

Understanding harassment and bullying of learners in school: An education law perspective

Annamagriet de Wet

Edu-HRight Research Unit, Faculty of Education Sciences, North-West University,
Potchefstroom Campus

E-mail: annamagriet.dewet@nwu.ac.za

South African learners are often subjected to harassment, bullying and other forms of victimisation and abuse in schools. A duty rests of educators, schools and the Department of Basic Education to provide and maintain safe school environments that are free from harassment, bullying and other forms of victimisation and abuse. Having a clear understanding of the concepts that describe different forms of bullying and harassing behaviour can be regarded as one of the key-measures for preventing and addressing harassment, bullying and other forms of victimisation and abuse in schools is. Without a clear understanding of each of the concepts as well as what behaviour constitutes each form of misconduct, educators will be unable to identify and act on harassment and bullying when it occurs. However, a great variety of definitions and conceptualisations exist for bullying and harassment. Moreover, the Protection from Harassment Act came into effect in 2013, highlighting the need for a clear conceptualisation of harassment and related concepts within the school setting. This article analysed legal documents as well as theoretical conceptualisations of harassment, sexual harassment and bullying in an attempt to provide a clear conceptualisation that will aid schools to identify behaviour that amounts to harassment or bullying. Differences between the respective concepts as well as differences between permitted and prohibited behaviour received particular attention with a view to aid educators and schools in understanding which behaviour constitutes bullying and which behaviour constitutes harassment, including sexual harassment. The article concludes with guidelines for handling harassment and bullying in the school environment

Keywords: education law; safe school; sexual harassment; harassment; bullying; rape; sexual violence; violence; aggression; abuse.

BACKGROUND

In an ideal world, interactions between humans will be caring, respectful and compassionate. Such interactions are especially expected against the background of human rights and the values outlined in the *Constitution of the Republic of South Africa* (SA, 1996a). In reality, though, some human interactions are characterised by violence and abuse, be it emotional, psychological or physical violence. Interpersonal violence and abuse reflects a lack of social skills or the will for some to behave in accordance with moral, social and legal norms. Bullying, harassment and other forms of victimisation and abuse are forms of violence that are wide-spread in schools (De Wet & Van Huyssteen, 2008) and may result not only in physical harm but often also cause psychological, emotional, mental or economic harm. A brief look at the headlines on various news platforms will reveal just how wide-spread harassment, bullying and other forms of victimisation and abuse are (Burton & Leochut, 2013: 11-31; De Vries, 2008; Harbour, 2010; John, 2014; Matitsa, 2011: 9; Prinsloo, 2005: 5; SACE, 2011: 11; MiET, 2009).

High frequencies or intensities of emotional, psychological or physical aggression create a hostile, unsafe and abusive school environment. Learners in such a school environment, and in particular those who fall victim to harassment or bullying are left with feelings of humiliation, powerlessness, rejection, helplessness, defencelessness, psychological distress, depression, anxiety, fear, anger and low self-esteem (Shields, Nadasen & Hanneke, 2014: 8-11; Naser et al, 2003: 127; MiET, 2009: 21-23; Neff, 2001: 2; OCR, 2008: 1; Selikow, Zulu & Cedras, 2002: 23, AAUW, 1993: 9; Houston, 2001: 1; DBE, 2008a: 7). More importantly, learners' education rights cannot be realised in a hostile, unsafe or abusive school environment: harassment and bullying negatively affects teaching-learning in many ways (Oosthuizen, 2015: 7-9; De Wet, 2010: 226-246).

The duty of educators to create a safe school environment that is free from harassment, bullying and other forms of victimisation and abuse have been established (see De Wet, 2013: 24-27; De Wet, 2010: 78:87). Moreover, there are indications of the possibility of schools' and educators' delictual liability for the emotional and physical harm suffered by victims if this duty is not exercised (De Wet, 2010: 87-97; De Wet, 2013: 27-32). Having a clear understanding of the concepts that describe different forms of bullying and harassing behaviour can be regarded as one of the key-measures for preventing and

addressing harassment, bullying and other forms of victimisation and abuse in schools is (De Wet & Oosthuizen, 2010: 222-223; De Wet, 2010: 198-199; Musaka, 1999: 58-60; Lewis & Hastings, 1994: 201). Without a clear understanding of each of the concepts as well as what behaviour constitutes each form of misconduct, educators will be unable to identify and act on harassment and bullying when it occurs.

In 2010, De Wet and Oosthuizen (2010) explored the nature of sexual harassment of learners in schools and provided detailed conceptualisations of various forms of sexual harassment of learners by both their peers and their educators. In 2012, Coetzee (2012) highlighted some conceptual gaps when she analysed law and policy dealing with learner sexual misconduct in schools. In 2013, in an attempt to address some of the issues raised by Coetzee (2012), De Wet (2013) re-visited the concepts of sexual violence and sexual harassment. However, during 2013 the Protection from Harassment Act came into operation, newly defining harassment and sexual harassment and providing remedies for victims of harassment. It has therefore once again become necessary to provide a clear conceptualisation of harassment and other concepts related to or associated with harassment of learners in schools. Questions arise regarding the nature of harassment and how it differs from sexual harassment, and also to what extent victims of bullying are protected.

Against this background, the aim of this article is to analyse legal documents as well as theoretical conceptualisations of harassment, sexual harassment and bullying in an attempt to provide a clear conceptualisation that will aid schools to identify behaviour that amounts to harassment or bullying. Particular attention will be given to the differences between the respective concepts as well as differences between permitted and prohibited behaviour with a view to aid educators and schools in understanding which behaviour constitutes bullying and which behaviour constitutes harassment, including sexual harassment. The article concludes with guidelines for handling harassment and bullying in the school environment.

HARASSMENT, SEXUAL HARASSMENT AND BULLYING: A CONCEPTUALISING

When examining the various ways in which authors and legal documents define bullying, harassment and other forms of victimisation and abuse, it is easy to understand why educators and schools have trouble distinguishing between or identifying behaviours that amount to harassment, sexual harassment and bullying. In essence, these concepts all describe unwelcome, offensive and hurtful behaviour which is serious or repetitive in nature. Acts, regulations and policies in the South African legal framework more often make use of the word harassment (see SA, 2000; SA, 2011; DBE, 2002) than the word bullying (see SA, 2005; DBE, 1998). The paragraphs to follow clarify the nature, characteristics and behaviours related to the concepts harassment, sexual harassment and bullying.

Harassment

The concept *harassment* in essence refers to a violation of personal boundaries in a manner that the victim experiences as harmful or offensive. Within the school setting, the Regulations to Prohibit Initiation Practices in Schools (DBE, 2002: Section 1) defines *harassment* as follows:

...behaviour which is hostile or offensive to a reasonable person and which unreasonably interferes with an individual's work, academic performance or social life and any behaviour that creates an undermining of the integrity or dignity of an individual. Such behaviour can make a reasonable person feel uncomfortable, unsafe, threatened, embarrassed, and may be physical, verbal or non-verbal. The common link is that the behaviour would be unwanted by any reasonable person and could not be justified through personal or family relationships.

This definition defines harassment as behaviour in schools that is unwelcome, offensive and hurtful. The effects that such behaviour may have on the learner are specifically highlighted as part of the definition, addition to reasonableness in determining unwelcomeness.

A different definition can be found in the *Promotion of Equality and Prevention of Unfair Discrimination Act* (SA, 2000, hereinafter *Equality Act*) which prohibits harassment that constitutes unfair discrimination that is directed at a person because of that person's membership or perceived membership of a specific group. Harassment in this sense is defined as (SA, 2000: Section 1):

...unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to sex, gender, sexual orientation or a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such a group.

In terms of Section 9 of the *Constitution* (SA, 1996a) as well as section 1 of the *Equality Act* prohibited grounds include race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. In addition, the *Equality Act* includes any other ground where discrimination causes or perpetuates systemic disadvantage, undermines a person's human dignity or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner. Such harassment would include homophobic, racist, sexist or xenophobic bullying or harassment, all of which is based on one of the prohibited grounds and violates a person's human dignity and right to equality.

Apart from defining harassment in relation to unfair discrimination, The *Equality Act* characterises harassment as unwanted behaviour which is persistent or repetitive, and that causes harm in the form of degradation, humiliation, hostile or intimidating environments or other real or threatened adverse consequences inflicted on the victim by means of intimidation or coercion.

In 2013, the *Protection from Harassment Act* (SA, 2011, hereinafter *Harassment Act*) came into effect which affords victims of harassment effective remedies and enables organs of state to protect victims and prosecute perpetrators of harassment. This act introduced a definition that highlights the harmful nature of harassment as opposed to defining it as offensive or persistent or serious. Harassment is defined as meaning (SA, 2011: Section 1),

...directly or indirectly engaging in conduct that the respondent knows or ought to know –

- (a) causes [any mental, physical, psychological or economical] harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably –
 - (i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
 - (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
 - (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of the complainant or a related person; or
- (b) amounts to sexual harassment.

In terms of the *Harassment Act* (SA, 2011) harassment is any behaviour that causes mental, physical, psychological or economic damage to the victim, thus harassment refers to harmful behaviour as opposed to unwanted behaviour in other definitions. However, harmful behaviour only constitutes harassment if the perpetrator has realised, or can be reasonably expected to have realised, that his or her behaviour would be harmful. This definition further includes the notion of reasonableness by including “by unreasonably” before listing prohibited behaviours in subsections (a)(i)-(iii). In other words, the behaviour listed is only prohibited to the extent that it would be viewed as unreasonable, thus unwelcome, offensive or harmful to the reasonable person.

The omission of qualifiers such as “persistent” and “serious” which is often used when defining harassment implies that for the purpose of the *Harassment Act* (SA, 2011) and the remedies made available by this act, the definition is more inclusive than other definitions. In this sense, the Act seeks to not only protect victims after repeated harmful behaviour has taken place, but also to prevent repeated harmful behaviour by affording victims of harassment remedies even in cases where the behaviour is not (yet) persistent. Then again, the Act limits behaviour to sexual harassment or to the behaviours listed in subsections (a)(i)-(iii). In this sense the *Harassment Act*'s definition is not as wide as other definitions that include any unwanted behaviour that demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission. The *Harassment Act* does particularly include harassment that takes place by means of electronic communication, thus including cyber-harassment and cyber-stalking.

When schools and educators aim at preventing and dealing with harassment, they should understand that each of the definitions quoted here are relevant for the purposes of the remedies available in the specific document it is included in, be it the *Regulations for Prohibiting Initiation Practices* (DBE, 2002a) the *Equality Act* (SA, 2000) or the *Harassment Act* (SA, 2011). But, for the purposes of a more general approach to prevention and management of harassment in school, an inclusive and less specific definition is needed. Drawing from the elements in the definitions quoted above, harassment could be defined as *unwanted behaviour that is unreasonable and causes mental, psychological, physical or*

economic harm to the victim. Harm includes personal harm, humiliation or degradation as well as hostile, intimidating or abusive environments that interfere with teaching-learning.

Harassment includes sexual harassment but is not necessarily sexual in nature. In the paragraphs to follow, sexual harassment will be unpacked.

Sexual Harassment

Sexual harassment is generally understood as a form of gender violence which includes all overt and covert acts directed at a person because of his or her gender and that result in, or could result in, the physical, sexual or psychological harm or suffering of a person (male or female) (Selikow et al, 2003: 23). In terms of the *Harassment Act*, sexual harassment is defined as harassment that is sexual in nature, including unwelcome sexual attention, unwelcome sexual behaviour, sexual coercion or sexual bribery (SA, 2011: Section 1):

Sexual harassment means any –

- (a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;
- (b) unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated;
- (c) implied or expressed promise of reward for complying with a sexually-oriented request; or
- (d) implied or expressed threat or reprisal or actual reprisal for refusal to comply with a sexually oriented request.

Within the education context, the Guidelines for the Prevention and Management of Sexual Violence and Harassment of Learners in Public Schools (DBE, 2008a, hereinafter *Sexual Violence and Harassment Guidelines*) defines sexual harassment in a similar manner, but also includes gender-based harassment in its definition:

Sexual harassment is:

- (i) Unwanted conduct of a sexual nature
- (ii) Sexual attention constitutes sexual harassment if:
 - (a) The behaviour is persisted (although a single incident of harassment may constitute sexual harassment)
 - (b) The recipient has made it clear that the behaviour is considered as offensive, and or
 - (c) The perpetrator knew or should have known that the behaviour is regarded as unacceptable
- (iii) Sexual harassment may include unwelcome physical, verbal or non-verbal conduct
- (v) [sic] It may include discrimination or offensive behaviour on the basis of the gender or sexual orientation of a person
- (vi) Sexual harassment is not limited to situations where an unequal power relationship exists between parties involved
- (vii) Sexual harassment can be committed by and against a male or female person.

The definition by the Department of Education includes harassment as a form of unfair discrimination on the basis of sexual orientation and gender. Due to problematic conceptualisations in the *Sexual Violence and Harassment Guidelines* (DBE, 2008a) as pointed out by Coetzee (2012: 27-29) and De Wet (2013: 22-24) this article will stand by the definition provided by the *Harassment Act*. Grouping the two forms of harassment together would prevent educators and learners from understanding the distinct nature, causes and effects of each. Difficult as it may be, it is therefore important to draw a distinction between “gender-based” harassment and “sexual” harassment.

It is recommended that schools distinguish between discriminatory harassment as prohibited by the *Equality Act* and sexual harassment as prohibited by the *Harassment Act*. Gender-based harassment (as defined by the *Equality Act* (SA, 2000: Section 1)) refers to unwelcome behaviour that is related to sex, gender, sexual orientation, pregnancy, virginity or marital status. Gender-based harassment encompasses generalised sexist statements and behaviour that convey insulting, degrading and/or sexist attitudes, or that undermine the status and integrity of girls and women, or unreasonably deprive girls and women of opportunities afforded boys and men. Gender-harassment is often included as a form of sexual harassment. In contrast, sexual harassment, as defined by the *Harassment Act* (SA, 2011) refers to unwelcome behaviour of a sexual nature.

In short, sexual harassment could be distinguished from other non-sexual forms of harassment and bullying by the sexual nature thereof (in terms of the *Harassment Act*): it involves conduct that is sexual

in nature or related to sex or sexuality and is usually directed at a person because of his or her gender or sex. De Wet & Oosthuizen (2010: 201-211) pointed out the criteria for sexual harassment as follows:

- conduct must be of sexual nature;
- conduct must be unwelcome to the victim,
- behaviour must be severe, pervasive or persistent,
- conduct must reasonably interfere with the victim's work or study; and
- subjective and objective standards should be met, which refers to the reasonability of the victim's feelings.

The *Harassment Act* however does not seem to include persistence as a requirement, while reasonableness and unwelcomeness are included. Thus, unwelcome sexual attention or sexual conduct does not need to be persistent to qualify as sexual harassment.

An important question to consider is the question of what behaviours constitute "sexual conduct" or "sexual attention". The *Harassment Act* is pretty clear on what behaviours constitute sexual harassment. Nevertheless, some clarification of sexual conduct may be helpful. Films and Publications Act (SA 1996: Schedule 11) defines *sexual conduct* as follows:

Sexual conduct means genitals in a state of stimulation or arousal; the lewd display of genitals; masturbation; sexual intercourse, which includes anal sexual intercourse; the fondling, or touching with any object, of genitals; the penetration of a vagina or anus with any object; oral genital contact; or oral anal contact.

This definition describes "sexual conduct" by referring to rather explicit and overt sex-related behaviour. However, in the context of sexual harassment, sexual conduct may also include less explicit behaviour such as sexual advances or innuendos; touching of a sexual nature; graffiti of a sexual nature; displaying or distributing of sexually explicit drawings, pictures, objects and written materials; sexual gestures; sexual or "dirty" jokes, comments or insults; pressure for sexual favours; touching oneself sexually or talking about one's sexual activity in front of others; inappropriate enquiries about a person's sex life; spreading rumours about or rating someone as to sexual activity or performance; and a body or strip search by or in the presence of the opposite sex (OCR, 2008: 3; SA, 2005: Section 5.3.1; De Wet & Oosthuizen, 2010).

A distinction can be made between less severe and more severe categories of sexual harassment. Sexual harassing behaviour could include actions from one or more of the following categories (Lewis & Hastings, 1994: 22; De Wet & Oosthuizen, 2010: 1198):

- *Seductive behaviour* including unwanted, inappropriate and offensive physical or verbal sexual advances.
- *Sexual bribery* including solicitation of sexual activity or other sex-linked behaviour for promise of reward – this includes *quid pro quo* ('this for that') harassment where an employer abuses authority over an employee, or an educator over a learner.
- *Sexual coercion* including coercion or sexual activity or other sex-linked behaviour by means of intimidation or threatening.
- *Sexual assault* including any form of sexual violation or rape as defined in the *Sexual Offences Act*.

A person who engages in sexual harassment thus focuses on only one aspect of the victim's being, namely sexuality, which, in effect, reduces the victim to an object for the sexual or other pleasure (gratification) of the perpetrator. Such behaviour is morally objectionable and represents sexual objectification. Objectification is defined by Papadaki (2010: 32) as

Seeing and/or treating a person as an object (seeing and/or treating them in one or more of these seven ways: as an instrument, inert, fungible, violable, owned, denied autonomy, denied subjectivity), in such a way that denies this person's humanity. A person's humanity is denied when it is ignored, not properly acknowledged and/or when it is in some way harmed.

Not all sexual attention can however be considered sexual harassment. Flirting is for example common among especially teenagers, and therefore it is necessary for educators to be able to distinguish between flirting and sexual harassment, especially when behaviour falls in the category of seductive behaviour. Flirting does not cause harm or make the person being teased feel powerless or victimised. Flirting is usually flattering, boosting the self-esteem and value of the person being teased. It is reciprocal and both parties can participate in and enjoy the teasing equally. (De Wet, 2010; De Wet, 2013; De Wet & Oosthuizen, 2010; Bates, 2014; De Wet, 2015). Harassment on the other hand is not enjoyed by the victim and instead of being flattering, it leaves the victim feeling powerless, degraded, disrespected and

degraded. Harassment is behaviour that is unwanted and one-sided, not welcome to the victim and experienced as a violation of dignity and/or mental, bodily or sexual integrity (De Wet, 2010; De Wet, 2013; De Wet & Oosthuizen, 2010; Bates, 2014). Thus it denies the victim's humanity (Papadaki, 2010).

In spite of the extensive conceptualisation of harassment and sexual harassment provided here, there is still a gap when it comes to describing and/or defining some of the unwelcome attempts one person could make to gain or maintain power and/or control over another by disempowering the victim. In an attempt to cover this gap in the definition of harassment, the phenomenon 'bullying' will be looked at next.

Bullying

The concept *bullying* is found in the *Children's Act* (SA, 2005: Section 1) where child abuse is defined as including bullying by another child:

"abuse", in relation to a child, means any form of harm or ill-treatment deliberately inflicted on a child, and includes–

- (a) assaulting a child or inflicting any other form of deliberate injury to a child;
- (b) sexually abusing a child or allowing a child to be sexually abused;
- (c) bullying by another child;
- (d) a labour practice that exploits a child; or
- (e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally;

In terms of this definition bullying of learners by other learners in school could amount to child abuse where the behaviour involves any form of harm or ill-treatment deliberately inflicted on a child. This raises the question as to whether educators who become aware of bullying as a form of child abuse are compelled under section 110 of the *Children's Act* to report it to a child protection organization or the police. In terms of section 110 any teacher who on reasonable grounds concludes that a child has been abused in a manner causing physical injury or sexually abused must report that conclusion in the prescribed form to a designated child protection organization, the provincial department of social development or a police official.

Looking to education specific documents, the *Guidelines for Consideration of Governing Bodies when Adopting a Code of Conduct for Learners* uses the word bullying in the list of offences that may lead to suspension (DBE, 1998: item 11(m)). Bullying is, however, not defined, and since the document is older than the *Children's Act* it would not include any guideline as to the possibility of handling bullying as child abuse. In terms of the Guidelines and the *South African Schools Act* (SA, 1996b) learners who bully should be disciplined according to disciplinary procedures for serious misconduct (Sections 8 and 9).

When considering how other authors (De Wet, 2003: 169; De Wet & Van Huyssteen, 2008: 14; Russo, 2013: 32; Moodley, 2012: 539; Vally & Ramadiro, 2005: 4-5; De Wet, 2015) define bullying, and drawing on harassment definitions quoted earlier in this article, bullying can be defined as unwelcome and harmful conduct which is persistent or serious and demeans, humiliates, intimidates, creates a hostile or intimidating environment, causes deliberate harm or is calculated to induce submission by actual or threatened adverse consequences.

Bullying involves an attempt by the bully to gain power and/or control by disempowering the victim, often in an attempt on the side of the bully to gain self-worth. Russo (2013: 32) as well as De Wet and Van Huyssteen (2008:18) point out that a bully, who can either be a poor performer (with low self-esteem, low academic performance, emotional problems, poor social skills) or a good performer (high self-esteem who is rich, attractive, athletic, popular or articulate and is assertive), bullies others in an attempt to reinforce or gain social or personal power. This is done by degrading, intimidating or demeaning the victim (usually repeatedly).

Bullying is characterised by the following defining elements (Neser et al, 2003: 127,129; Sullivan, 2000: 9, Behr, 2000: 48; Russo, 2013: 32; Vally & Ramadiro, 2005: 4-5; Moodley, 2012: 539; De Wet & Van Huyssteen, 2008: 15; De Wet, 2015):

- Harm is intended.
- An imbalance of power (real or imagined) exists.
- It involves a pattern of repeated behaviour.
- It is often organised and systematic, and may be carried out by groups.
- The victim is vulnerable.

- A lack of support for the victim exists.
- The victim experiences physical or psychological damage (hurt or harm) but often both.

Not all deliberately hurtful or persistent behaviour amounts to bullying. Therefore, and in order to educate learners and deal with perpetrators, it is necessary for educators to be able to distinguish between behaviour that amounts to bullying on the one hand, and teasing, conflict or occasional mean behaviour on the other hand. Whereas conflict and occasional mean behaviour is unwanted and unpleasant it differs from bullying in that it is not persistent (Vally & Ramadiro, 2005: 4-5; Sinclair, 2012; Sepp, 2013) while teasing, although persistent, differs from bullying in that it is not (deliberately) hurtful (Vally & Ramadiro, 2005: 4-5; Sinclair, 2012; Sepp, 2013).

To aid the identification of behaviour that amounts to harassment and/or bullying, some examples of how these may present themselves in the school environment will be looked at next.

Different forms of harassment and bullying

Both bullying and harassment refer to unwelcome behaviour and to behaviour that harms the victim in some way. Although harassment and bullying can both represent a pattern of repeated behaviour, a single act of a serious nature could constitute harassment. Some important differences between harassment and bullying are as follows (De Wet, 2015):

- 1 Bullying is exercised repeatedly by a specific person or group of persons towards a specific individual, whereas harassment may be exercised (repeatedly) towards individuals or groups by a variety of persons in a specific environment such as the school.
- 2 The bully is known to the victim whereas one can be harassed by a stranger too.
- 3 While harm is intended in the case of bullying, some forms of harassment (for example seductive behaviour) are not aimed at hurting the victim. It is, however, calculated to induce submission, and the perpetrator knows, or can reasonably be expected to know, that it is unwanted and harmful.
- 4 Although harassment is often power-based, a fourth difference may occur in cases when harassment is perpetrated in a situation where there is no power imbalance between the victim and the harasser, for example excessive teasing by a peer or colleague.

Learners who harass and bully other learners may employ one or more of a wide variety of behaviours. The nature of the behaviour and the motivation for the various forms may differ, but the defining characteristics will be present in each instance. To aid educators further in understanding which behaviour constitutes bullying and/or harassment, I have summarised various forms and examples of each in the list below (Van Meelis, 1999: 74, De Wet, 2003: 170; De Wet & Van Huyssteen, 2008: 15-16, 30; Russo, 2013: 32; Moodley, 2012: 540; Vally & Ramadiro, 2005: 4-5; DBE, 2008a: 5-6; Coetzee, 2012; De Wet & Oosthuizen, 2010: 198-201; Naser et al, 2003: 128; Behr, 2000: 48, Weaver, 2001: 24; De Wet, 2013: 22-25; McCarthy, 2014; SA, 2000; SA, 2007):

- *Verbal* bullying or harassment involves hurtful words and includes hurtful name-calling, persistent teasing, ridicule, taunts, gossip, threatening, vulgar language, remarks or jokes of a racist, homophobic, islamophobic, religiophobic, sexist or xenophobic nature, teasing someone about their disability, name-calling, sexual jokes, unwanted conversations of a sexual nature, whistling, crude comments (for example about body parts), spreading slanderous rumours about someone, hate speech and asking for or pressurising for sex.
- *Physical* bullying or harassment involves bodily harm and includes punching, poking, strangling, kicking, hair pulling, beating, biting, tripping, excessive tickling, assault (including corporal punishment at school), direct vandalism, fondling, patting, grabbing, groping, pinching, brushing up against someone in a sexual way, pulling on a person's clothes in a crude manner, forced kissing, sexual violation, statutory rape and rape.
- *Nonverbal* bullying or harassment involves mostly imagery and gestures. Imagery includes graffiti of a sexual, sexist, homophobic, xenophobic or racist nature, or drawing, creating, displaying or spreading images, pictures or cartoons that are sexually objectifying or sexually explicit, discriminatory in nature, amount to child pornography or are embarrassing or defaming pictures of a person. Other forms of nonverbal bullying are spying on someone, leering, stalking, winking, looks and rude or obscene gestures, sexually suggestive or lewd acts, masturbation as well as flashing. Pestering someone by taking, vandalising or damaging their belongings is another form of nonverbal bullying or harassment.

Bullying and/or harassment are usually verbal, non-verbal or physical in nature. However, I would include in the list those specific forms of bullying and harassment listed below which, although still verbal, non-verbal or physical, have a specific nature due to among others its purpose or platform (Van Meelis, 1999: 74, De Wet, 2003: 170; De Wet & Van Huyssteen, 2008: 15-16, 30; Russo, 2013: 32; Moodley, 2012: 540; Vally & Ramadiro, 2005: 4-5; DBE, 2008a: 5-6; Coetzee, 2012; De Wet & Oosthuizen, 2010: 198-201; Nesor et al, 2003: 128; Behr, 2000: 48, Weaver, 2001: 24; De Wet, 2013: 22-25; McCarthy, 2014; SA, 2000; SA, 2007):

- *Emotional* bullying, also referred to as psychological bullying, refers to terrorising, extorting, defaming, humiliating, blackmailing, rating/ranking of personal characteristics, manipulating friendships, intimidation, marginalisation, ostracising and peer pressure.
- *Relational* bullying occurs when the victim is deliberately excluded from a group or activity, or friendships are manipulated.
- *Secondary* bullying or harassment may occur when a person who has filed a complaint of bullying or harassment is victimised by educators or peers, or even parents, departmental officials and other community members.
- *Discriminatory* bullying or harassment is any verbal, nonverbal or physical bullying or harassment based on race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. It includes sexual harassment, gender-based harassment, racist or xenophobic bullying and homophobic harassment or bullying.
- *Cyber, internet or technological* bullying or harassment uses electronic communications technology as a platform on which or means by which to bully or harass. It includes unwelcome sexting, cyberstalking, posting embarrassing content about someone, stealing personal information, unreasonable intimidation during gaming, creating fake profiles on social network sites and sending threatening, mean or defaming text messages or images.
- *Initiation practices* represent any verbal, nonverbal or physical bullying or harassment which is exercised in the process of initiation, admission into or affiliation with, or as a condition for continued membership of a school, group, activity, team or organisation. Such practices intend to or has the effect of establishing or reaffirming hierarchical relationships, where the newcomer holds the least power.
- *A hostile or unwelcoming environment* occurs when any verbal, nonverbal or physical bullying or harassment is so severe, persistent or pervasive that it creates a hostile, intimidating, threatening or abusive school environment in which the victim(s) cannot participate freely in or benefit fully from education programmes or activities.
- *Child abuse* occurs when any verbal, nonverbal or physical bullying, harassment (including sexual harassment) or other forms of deliberate injury are directed towards a child under the age of 18.

It is important that educators and education managers find effective ways to deal with bullying and harassment in their schools, because if they do not intervene, they could possibly be held liable for the physical as well as psychological and emotional injuries the victim of bullying, harassment or sexual harassment sustain (De Wet, 2013: 27-32).

GUIDELINES FOR DEALING WITH HARASSMENT AND BULLYING OF LEARNERS IN SCHOOLS

In the light of the expansive conceptualisation above, the need for educational and awareness programmes for school management, educators and learners are apparent. De Wet (2010: 324) pointed out that learners should be educated regarding the meaning and forms of sexual harassment as well as reporting procedures to be followed in case of a complaint, while educators should be sensitised and informed regarding sexual harassment and their duty towards the protection of learners and the implementation of the complaints procedures. The Department of Basic Education and schools need to collaborate to make educational and awareness programmes available to educators and learners. Such programmes should do the following (De Wet, 2010: 324-326):

- Equip learners and educators with the knowledge and understanding needed to identify harassment and bullying as well as the unacceptable behaviour that constitutes each. Role-players like learners, teachers and school management and governance should understand how to distinguish different

forms and categories of harassment, sexual harassment and bullying from one another. Educational and awareness programmes should therefore equip them with the knowledge needed to define harassment and bullying in its different forms and categories, to identify prohibited behaviour when it occurs, and know exactly which behaviour is unacceptable. Role-players dealing with disciplinary procedures should be able to distinguish less severe/serious misconduct from more severe/serious misconduct. In addition, educators need to be able to support learners in the use of complaints procedures and to educate learners pertaining acceptable and unacceptable behaviour.

- Inform school governing bodies with regard to school policy requirements for effectively preventing and managing harassment and bullying of learners in school
- Inform school governing bodies, educators and learners of proper complaints procedures. Complaints procedures should be included in school policy (e.g. harassment and bullying policy, school safety policy and code of conduct for learners).

The school may draft a policy for harassment and a policy for bullying separately or together, or may include harassment and bullying in the school's anti-violence policy. The code of conduct for learners is also a key school-based policy for managing the behaviour of learners. However, harassment and bullying are not perpetrated by learners only, and therefore a harassment and bullying policy for the school is advised that deals with violence and abuse perpetrated by both learners and employees. When adopting school policy on harassment and bullying, school governing bodies should ensure the policy is in agreement with national and provincial legal and policy frameworks.

Any policy addressing harassment and bullying should include a section which conceptualises and categorizes bullying and harassing behaviour. This article as well as the relevant general and education specific legislation and policy provide clear indications of how the different concepts should be clarified and categorised. In addition, misconduct/offences should be categorised according to levels of seriousness, while indicating disciplinary procedures and possible sanctions to match each category of misconduct according to seriousness (De Wet, 2010: 326-327; DBE, 2008a; SA, 2007; SA, 2011; DBE, 2008b).

Complaints procedures are another important aspect needing attention in school policy. The policy should designate a complaints contact person, and also include a complaint form which allows for anonymous or non-anonymous complaints in formal and informal complaints procedures. This should be complemented by an outline of investigation procedures that protects privacy and dignity of all involved. (De Wet, 2010: 326-327; DBE, 2008a; SA, 2007; SA, 2011; DBE, 2008b).

Finally, school policy should indicate how the school will support victims of harassment and bullying, especially in cases that are serious. They should offer counselling or, if unable to offer counselling services, should be able to refer the victim to organisations that will be able to provide counselling (DBE, 2008a).

In addition to the above-mentioned school-based strategies for preventing and dealing with harassment and bullying, the *Harassment Act* (SA, 2011) provides for victims of harassment as defined in the *Harassment Act* to apply for a protection order against harassment. In terms of the *Harassment Act*, a victim may approach any court in the area where he or she lives, works or where the harassment happened to file an application with the clerk of the court. The application may be accompanied by affidavits by possible witnesses. Either the victim him- or herself, or, with the consent of the victim, a person acting on his/her behalf can bring such an application. Children may bring an application without the permission or assistance of their parents. If the court is convinced that harassment has taken place and that the victim is suffering harm or may suffer harm in the immediate future, an interim protection order could even be provided outside of court hours. In the light of the increasing frequency of cyber-harassment and bullying, the *Harassment Act* added protection to victims of such harassment even where the identity and/or address of the perpetrator is unknown by obligating electronic communications service providers, upon request of the court, to make the relevant personal details of the harasser available.

Upon considering the application for a protection order, the court will determine whether the accused has engaged in harassment or sexual harassment in terms of the *Harassment Act* (SA, 2011) and whether the victim is suffering harm or may suffer harm in the immediate future. If this has been established the court will issue an interim protection order with a warrant for arrest which is suspended until the accused breaches the protection order. The protection order would prohibit the accused from engaging

in or attempting to engage in any further harassment. The court may also order the SAPS to seize any weapon if necessary. A final protection order will only be issued after the accused has had an opportunity to be heard (SA, 2011).

Remedies are also available under the *Equality Act* for victims of discriminatory harassment (SA, 2000). Victims of discriminatory harassment and hate speech as defined in the *Equality Act* should first approach the school with their complaints, but if the school does not deal with the matter sufficiently and especially if a hostile environment persists, victims may approach Equality Courts (High courts and designated Magistrate Courts). Any person acting on his or her own behalf, or any person or organisation acting in the interest of an individual or group or the wider public, may approach an Equality Court with regards to discriminatory harassment. In an attempt to solve the matter, the Equality Court may conduct a hearing, or refer the matter to an appropriate institution, body, court, tribunal or other forum.

Forms of harassment and bullying that constitute criminal offences such as rape, sexual violation and assault should be indicated by school policy as such. It constitutes serious misconduct and should be dealt with accordingly. Furthermore criminal conduct can be reported directly to the SAPS or to social workers assigned to Child Line or the Department of Social Development. Because victims of sexual violence (e.g. rape or sexual violation) need to be examined by a doctor who should prescribed anti-retroviral medication, the victim should report the incident(s) to the SAPS immediately or within 72 hours (SA, 2007; DBE, 2008a).

Criminal behaviour by or against under-aged learners should be dealt with in terms of the *Child Justice Act* (SA, 2008) and *Children's Act* (SA, 2005), while criminal behaviour by adults will be dealt with in accordance with other relevant legislation such as the *Criminal Offences Act* (SA, 2007), *Children's Act* (SA, 2005) and *Criminal Procedures Act* (SA, 1977). Once a criminal complaint has been lodged, the SAPS investigation and the disciplinary proceedings initiated by the school and/or Department of Basic Education should run concurrently (DBE, 2008a).

In the case of behaviour defined by the Children's Act as child abuse, teachers or other people working with children (e.g. school social worker, speech therapist, nurse or psychiatrist) who "on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected" has a legal duty to report such an instance to a designated child protection organisation, the provincial Department of Social Development or an SAPS official (section 110).

CONCLUSION

Harassment and bullying in the school environment violates human rights of learners and prevents them from fully benefiting from education. In order for educators and schools to be able to deal with harassment and bullying in the school in an attempt to create a safe environment conducive to teaching-learning, they need to first understand each concept. Without a clear understanding of each of the concepts as well as what behaviour constitutes each form of misconduct, educators will be unable to identify and act on harassment and bullying when it occurs. This article therefore focussed on conceptualising the concepts of harassment, sexual harassment and bullying by drawing on legal documents as well as literature. This should aid schools in planning their prevention strategies and also in their efforts to deal with harassment and violence that occur in the school environment.

LIST OF REFERENCES

- AAUW see American Association of University Women
- American Association of University Women. 1993. *Hostile hallways: The AAUW survey on sexual harassment in America's schools*. Washington, DC: Harris/Scholastic research.
- Bates, L. 2014. *Flirtation or sexual harassment? Here's how to tell the difference*. 10 April 2014. Available at: www.theguardian.com/lifeandstyle/womens-blog/2014/apr/10/sexual-harassment-flirting-six-differences (accessed on: 25 March 2015).
- Behr, M. 2000. Playground, battleground. *Fairlady*, 34(13): 46-48.
- Burton, P. & Leochut, L. 2013. *School violence in South Africa: Results of the 2012 national school violence study*. Centre for Justice and Crime Prevention: Cape Town.

- Coetzee, S. 2012. Law and policy regulating the management of learner-on-learner sexual misconduct in South African public schools. *Child Abuse Research: A South African Journal*, 13(1): 27-39.
- DBE see National Department of Basic Education
- De Vries, Lavern. 2008. *Man rapes pupil in school toilets, walks away*. Available at: <http://www.iol.co.za/news/south-africa/man-rapes-pupil-in-school-toilets-walk-away-1.422483#.VUD6759qqko> (accessed on: 28 April 2015).
- De Wet, A. & Oosthuizen, I.J. 2010. The nature of learner sexual harassment in schools: An education law perspective. *Acta Academica*, 42(3): 194-229.
- De Wet, A. & Van Huyssteen, A. 2008. Dealing with pertinent elements of an unsafe school environment. In Oosthuizen, I. Jed. *Safe Schools* (3rd edn.). Centre for Education Law and Education Policy Pretoria:9-62.
- De Wet A. 2015. School safety. In I.J. Oosthuizen (Ed.). *Introduction to Education Law* (4th ed.). Pretoria: Van Schaik.
- De Wet, A. 2013. Father to sue education department over rape – civil remedies for sexual violence and harassment in public schools. *Child Abuse Research: A South African Journal*, 14(1): 22-35.
- De Wet, A. 2010. *Sexual Harassment of Learners in Secondary Schools: An Education Law Perspective* (Degree Philosophiae Doctor in Education Law at Potchefstroom Campus of the North-West University).
- De Wet, N.C. 2003. Free State educators' perceptions of the scope of learner crime. *South African Journal of Education*, 23(3): 168-175.
- Harbour, Tarryn. 2010. *School girls 'suffer in silence'* Available at: <http://www.mg.co.za/article/2010-11-12-schoolgirls-suffer-in-silence> (accessed on: 26 April 2015).
- Houston, L. 2001. One thing I didn't like about college. 8 October 2001. Available at: <http://projects.is.asu.edu/pipermail/hpn/2000-October/001611.htm> (accessed: January 2010).
- John, Victoria. 2014. *School-fight websites incite further violence, say experts*. Available at: <http://www.mg.co.za/article/2014-05-20-school-fight-websites-incite-further-violence> (accessed on: 26 April 2015).
- Lewis, J.F. & Hastings, S.C. 1994. *Sexual harassment in education*. (2nd ed.). Topeka: National Organisation on Legal Problems of Education.
- Matitsa, M.G. 2011. Exploring safety in township secondary schools in the Free State province. *South African Journal of Education*, 31(2): 163-174.
- McCarthy, N. 2014. *Online harassment: Who's most at risk?* [Infographic] 10/23/2014 www.forbes.com/sites/niallmccarthy/2014/10/23/online-harassment-whos-most-at-risk-infographic/.
- MiET Africa. 2009. Safety in schools: Literature Review. Monitoring and Evaluation. June 2009.
- Moodley, Isabel. 2012. Cyber bullying: A legal framework for South African educators. *South African Public Law*, 27: 539-558.
- Musaka, V. 1999. Talking about sexual harassment in school. *Agenda*, 41: 58-60.
- National Department of Basic Education (DBE), South Africa. Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners, 1998.
- National Department of Basic Education (DBE), South Africa. Guidelines for the Prevention and Management of Sexual Violence and Harassment in Schools, 2008a.
- National Department of Basic Education (DBE), South Africa. Implementation Guidelines: Safe and Caring Child-Friendly Schools in South-Africa, jointly issued with UNICEF, 2008b.
- National Department of Basic Education (DBE), South Africa. Regulations to Prohibit Initiation Practices at Schools, 2002.
- Neff, D. 2001. *Sexual harassment investigative training: Prepares educators to prevent, investigate, stop offensive environments in schools*. Available at: <http://www.mcgrathinc.com/Articles/articles-037.html> (accessed on: 09 May 2002).
- Neser, J., Ovens, M., Van der Merwe, E., Morodi, A., & Ladikos, R. 2003. Bullying in schools: A general overview. *Acta Criminologica*, 16(1): 127-157.
- OCR see Office of Civil Rights

- Office of Civil Rights. 2008. *Sexual harassment: It's not academic*. Available at: <http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html> (accessed on: 01 June 2009).
- Oosthuizen, I.J. 2015. The essence of education law. In Oosthuizen (Ed.). *Aspect of Education Law*. (5th ed.). Pretoria: Van Schaik.
- Papadaki, L, 2010. What is objectification? *Journal of Moral Philosophy*, 7: 16-36.
- Prinsloo, I.J. 2005. How safe are South African schools? *South African Journal of Education*, 25(1): 5-10.
- Russo, Charles J. 2013. Bullying, the Law, and Safe Schools. *School Business Affairs*, January 2015 :32-34. Available at: <http://www.asbointl.org> (accessed on: 23 April 2015).
- SA see South Africa, Republic
- SACE see South African Council for Educators
- Selikow, T., Zulu, B., & Cedras, E. 2002. The ingagara, the regte and the cherry: HIV/AIDS and youth culture in contemporary urban townships. *Agenda*, 53: 22-32.
- Sepp, Jaclyn. 2013. Ms Sepp's Counsellor Corner. Available at: <http://www.msepp.blogspot.com/2013/11/is-it-bullying-what-is-it.html> (accessed on: 25 April 2015).
- Shields, Nancy, Nadasen, Kathy & Hanneke, Christine. 2014. Teacher Responses to School Violence in Cape Town, South Africa. *Journal of Applied Social Science USA*, 9(1): 47-64.
- Sinclair, Katie. 2012. Is is bullying? What is it? Available at: <http://counselor-corner.blogspot.com/2012/08/september-lessons.html> (accessed on: 27 April 2015).
- South Africa, Republic (SA). Child Justice Act 75 of 2008
- South Africa, Republic (SA). Children's Act 38 of 2005
- South Africa, Republic (SA). Criminal Law Act 32 of 2007
- South Africa, Republic (SA) Criminal Procedure Act 51 of 1977
- South Africa, Republic (SA). Films and Publications Act 65 of 1996
- South Africa, Republic (SA). Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- South Africa, Republic (SA). Protection from Harassment Act 17 of 2011
- South Africa, Republic (SA). The Constitution of the Republic of South-Africa, 108 of 1996a
- South Africa, Republic (SA). South Africa Schools Act, 84 of 1996b
- South African Council for Educators (SACE). 2011. *School Based Violence Report: an overview of School-based Violence in South-Africa*. Available at: www.sace.org.za/upload/files/school%20Based%20Violence%20Report-2011.pdf (accessed on: 27 April 2015).
- Sullivan, K. 2000. *The anti-bully handbook*. New Zealand: Oxford Press.
- Vally, S. & Ramadiro, B. 2005. *Corporal punishment and bullying: the rights of learners*. Education rights project. Education rights for learners, parents and educators book 11. Available at: www.erp.org.za (accessed on: 25 March 2015).
- Van Meelis, T. 1999. Speak out. *South African Labour Bulletin*, 23(5): 74-77.
- Washington and Lee University, Office of Health Promotion, University Counselling Center. Sexual harassment. Available at: www.wlu.edu/student-life/health-and-safety/student-health-and-counseling/health-library/relationships/sexual-harassment (accessed on: 25 March 2015).
- Weaver, S. 2001. Implementing strategies to curb bullying in schools. *Independent Education*, Winter: 23-24.