



## SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File Ref No: WC/2010/0424

In the matter between:

**Jo Anne Du Plooy**

2012-03-14

**COMPLAINANT**

and

**Alex Blaikie Montessori Center**

**FIRST RESPONDENT**

**Ms. Bronwyn Thomas**

**SECOND RESPONDENT**

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### REPORT

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#### 1. Introduction

- 1.1 The South African Human Rights Commission (hereinafter referred to as the "SAHRC") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996.
- 1.2 The SAHRC and the other institutions created under Chapter 9 of the Constitution are described as "state institutions supporting constitutional democracy".
- 1.3 The SAHRC is specifically required to:
- 1.3.1 Promote respect for human rights;
  - 1.3.2 Promote the protection, development and attainment of human rights; and

- 1.3.3** Monitor and assess the observance of human rights in the Republic.
- 1.4** *Section 184(2) of the Constitution*<sup>1</sup> empowers the SAHRC to investigate and report on the observance of human rights in the country.
- 1.5** Further, *section 184(2) and (d)* affords the Commission authority to carry out research and to educate on human rights related matters.
- 1.6** The *Human Rights Commission Act, 54 of 1994*, (hereinafter referred to as "the Act") further supplements the powers of the SAHRC.<sup>2</sup>

## **2 Complaint**

- 2.1** The Complainant, Jo-Anne Du Plooy, is the mother of a four-year-old daughter, Amelia. She attends Alex Blaikie Montessori Centre which is an educational institution. She alleges that around 29<sup>th</sup> of November 2010 Amelia accidentally or deliberately stepped on the arm of another child named Zoë Kidd-Anderson. Zoë reported the incident to the principal, Bronwyn Thomas.
- 2.2** The Complainant alleges Ms. Thomas then instructed Zoë to retaliate against Amelia by standing on Amelia's arm. The Complainant further alleges that as punishment for this incident, Zoë was required to stay on the floor of the institution without a mattress for an hour.
- 2.3** The above complaint raises the issue whether or not Section 28 of the Constitution has been infringed which protects the rights of children.

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<sup>1</sup> The Constitution of the Republic of South Africa Act 108 of 1996

<sup>2</sup> Findings and recommendation of the Commission in the matter of Van Onselen, Gareth on behalf of the Democratic Alliance number FS/2010/0231.

### **3 Constitutional Provision**

**3.1** Section 28 of the Constitution holds that:

*(1) Every child has the right –*

*(d) To be protected from maltreatment, neglect, abuse or degradation.*

*(2) A child's best interests are of paramount importance in every matter concerning the right.*

### **4 Response to Allegations**

**4.1** Ms. Thomas (2<sup>nd</sup> Repondent) denies the allegations. She admits that Zoë did approach her to say that Amelia stood on her arm. Ms. Thomas states that when the incident was reported, she spoke to the two children and denies completely the allegation that she had allowed one child to stand on the other's arm as a form of punishment.

**4.2** She also denies that she removed the child's mattress as the result of the incident. According to her, Zoë's mattress was only removed 4-5 minutes and then returned to her for a separate incident.

### **5 The Investigation**

**5.1** The Department of Social Development conducted an investigation and issued findings. The Department highlighted that the institution has complied in terms of the Child Care Act and its application was processed by the Department.

**5.2** According to the Department, the facility is well organized, well managed, and a conducive institution for children. The Department held that the above allegations were difficult to prove.

**5.3** According to the Department, Ms. Thomas (2<sup>nd</sup> Repondent) denies that she instructed a child to stand on another child's arm. In all, none of the staff that was interviewed, had witnessed the incident or could recall that it took place, though it is alleged that they were present when it took place.

- 5.4** The school further alleges the parents took advantage of the fact that their children were too young to account for themselves and therefore embellished the story regarding the incident.
- 5.5** What made matters to be more difficult was the fact that the Complainant provided no witnesses to validate her child's account.
- 5.6** Having considered the seriousness of the allegations, the Department recommended that, the facility needs to be monitored for an extended period of time in order to gain deeper understanding on the school's treatment of the children.

## **6 Findings**

- 6.1** The following findings are not contested:
- 6.1.1** That there was a report of an alleged incident by Zoe.
- 6.1.2** The time on which the incident is alleged to have happened.
- 6.2** What is contested is the manner in which the incident was handled by Ms. Thomas (2<sup>nd</sup> Respondent) and her staff.
- 6.3** What must also be established is whether the alleged allegations amount to corporal punishment? If they did, the first question is whether the 2<sup>nd</sup> Respondent is liable under the South African Schools Act.<sup>3</sup> The second question is whether the 2<sup>nd</sup> Respondent violated section 28 of the Constitution.<sup>4</sup>

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<sup>3</sup> South African Schools Act NO. 84 of 1996 Section 10

(1) No person may administer corporal punishment at a school to a learner.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

Complemented by the *Employment of Educators Act* NO. 76 of 1998 Section 18(5)(f)

*An educator may be dismissed if he or she is found guilty of contravening section 10 of the South African Schools Act, 1996 (Act No. 84 of 1996).*

<sup>4</sup> Section 28(2) of the Constitution which protects the best interests of the child should be seen as a right and not as a mere guiding principle. (T. Boezaart, 2009., *Child Law in South Africa*, Juta 1<sup>st</sup> edition, Page 280)

Concerning evidence the court held that 'technical matters such as which party bears the onus of proof should play a diminished role in matters where the court are guarding the best interests of a child' (AD v DW 2008 (3) SA 183 (CC) Paragraph 55)

**6.4** In the *Christian Education South Africa v Minister of Education*<sup>5</sup>, the question on corporal punishment was dealt with<sup>6</sup> accordingly should it be established that corporal punishment was used by Ms. Thomas she could be held accountable in terms of the aforementioned court ruling.

**7** However, given the fact that no reliable witness can attest to what really happened, it cannot be held that the alleged actions constitute an outright violation of Section 28. In a serious matter like this, the facts should not be clouded by ambiguity. Therefore, further evidence would be required to deem the actions as a violation of human rights.

## **8 Recommendation**

**8.1** The recommendation made by the Department of Social Development should be followed, and weekly monitoring should take place.

**8.2** The Principal or School Management should inform parents about the policies, programmes and practices of the institution.

**8.3** When a child (via their parents) submit a complaint or alleges misconduct, the school administrations should have a system to handle these complaints and record the relevant information regarding the claim.

**9** In respect of the current matter parties should find reconciliation. This can be facilitated by the SAHRC.

## **Appeal Clause**

Should you not be satisfied with this decision, you may lodge an appeal, in writing within 45 days of receipt of this letter. A copy of the appeal form is available at any office of the SAHRC. The appeal should be lodged with the Head Office of the SAHRC – contact details are as follows:

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<sup>5</sup> *Christian Education South Africa v Minister of Education*, 2000 (10) BCLR 1051 (CC), Paragraph 10

<sup>6</sup> *S v Williams and Others* (CCT20/94) [1995], Paragraph 48 and 49

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SIGNED: \_\_\_\_\_ AT Braamfontein ON THE 24<sup>th</sup> DAY OF July 2012

  
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**COMMISSIONER**

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**