THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case no**:** 766 &767/2011
Reportable

In the matter between:

THE HEAD OF DEPARTMENT: DEPARTMENT OF EDUCATION, FREE STATE PROVINCE Appellant

and

WELKOM HIGH SCHOOL First Respondent
THE GOVERNING BODY OF WELKOM HIGH SCHOOL Second Respondent

And in the matter between:

THE HEAD OF DEPARTMENT: DEPARTMENT OF EDUCATION, FREE STATE PROVINCE Appellant

and

HARMONY HIGH SCHOOL First Respondent
THE GOVERNING BODY OF HARMONY HIGH SCHOOL Second Respondent

Neutral citation: *The Head of Department: Department of Education, Free State Province v Welkom High School & Harmony High School* (766 &767/2011) [2012] *ZASCA* 150 (28 September 2012)

Coram: MPATI P, CLOETE, MHLANTLA, THERON JJA and PLASKET AJA

Heard: 18 September 2012

Delivered 28 September 2012

Summary: **School and school governing body - School governing body – In terms of South African Schools Act 84 of 1996, governance of public school vested in governing body, including right to determine school's code of conduct – the provincial head of department not empowered to instruct a school principal to ignore a pregnancy policy**

even if school governing body not empowered to adopt such a policy and even if the policy is unconstitutional.

Administrative law – administrative act – consequences of invalidity – Until invalid administrative action set aside by court in proceedings for judicial review, it exists in fact and it has legal consequences that cannot be disregarded.

Administrative law – distinction between direct and collateral challenge – only a person threatened with coercive action by a public authority may mount a collateral challenge – HOD's challenge not collateral.

ORDER

On appeal from: Free State High Court, Bloemfontein, (Rampai J sitting as court of first instance):

1 Each appeal is dismissed, with costs.

2 The order of the high court is amended to read:

'(a) In each case, for as long as the pregnancy policy remains in force, the first respondent is interdicted and restrained from directing the school principal to act in a manner contrary to the policy adopted by the school governing body.
(b) The learner concerned shall be entitled to attend formal classes at the school, to remain at the school and in her current grade and to be taught, to learn and to be examined.'

JUDGMENT

THERON JA (MPATI P, CLOETE, MHLANTLA JJA and PLASKET AJA concurring):

Introduction

[1] This appeal concerns the exercise of administrative power and the principle of legality, in the context of an instruction by a provincial Head of the Department of Education (HOD) to a principal of a public school to act in a manner contrary to a policy adopted by the school's governing body.

Background

[2] The appellant is the HOD in the Free State. The first respondent, in each matter, is a public school as defined in the South African Schools Act 84 of 1996 (the Act), respectively, Welkom High School and Harmony High School. The second respondent, in each matter, is the governing body of the respective school.

[3] On 20 November 2008, the governing body of Welkom High School adopted a policy on the Management of Learner Pregnancy, which policy was implemented with effect from 1 January 2009. The governing body of Harmony High School adopted its Policy on Pregnant School Girls on 29 January 2009. Each governing body contends that the pregnancy policy adopted by it was in accordance with the National Department of Education's Measures for the Prevention and Management of Learner Pregnancy, which were published in 2007 and intended to assist public schools in managing learner pregnancies as and when they occurred. The implementation of the respective pregnancy policies gave rise to this dispute.

[4] The first matter concerned Ms D (D), a 15 year old grade 9 learner at Welkom High School in 2010, who fell pregnant in 2010 and was due to give birth in December. In September 2010, D was advised by the principal that pursuant to the terms of the pregnancy policy, the school had taken a decision that she would have to take a leave of absence for the period 16 September 2010 until the second term in 2011, when she would be able to return in order to continue with grade 9. D's family laid a complaint against her 'expulsion' with the Minister of Basic Education, the MEC for Education in the Free State and the Human Rights Commission of South Africa. On 28 October 2010 the principal received a written directive from the HOD to rescind the decision taken in respect of D and to allow her to return to school immediately. The

school sought advice from the Federation of Governing Bodies for South African Schools (FEDSAS), a national representative organisation for school governing bodies of which it is a member. It was advised by FEDSAS to re-admit D to school, pending the outcome of an application to court to challenge the validity of the HOD's instruction. D was subsequently allowed to continue with her schooling.

[5] In the second matter, Ms M (M), a 17 year old grade 11 learner at Harmony High School gave birth to a child during June 2010. In terms of the school's pregnancy policy, a learner could not 'be re-admitted to school in the same year that they left school due to a pregnancy'. The school took a decision, in accordance with its pregnancy policy, not to allow M to continue with her schooling for the remainder of 2010. The school subsequently received a written request from the Department of Education, to review M's case. The governing body decided not to alter its initial decision. In a letter dated 20 October 2010, the HOD instructed the principal to rescind the decision and to allow Mokoena to return to school immediately. The instruction was in similar terms to that issued to the principal of Welkom High School.

[6] The high school and its governing body, in each matter, instituted urgent proceedings against the HOD during November 2010 in the Free State High Court, Bloemfontein. The matters were consolidated and in May the following year Rampai J granted an order which, inter alia, (a) declared that the HOD does not have authority to instruct or compel the school principal to act in a manner contrary to a policy adopted by the school governing body; (b) declared that the decisions taken by the governing bodies of the schools relating to the exclusion of D and M, pursuant to the implementation of the schools' pregnancy policies, were valid in law and (c) interdicted the HOD from taking steps intended to undermine the decisions taken by the schools and their respective governing

bodies pursuant to the pregnancy policies. It is against these orders that the HOD appeals, with the leave of the high court.[1] There was no appeal against the part of the order that the two learners were entitled to return to school.

[7] The South African Human Rights Commission and the Centre for Child Law were admitted as amici curiae in the high court. On 10 May 2012, this court granted the Centre for Child Law leave to intervene on appeal as an amicus curiae. The Centre for Child Law was established by the University of Pretoria and is registered as a law clinic with the Law Society of the Northern Provinces. Its main objective is to establish and promote child law and uphold the rights of children in South Africa, and in particular to use the law and litigation as an instrument to advance such interests. The submissions of the Centre for Child Law are in essence that the pregnancy policies are unconstitutional in that they discriminate against learners on the grounds of pregnancy. It will become clear why it is not necessary to have regard to these submissions.

The South African Schools Act

[8] The legislative framework relevant to the appeal is to be found in the Act. In terms of the scheme of the Act, public schools are to be run by three partners, namely the national government represented by the Minister of Education; the provincial government, that acts through the MEC for Education; and parents of the learners and members of the community where the school is located, the latter being represented in the school governing body.[2] Sections 5(5), 6(2), 7, 8(1), 16(1) and 20(1) – (5) of the Act vest particular governance powers in the governing body.

[1]The decision of the high court is reported as *Welkom High School & another v Head, Department of Education, Free State Province and Another Case* 2011 (4) SA 531 (FB).
[2]*Head of Department, Mpumalanga Department of Education & another v Hoërskool Ermelo & another* 2010 (2) SA 415 (CC) para 56.

[9] Section 23 provides that public school governing bodies are to comprise elected members, the principal in his or her official capacity and co-opted members. The elected members comprise a member or members of each of the following categories: parents of learners at the school, educators at the school, members of staff at the school who are not educators and learners in the eighth grade or higher at the school. The number of parent members on the governing body must comprise one more than the combined total of other members who have voting rights. Co-opted members of the governing body do not have voting rights.

[10] The governing body's primary function is to promote the interests of the school and ensure the provision of quality education for its learners.[3] The powers of a governing body are limited and it may only perform such functions and obligations and exercise only such rights as prescribed by the Act.[4] The limited nature of the powers of a governing body was confirmed by the Constitutional Court in *Head of Department, Mpumalanga Department of Education & another v Hoërskool Ermelo & another*, where Moseneke DCJ stated that a governing body has 'defined autonomy over some of the domestic affairs of the school'.[5]

[11] Whereas the 'professional management' of a public school must be undertaken by the principal under the authority of the HOD, the 'governance' is vested in the governing body.[6] A governing body must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.[7] Such code 'must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the

[3] Section 20(1(*a*) of the Act.
[4] Section 16(1) of the Act.
[5] Para 56.
[6] Section (16)(1) and (3) of the Act.
[7] Section 8(1) of the Act.

quality of the learning process'.[8] Section 20(1) of the Act details the functions that the governing body must perform. The obligation to adopt a code of conduct is specifically stated in s 20(1)(*d*).

Collateral challenge

[12] The HOD accepts that the governing body has authority to adopt a code of conduct but contends that it does not have the power to adopt any policy, the effect of which would be to exclude learners from attending school. It was contended that the HOD, when the lawfulness of his instructions were challenged in court, was entitled to launch a collateral challenge attacking the validity of the decisions taken by the governing bodies, and has in fact done so in these proceedings.

[13] This court, in *Oudekraal Estates (Pty) Ltd v City of Cape Town & others*,[9] held that a person has the right to raise a collateral challenge to the validity of an administrative act where he or she is threatened with coercive action by a public authority. The basis and nature of a collateral challenge was explained as follows:

'When construed against the background of principles underlying the rule of law a statute will generally not be interpreted to mean that a subject is compelled to perform or refrain from performing an act in the absence of a lawful basis for that compulsion. It is in those cases ─ where the subject is sought to be coerced by a public authority into compliance with an unlawful administrative act ─ that the subject may be entitled to ignore the unlawful act with impunity and justify his conduct by raising what has come to be known as a "defensive" or a "collateral" challenge to the validity of the administrative act.'[10]

[14] There is no act that the HOD is compelled to perform or refrain from performing in consequence of the pregnancy policies. Neither is there any

[8] Section 8(2) of the Act.
[9] *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* 2004 (6) SA 222 (SCA).
[10] Para 32.

coercive action directed at him consequent upon the implementation of the pregnancy policies. The learners could have mounted a collateral challenge in order to resist attempts by the schools to prevent them from attending school, had the schools for instance applied to interdict them from doing so.

[15] In *Kouga Municipality v Bellingan & others*,[11] this court discussed the distinction between a direct and a defensive (collateral) challenge. In that matter, the respondents had, in proceedings in the high court, launched a direct challenge against a by-law passed by the municipality regulating liquor trading hours. Cloete JA, when considering whether the high court had granted appropriate relief to the respondents, stated:

'… the correct approach to the relief sought by the applicants would have been to recognise that the application was in form a direct challenge, but in substance a defensive or collateral challenge, to the validity of the bylaw. The two are different …'[12]

In describing the difference between the two, Cloete JA referred to the statement in *Oudekraal* that:

'Each remedy thus has its separate application to its appropriate circumstances and they ought not to be seen as interchangeable manifestations of a single remedy that arises whenever an administrative act is invalid.'[13]

This is in accordance with the principle that a collateral challenge to the validity of an administrative act will only be available 'if the right remedy is sought by the right person in the right proceedings'.[14] *Kouga Municipality* confirmed that a collateral challenge is available to the person against whom an unlawful administrative act is sought to be enforced, and the learned judge of appeal concluded that there was 'no reason why a collateral challenge to the validity of

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[11] *Kouga Municipality v Bellingan & others* 2012 (2) SA 95 (SCA)
[12] Para 12.
[13] Ibid.
[14] *Metal and Electrical Workers Union of South Africa v National Panasonic Co (Parow Factory)* 1991 (2) SA 527 (C) at 530C-D. See also *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* 2004 (6) SA 222 (SCA) para 35 where this phrase from *Metal and Electrical Workers Union* was quoted with approval. See generally H W R Wade and C F Forsyth *Administrative Law* 9 ed (2004) at 302.

a piece of legislation cannot be brought in civil proceedings for a declaratory order by a person who has been charged with contravening such legislation'.[15]

[16] The HOD alleges that he is, in these proceedings, protecting the constitutional right of learners not to be excluded from school. A collateral challenge of this nature to the validity of the decisions of the governing body is not a defence in the hands of the HOD. The HOD says the pregnancy policies are unlawful, and in a nutshell, the basis of his defence is that the HOD has the power to instruct principals, as their employer, not to obey an unlawful policy or act in an unlawful manner, especially if to do so would be unconstitutional. That is a direct challenge and he has to approach a court to set aside the decisions that are, in his opinion, invalid. These matters are the converse of those dealt with in *Kouga Municipality* inasmuch as the challenge by the HOD is in form a collateral challenge, but in substance a direct challenge. The argument that the HOD had brought a collateral challenge falls to be rejected.

Section 172(1) of the Constitution

[17] I now turn to the question whether this court is obliged, in terms of s 172(1) of the Constitution,[16] to deal with the constitutional issues raised by the HOD. As was submitted by his counsel, as part of his defence, the HOD relied on the alleged unconstitutionality of the exclusionary provisions of the pregnancy policies and the decisions taken in reliance thereon to exclude learners from attending school.

[18] It was argued, on behalf of the HOD, that if the pregnancy policies are unconstitutional then the HOD is entitled, as employer, to issue an instruction to

[15] *Kouga Municipality v Bellingan & others* 2012 (2) SA 95 (SCA) para 19.
[16] Section 172(1) of the Constitution reads:
'When deciding a constitutional matter within its power, a court –
(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency…'.

the principal, as employee, not to give effect to an unlawful policy. It was further argued that this court is obliged to consider the constitutionality of the pregnancy policies. In this regard, reliance was placed on the following passage of *Mkangeli & others v Joubert & others*:[17]

'Having reached the conclusion that the Tenure Act was unconstitutional, Flemming DJP considered it unnecessary to make a formal declaration of invalidity - this despite the provisions of s 172(1) of the Constitution which requires that a Court when deciding a constitutional matter within its jurisdiction "must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency". If the constitutionality of the legislation was not relevant to his judgment the learned judge ought not to have considered that issue; if it was relevant he ought to have taken steps to have had the Minister responsible for the administration of the Tenure Act joined as a party to the proceedings. He ought then to have heard argument from the parties on that issue, and if he found the Act to be inconsistent with the Constitution, he ought to have made a declaration to that effect as required by s 172(1) of the Constitution.'[18]

[19] In my view, the fact that a collateral challenge was not available to the HOD puts paid to this argument. Secondly, the passage I have quoted from *Mkangeli* is to the effect that when a constitutional challenge is properly before a court, it must deal with it. In this case, because the HOD was not entitled to raise a collateral challenge, the constitutionality of the pregnancy policies was not properly before the court a quo.

[20] It was not necessary for the court to determine the constitutional issue.[19] The schools have deliberately chosen not to address the constitutional complaints against the exclusionary provisions of the pregnancy policies and have confined themselves to an argument that, irrespective of the constitutional validity of the policies, the HOD has no power to order the principals to ignore

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[17] *Mkangeli & others v Joubert & others* 2001 (2) SA 1191 (CC).
[18] Para 10.
[19] *S v Mhlungu & others* 1995 (3) SA 867 (CC) para 59; *Zantsi v Council of State, Ciskei & others* 1995 (4) SA 615 (CC) paras 2-5; *Ex Parte Minister of Safety and Security & others: In Re S v Walters & another* 2002 (4) SA 613 paras 64-67.

the policies and to re-admit the learners, and that his conduct in doing so violated the constitutional principle of legality. In the view I take of the matter, it was indeed not necessary for the schools to address the constitutional complaints against the pregnancy policies. They launched proceedings relating to the unlawful conduct of the HOD.[20] That issue can be determined without pronouncing upon the constitutionality of the policies. It would have been different, had the HOD launched a counter-application, as he had indicated was his intention to; but he did not. The constitutionality of the pregnancy policies was not relevant to the judgment of the high court and the learned judge was correct in not considering that issue. The judge put the matter thus:

'The common issue before me in these two applications is really not the unlawfulness of the pregnancy policies adopted and implemented, but rather the lawfulness of the instruction given. I am therefore not called upon to consider the substantive dimension (merits or demerits) of the pregnancy policy. Yet, that was precisely what the respondents and the amici wanted me to do. But there was no avenue open to me to get there. None of the respondents had filed any counter-application to challenge the pregnancy policies adopted by the schools. The critical issue before me was concerned with the procedural dimension of the first respondent's action(s) — call it the legality thereof, if you will.'[21]

The reasoning of the high court cannot be faulted and is equally applicable to the issues on appeal. In any event, there is insufficient evidence on record to embark on a detailed analysis of the constitutionality of the pregnancy policies.

Authority of the HOD

[21] It was argued that as the employer of principals, the HOD has the ordinary powers of an employer to issue instructions to an employee. This was the only basis on which the HOD relied for his authority to have issued instructions to the principals to disregard the provisions of the pregnancy policies. It was further contended that the HOD, as employer, has the power to

[20] For a similar situation see *Queenstown Girls High School v MEC, Department of Education, Eastern Cape & others* 2009 (5) SA 183 (Ck) para 13.

[21] *Welkom High School & another v Head, Department of Education, Free State Province and Another Case* 2011 (4) SA 531 (FB) para 36.

instruct a principal, as employee, not to implement an unlawful policy and was obliged to do so in view of s 7(2) of the Constitution[22] if the policy was unconstitutional. It was contended that the Act recognises the importance of the employer/employee relationship between the HOD and the principal, and the primacy of this relationship over any relationship between the principal and the governing body. Support for this view, so the argument went, is to be found in s 16(3) of the Act which provides that the principal's responsibility for the professional management of the school is exercised 'under the authority of the Head of Department'. Thus, while the principal sits on, and is obliged to assist, the governing body in the performance of its functions and responsibilities, such assistance may not be in conflict with instructions issued by the HOD.

[22] This argument is fundamentally flawed and a recipe for chaos. It is flawed because it ignores the fact that, as I have pointed out, the adoption of a code of conduct is a governance issue that falls within the domain of the governing body. It does not fall within the professional management of a public school that must be undertaken by the principal under the authority of the HOD. The HOD may issue appropriate instructions to a principal in relation to the professional management of the school, but he does not have any authority, under the Act, to issue an instruction to a principal to disregard a policy adopted by the governing body in relation to governance matters at the school. The HOD's opinion that such policy might be unlawful is no justification for his interference in matters over which the governing body exercises responsibility. That would produce the chaos to which I have referred. The HOD was entitled to request the governing bodies of the schools to rescind their pregnancy policies and to put forward all arguments he considered relevant. But his remedy when they refused to do so was to mount a challenge in a court of law –

[22] Section 7(2) of the Constitution reads:
'The state must respect, protect, promote and fulfil the rights in the Bill of Rights'.

as a matter of urgency for interim relief, if necessary. I turn to consider this question.

Administrative decisions of the governing bodies

[23] A decision by a school governing body to adopt a pregnancy policy is an administrative decision. Even if the pregnancy policies adopted are unconstitutional, and even if school governing bodies are not empowered by the Act to adopt such policies, as alleged by the HOD, it does not follow that the HOD is entitled to instruct the principals to disregard such policies. In *Oudekraal*, this court held that until an unlawful and invalid administrative decision is set aside 'by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked'.[23] The rationale underlying the court's decision is apparent from the following passage of the judgment:

'The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.'[24]

In the circumstances, the decisions of the governing bodies stand until set aside by a court, and the conduct of the HOD, in instructing the principals not to implement the policies, was unlawful.

[24] The HOD says that by issuing the instructions to the principals he was acting in the best interests of the learners who were being denied access to school in terms of unlawful and unconstitutional polices. The purest of motives of the HOD cannot justify what amounts to self-help. The high court was alive to the fact that the HOD, in issuing the directive to the principals, had tried to

[23] *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* 2004 (6) SA 222 (SCA) para 26.
[24] Ibid. See also *Judicial Service Commission v Cape Bar Council (Centre for Constitutional Rights as amicus curiae)* (818/11) [2012] ZASCA 115 para 13 and the cases cited therein.

'ensure that invalidity and injustice did not prevail'. The HOD believed that he was acting in the best interests of the learners, but the course of conduct he adopted was, and remains, unlawful.

The principle of legality

[25] It must be accepted that the HOD exercises executive control over public schools through principals.[25] However, the HOD is constrained by the principle of legality. This principle dictates that 'the exercise of public power is only legitimate where lawful'.[26] The HOD, as a public functionary, may exercise no power and perform no function beyond that conferred upon him by law. The question that arises is whether the HOD, by instructing the principals to re-admit the learners, acted within his powers.

[26] In *Minister of Education, Western Cape & others v Governing Body, Mikro Primary School & another*, it was held that, save in the case of a new school, the governance of the school and the admission and language policy of the school are to be determined by the governing body of a school subject to the provisions of the Act and applicable provincial law.[27] The school was a single medium Afrikaans school. The court held that a directive by the HOD to the principal to admit certain learners and to have them taught in English, was unlawful. The court concluded that the HOD and Minister, by failing to avail themselves of any of the remedies available to them, and merely instructing the principal to admit the learners concerned to the school for instruction in English, had acted contrary to the admission policy of the school and in so doing the Department of Education had substituted its own admission policy for that of the school. Streicher JA went to say that:

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[25] *Head of Department, Mpumalanga Department of Education & another v Hoërskool Ermelo & another* 2010 (2) SA 415 (CC) para 56.
[26] *Fedsure Life Assurance Ltd & others v Greater Johannesburg Transitional Metropolitan Council & others* 1999 (1) SA 374 (CC) para 56.
[27] *Minister of Education, Western Cape & others v Governing Body, Mikro Primary School & another* 2006 (1) SA 1 (SCA) para 32.

'In so doing it was acting unlawfully, as it did not have the power to determine an admission policy for the school. Even if the language and admission policy determined by the first respondent was invalid, the department or the first and second appellants did not, in terms of the Act, have the power to determine a language or admission policy for the second respondent. It follows that the directive … was unlawful.'[28]

[27] In the matters under consideration, the HOD issued a directive to each of the school principals that D and M should be allowed to return to school and that the decision of the governing bodies be rescinded. The HOD, in issuing such instructions to the principals, was in effect substituting his own pregnancy policy for that of the respective schools. The HOD does not have the power, in terms of the Act, to determine pregnancy policies for the schools. Whether the governing bodies have such power is irrelevant, and so is the constitutionality of the policies, the question addressed by the amicus curiae. It suffices, for the purposes of this appeal, to hold that the HOD failed to adhere to the principle of legality and that his conduct is accordingly unlawful, for the reasons given by the high court:

'The HOD had no outright legislative power to determine or to abolish the learner pregnancy policy for the school all on his own and against the popular and democratic will or resolution of the school governors. This was the effect of his [instruction]. Similarly, he had no outright legislative authority to veto the principal's decision to implement the learner pregnancy policy of the school. This was the effect of his … order. However misguided or invalid the learner pregnancy policy was the department or its functionary had no … power to override the school governors and the school managers.'[29]

Order

[28] The terms of the order granted by the high court are too wide and need to be amended so as to limit the scope of the order. In terms of the order as it

[28] *Minister of Education, Western Cape & others v Governing Body, Mikro Primary School & another* 2006 (1) SA 1 (SCA) para 43.
[29] *Welkom High School & another v Head, Department of Education, Free State Province and Another Case* 2011 (4) SA 531 (FB) para 45.

stands, the HOD would be precluded from taking the decisions of the governing bodies on review. In addition, that part of the order declaring the decisions of the governing bodies 'valid in law' presupposes that the decisions cannot be assailed on any legal grounds. I doubt that the learned judge intended to go that far. He must have intended, as stated in *Oudekraal*, that the decisions are valid until set aside. Furthermore, the order that the learners are to remain at the schools 'until the completion of their high school careers' effectively precludes their future expulsion on valid grounds. The order that was given reflected the fact that by the time the application came to be heard, the learners had passed the grades in which they were studying at the time the application was launched and they were already being educated in a higher grade.

[29] The following order is made:

1 Each appeal is dismissed, with costs.

2 The order of the high court is amended to read:

'(a) In each case, for as long as the pregnancy policy remains in force, the first respondent is interdicted and restrained from directing the school principal to act in a manner contrary to the policy adopted by the school governing body.

(b) The learner concerned shall be entitled to attend formal classes at the school, to remain at the school and in her current grade and to be taught, to learn and to be examined.'

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L V THERON

JUDGE OF APPEAL

Appearances

Appellant:	M Chaskalson SC (with BS Mene) Instructed by: State Attorney, Bloemfontein
Amicus curiae:	N Rajab-Budlender Instructed by: Centre for Child Law, Pretoria University of Free State Law Clinic, Bloemfontein
Respondents:	N Snellenburg Instructed by: Horn & Van Rensburg Attorneys, Bloemfontein