had no previous convictions. According to Snyman, he did not disclose his previous conviction due to the phrasing of the question in the form, which question specifically required that he indicate whether he had been found guilty of a criminal offence “in his work”. No party to the proceedings could provide any suitable reason as to why Snyman’s

answer had not been checked with SAPS. It was at this stage that the court proceeded to consider the liability of the Department of Education, as they had ultimately been responsible for accepting Snyman as an employee.

Although the Department of Education attempted to shift the blame for failing to check Snyman's criminal history to the South African Council of Educators, which organization is responsible for the registration of educators, the court was not persuaded. The court was ultimately of the opinion that the Department was under a legal duty to vet educators before accepting them as employees to ensure that they are not only formally qualified to teach children, but also that they are suitable and fit persons.

The court concluded that a reasonable employer would have foreseen that children would be at risk of being sexually exploited or assaulted by educators such as Snyman. It was further clear that a reasonable employer would take steps to guard children against such harm by properly screening and vetting applicant educators.

Because the Department was unable to explain why it never checked or verified the forms Snyman completed, the court concluded that the Department of Education should, together with Snyman, be held liable for the damages suffered by the former student. These damages are to be determined at a later stage, either by a future trial or by agreement.

It should be noted that due to the liability imposed by the court on the Department of Education, something which has rarely been done in the past, this judgment is likely to be taken on appeal.

Alicia Cusack, Van Velden-Duffey Inc