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The nature of learner sexual harassment in schools: an education law perspective

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The starting point for dealing with sexual harassment in schools would be to define sexual harassment and outline the behaviour that constitutes it. This article aims to define and describe the nature of learner sexual harassment in the secondary school setting and to discuss the criteria for sexual harassment. Because of the difference between harassment by educators and harassment by peers, this article will explore the specific nature of each. Finally, recommendations are made with regard to educator and learner sexual harassment training.

Die aard van leerder seksuele teistering in skole: 'n onderwysregtelike perspektief

Die beginpunt in die hantering van seksuele teistering in skole sal wees om seksuele teistering te definieer en die presiese aard van sodanige gedrag te omskryf. Die doel van hierdie artikel is om die aard van leerder seksuele teistering in die sekondêre skoolopset breedvoerig te definieer. Kriteria vir seksuele teistering word ook bespreek. As gevolg van die definitiewe verskille tussen opvoeder-tot-leerder en leerder-tot-leerder seksuele teistering word die aard van elk verder ondersoek. Laastens word aanbevelings gemaak ten opsigte van opvoeder- en leerderopleiding met betrekking tot die seksuele teistering van leerders.

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Sexual harassment and the abuse of learners are problems in South African schools that cannot be ignored. In a study by the African Gender Institute of the University of Cape Town in which educators and learners from a secondary school in Khayelitsha were interviewed, both educator-to-learner and learner-to-learner harassment were found to be a problem (Musaka 1999: 58-60). Several studies and statistics have highlighted the problem of peer sexual harassment as well as educator-to-learner harassment (Fineran *et al* 2001: 211, 215-6, Govender 2005: 1, Louw 2003: 6, Anon 2001: 1, HRW 2001).

Although studies and reports indicate that sexual abuse and harassment of learners in schools is a considerable problem, it appears that sexual harassment is not always recognised as such. A study by the African Gender Institute, University of Cape Town, indicates that learners have a narrow understanding of what sexual harassment is (Musaka 1999: 58-60). Educators and victims often fail to recognise particular behaviour as sexual harassment due to a lack of understanding of the nature of sexual harassment and its different manifestations in the school setting (Lewis & Hastings 1994: 201, Musaka 1999: 58-60). Sexual harassment is consequently often ignored, minimised or undisclosed. The underlying problem appears to be the misunderstanding among learners and educators of how learner sexual harassment manifests in the school setting. A definition of sexual harassment as well as a broad description of the different manifestations of learner sexual harassment are essential.

1. Objectives and method

This article aims to define the nature of learner sexual harassment in the secondary school setting. Because of the difference in nature and effect between harassment by educators and harassment by peers, this article will also focus on the specific nature of teacher-to-learner and peer harassment, respectively. Recommendations are made with regard to the education of educators and learners to broaden their understanding of sexual harassment.

A literature study was performed in order to determine how sexual harassment in the school setting should be defined and what categories and forms of sexual harassment occur in schools. The following methods were used in the literature study:

- application of the rules for the interpretation of statutes to determine the statutory provisions pertaining to sexual harassment and its different manifestations in the education setting;
- the comparative legal method, to compare the local determinants of sexual harassment with those in the USA, and
- an analysis of case law in an effort to amplify the positivistic nature of sexual harassment in schools, and to explain how different forms of learner sexual harassment manifest in schools.

Definitions and criteria used in the USA are used to highlight certain concepts and ideas, as the issue of sexual harassment in USA schools has received a great deal of attention over the past years, both in literature and in court cases.

2. Definition

The Promotion of Equality and Prevention of Unfair Discrimination Act (RSA 2000a) defines harassment based on sex, gender or sexual orientation as:

> 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
>
> (a) sex, gender or sexual orientation
>
> (b) 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 groups.

The Promotion of Equality and Prevention of Unfair Discrimination Act (RSA 2000) describes sexual harassment as unwanted conduct related to sex, gender or sexual orientation, or a person's membership of a certain group, such as females.

Shoop (1992: 1) broadly defines sexual harassment as unsolicited and nonreciprocal male behaviour that emphasises a woman's sex-

role rather than her role as a member of an organisation. In *Gerbber v Algorax (2000)*[1] the judge quoted from a 1986 article by Mowatt stating that:

> Sexual harassment occurs when a woman's sex role overshadows her work in the eyes of the male, whether it be a supervisor, a co-worker, a client or a customer; in other words, her gender receives more attention than her work.

Sexual harassment, according to this definition, emphasises the woman's gender, which receives more attention than other qualities, such as her skills or knowledge.

However, harassment is not limited to male behaviour or only directed towards women. The definition of harassment in the Promotion of Equality and Prevention of Unfair Discrimination Act (RSA 2000a) indicates that harassment takes place not only against women, but also against men. Therefore, it can be stated that sexual harassment emphasises a person's sex, gender or sexual orientation, which receives more attention than other qualities.

Although the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace (RSA 2005a: section 3) does not define sexual harassment, it recognises sexual harassment as a form of unfair discrimination based on sex, gender or sexual orientation.

The Congress of South African Trade Unions (COSATU) defines sexual harassment as any "unwanted or unwelcome conduct of a sexual nature or other conduct based on sex", which makes the victim feel uncomfortable (Van Meelis 1999: 74). This conduct may be in the form of unwanted physical, verbal or nonverbal behaviour (Van Meelis 1999: 74).

De Kock defines sexual harassment in *J v M Limited (1989)*[2] as:

> … unwanted sexual behaviour or comments which have a negative effect on the recipient. Conduct which can constitute sexual harassment ranges from innuendo, inappropriate gesture, suggestions or hints or fondling without consent or by force to its worst form, namely, rape.

1 Gerbber v Algorax (Pty) Ltd 2000 (1) BALR 41 (CCMA).
2 J v M Limited 1989 (10) ILJ (IC).

The approach in South Africa is very similar to that in the US. According to the definition of the United States Equal Employment Opportunity Commission (EEOC), unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature constitute sexual harassment when the victim's employment is affected by the rejection of or submission to such conduct, or when the rejection of or submission to the perpetrator's conduct unreasonably interferes with an individual's work performance or creates a hostile, offensive or intimidating work environment (EEOC 2002: 1).

Based on the above-mentioned definitions sexual harassment could be defined as:

> any unwanted and unwelcome verbal or nonverbal conduct of a sexual nature, or conduct based on sex, gender or sexual orientation, which is persistent or serious and which is demeaning or humiliating, or creates a hostile, offensive or intimidating environment or is intended to induce submission by actual or threatened adverse consequences.

This definition is broad and includes different forms and categories of possible incidences of sexual harassment. There is a need to understand the different manifestations of sexual harassment in order to comprehend the nature of sexual harassment, in particular with regard to its manifestation in schools.

3. Different forms and categories of sexual harassment

Based on the various definitions of sexual harassment, different forms of sexual harassing behaviour can be classified in one of the following categories (Lewis & Hastings 1994: 22):

- Gender harassment, including generalised sexist statements and behaviour that convey insulting, degrading and/or sexist attitudes;
- Seductive behaviour, involving unwanted, inappropriate and offensive physical or verbal sexual advances;
- Sexual bribery, including solicitation of sexual activity or other sex-linked behaviour by means of promise of reward;
- Sexual coercion, which entails coercion or sexual activity or other sex-linked behaviour by threat of punishment, and
- Sexual assault, comprising indecent assault and/or rape.

The aforementioned five categories of sexual harassment suggest that there is a distinction between less severe and more severe categories of sexual harassment, ranging from gender harassment to sexual assault. Sexual harassment can take place in many different forms, including the following (Van Meelis 1999: 74, RSA 2005a):

- Verbal sexual harassment, including unwelcome innuendos, suggestions, hints, sexual advances, sexual jokes or insults, whistling, comments about body parts, inappropriate conversation of a sexual nature and the sending of sexually explicit text.
- Physical harassment, ranging from touching – for example fondling, patting, grabbing, groping, brushing up against someone in a sexual way, and kissing – to sexual assault and rape.
- Non-verbal harassment conduct, such as leering, winking, graffiti, drawing, displaying or sending sexually explicit pictures or objects, and rude or unwelcome gestures.
- *Quid pro quo* harassment, which can be called "this for that" harassment. This form of sexual harassment will be discussed in more detail later.
- Secondary harassment, which may occur when a person who has filed a complaint of harassment is harassed by educators or peers.
- Victimisation, which occurs when a person is victimised, intimidated or harassed on the basis of refusing to submit to unwanted attention.

Two legal terms used in court cases and literature are *quid pro quo* harassment and *hostile-environment* harassment. Although these terms are traditionally associated with sexual harassment in the workplace, they also occur in the school setting and will consequently be discussed in more detail.

3.1 *Quid pro quo* sexual harassment

Quid pro quo harassment, generally described as "this for that" harassment (Neff 2001: 1), occurs when a person's submission to or rejection of the sexual advances or conduct of a sexual nature is used by the perpetrator as the basis for employment decisions affecting the victim, or when a person's submission to such conduct is specified as a condition of employment (EEOC 2002: 2). *Quid pro quo* harassment may, however, also take place in the school setting between learners and their educators. In the case of a learner, it is not salary, more

money or career opportunities that are involved, but better marks for a subject or the passing of a subject and the favour of the educator who makes education decisions.

Quid pro quo harassment occurs in the educational setting (OCR 2006: 1):

> ... when a school employee causes a student to believe that he/she must submit to unwelcome sexual conduct in order to participate in a school program or activity. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct.

This type of sexual harassment implies abuse of authority or position to gain sexual advantages. It occurs when the victims feel that they have something to lose if they do not submit to sexual conduct (Neff 2001: 2). *Quid pro quo* harassment of learners in the school setting involves incidences where the educator, who holds a position of authority and trust towards the learner, uses that position of trust and authority to gain sexual advantages. For instance, a learner engages in sexual relations with her teacher because of his promise to give her good grades, or because of his threat to fail her if she does not share sexual favours with him.

3.2 Hostile-environment sexual harassment

Hostile-environment sexual harassment occurs when unwelcome sexual conduct reasonably interferes with the victim's job performance, or when such conduct creates a hostile, intimidating or offensive work environment. This type of harassment may occur even when the harassment does not result in tangible or economic job consequences; the victim may, in other words, not necessarily lose pay or promotion (EEOC 2002: 2). However, sexual harassment may also create a hostile environment in a school which differs from that in the workplace in that it is not the victim's job performance that is affected, but his/her school work and academic performance. As in a workplace situation, sexual harassment in the school can also create a hostile, intimidating or offensive environment (school environment in this case) for the victim.

In the school setting, hostile-environment sexual harassment occurs (OCR 2006: 1):

> ... when unwelcome conduct of a sexual nature is so severe, persistent or pervasive that it affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational environment.

A hostile environment can be created by a school employee, another learner or even a visitor to the school, such as a learner or employee from another school (OCR 2008: 2). This type of harassment generally refers to repeated acts of harassment, for example grabbing or groping, teasing, name-calling or unwelcome touching, which have the effect that the victim experiences the school to be a hostile place (Neff 2001: 2).

The USA case of *Davis v Monroe Country Board of Education (1999)*[3] provides an example of repeated unwelcome sexual conduct which created a hostile environment for the learner. A girl was subjected to inappropriate behaviour from a classmate, which included trying to touch her breasts and genital area, along with verbal requests for sexual relations. Despite complaints to officials, this behaviour persisted for five months, and the plaintiff claimed that it interfered with her education in that she had difficulty concentrating and performed poorer at school. Justice Kennedy remarked that since the school board had notice or knowledge of the conduct which offended the girl but yet acted deliberately indifferent in responding to that notice, the Board ought to be held liable on the grounds of discrimination.

Not all annoying sex-based behaviour, however, constitutes sexual harassment. The criteria for sexual harassment will now be discussed. These criteria may be used to determine whether a specific act or course of acts constitutes sexual harassment.

4. Criteria for sexual harassment

Neff (2001: 2) highlights five criteria that can be used to classify an act as sexual harassment:

3 Davis v Monroe Country Board of Education 1999 (526) US.

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

Only the first two criteria need to be met to constitute *quid pro quo* harassment. In addition to the first two criteria, the last three criteria also need to be met to constitute hostile-environment sexual harassment. Each of these criteria will be discussed below.

4.1 Conduct of a sexual nature

For any behaviour to be labelled as sexual harassment, the conduct must be of a sexual nature. Not all physical conduct is of a sexual nature, and sexual conduct is not always physical. In its definitions, the Films and Publications Act 65 of 1996 (RSA 1996d: section 1) defines sexual conduct as follows:

> Sexual conduct includes:
>
> (i) Male genitals in a state of arousal or stimulation;
>
> (ii) The undue display of genitals or of the anal region;
>
> (iii) Masturbation;
>
> (iv) Bestiality;
>
> (v) Sexual intercourse, whether real or simulated, including sexual anal intercourse;
>
> (vi Sexual contact involving the direct or indirect fondling or touching of the intimate parts of the body, including the breasts, with or without any object;
>
> (vii) The penetration of a vagina or anus with any object;
>
> (viii) Oral genital contact, or
>
> (ix) Oral anal contact.

This definition explains the behaviour which may be described as "sexual conduct".

The Office of Civil Rights (OCR 2008: 3) and the Code of Good Practice on the Handling of Sexual Harassment Cases in the Work-

place (RSA 2005a: section 5.3.1) also list the following examples of sexual conduct:

- sexual advance or innuendos;
- touching of a sexual nature;
- graffiti of a sexual nature;
- displaying or distributing 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 strip search by or in the presence of the opposite sex.

These examples include more subtle sexual conduct, as opposed to explicit conduct included in the definition by the Films and Publications Act.

This subtlety is also embedded in the American approach. In *Franklin v Gwinnett County Public Schools (1992)*,[4] the aggrieved learner complained about an educator who engaged her in sexually oriented conversations which later paved the way to forcible kissing and ultimately incidents of coercive sexual intercourse.

When the conduct has successfully been labelled as sexual conduct, the next criterion that needs to be met to constitute sexual harassment is unwelcomeness.

4.2 Unwelcomeness

According to judge Brand in *Gerbber v Algorax (Pty) Ltd (2000)*, the test whether sexual conduct is unwelcome is an objective one. He notes that:

> ... the test to be applied to determine whether the conduct of the alleged perpetrator constitutes sexual harassment should be an

4 Franklin v Gwinnett Country Public Schools 1992 (503) US.

> objective one [...] the test is whether the advances were welcome or whether the accused reasonably believed them to be unwelcome.

He goes on to quote the definition of sexual harassment from the Ontario Human Rights Code, which states that harassment is

> ... engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome.

The conduct of the perpetrator must have been unwelcome for it to be labelled as sexual harassment. Conduct is unwelcome when the victim did not request or invite the conduct and views it as undesirable or offensive (OCR 2008: 3).

Submission to sexual conduct does not necessarily mean that the conduct was welcome (Lewis & Hastings 1994: 9). The harassment may be unwelcome even if the victim has responded in a friendly manner to the perpetrator's behaviour (Lewis & Hastings 1994: 9). The victim may feel intimidated, or too embarrassed, confused or afraid to complain or resist (Snyman 2006: 452, OCR 2008: 3). In the case of educator-to-learner harassment, it can be intractable for a learner to refuse or express dislike of the behaviour. The plaintiff in an American case, *Gebser v Lago Vista Independent School District (1998)*,[5] did not complain about sexual advances from her teacher at a book club, as she felt uncertain as to how she should have behaved. Eventually the teacher regularly engaged in sexual intercourse with her until they were discovered by the police and the teacher was arrested.

The perpetrator may argue that s/he did not realise that the conduct was unwelcome to the victim, especially when the victim did not explicitly state that the behaviour was unwelcome. It may, however, be proved that the victim did reject the behaviour even if s/he never verbally rejected the perpetrator's behaviour (Lewis & Hastings 1994: 9). Dowling (1997: 43-5) applies four criteria to sexual harassment which can be used to determine when the actor's sexual advances or suggestions are unwelcome:

- inappropriate circumstances;
- the victim's utterances;

5 Gebser v Lago Vista Independent School District 1998 (524) US.

- the victim's behaviour, and
- unequal power relations.

The *circumstances* during a lecture or when an educator is explaining learning material to a learner would, for example, not be an appropriate time or situation for sexual advances. The nature of the relationship between the learner and the educator as caretaker also makes sexual conduct inappropriate and, therefore, to be rendered unwelcome.

The victim's utterances, which may indicate that s/he does not desire the sexual advances, and behaviour indicating unwelcomeness, should be respected by the perpetrator, as it is a clear indication that his/her attention is unwanted. If a victim does not say or do something to explicitly express his/her dislike and discomfort of the situation but "stiffens and remains motionless", this should be an indication that the conduct is not welcome (Dowling 1997: 44). In the case of unequal power relations, such as those which exist between an educator and a learner, the victim is often reluctant to tell the perpetrator that his/her attention is unwanted (Dowling 1997: 44).

4.2.1 Unwelcomeness in the case of consent

In some cases, the perpetrator may argue that the conduct was not unwelcome because the victim gave consent. The Criminal Law (Sexual Offences and Related Matters) Amendment Act[6] (RSA 2007: section 1) defines consent as voluntary or uncoerced agreement. When allegations of sexual harassment include consent, it must be determined whether such consent was given freely and voluntary, or whether the conduct was unwelcome and the consent therefore invalid. Factors that may influence the validity of consent are fear, alcohol or drug use, mental capacity, fraud and coercion (Snyman 2006: 452-4, McGrath 1998: 1).

Consent might have been given in fear, for example when coercion, violence or threats of violence occurred. If the victim had reason to believe that s/he would be harmed in any way when unwelcome sexual conduct is rejected, the consent given might be rendered invalid. This would typically be the case with *quid pro quo*

6 Hereafter the Criminal Law Amendment Act.

harassment. In such a case consent is not given wilfully and voluntarily and, consequently, constitutes unwelcome consent, which is invalid (Snyman 2006: 452-3, McGrath 1998: 1).

Consent given when the victim is under the influence of excessive amounts of alcohol or illicit drugs or when hypnotised cannot be recognised as valid either, as the victim in such a case did not give consent with a level state of mind (Snyman 2006: 453, McGrath 1998: 1).

The mental capacity of the victim also determines whether consent is given freely and voluntarily. An individual must have the mental capacity to comprehend the proposed act and consequences in order to be able to give valid consent (Snyman 2006: 453). For a learner to give valid consent, s/he must be above the legal age of consent (McGrath 1998: 2).

In terms of the Criminal Law Amendment Act (RSA 2007), it is unlawful for a person to commit an act of consensual sexual penetration with a child under the age of 16 (section 15).[7] In addition, it is unlawful to commit an act of sexual violation with a child under the age of 16 even with the child's consent (RSA 2007: section 16).[8] In South Africa, a child under the age of 16 is not deemed to have the capacity to give consent to either sexual penetration or an act of sexual violation. This would be the case where the offender is an adult, although a child of 12 years or older may also be prosecuted for the offences in sections 15 and 16 (RSA 2007). A child under the age of 12 is rendered unable to give consent to sexual intercourse (Snyman 2006: 453) or other sexual acts such as the conduct included in the definitions of sexual penetration and sexual violation in the Criminal Law Amendment Act (RSA 2007) to the extent that consent given by such a child is deemed invalid.

Consent gained by means of *fraud* is also invalid. If the perpetrator led the victim to believe that s/he was someone else, or that s/he

7 In terms of the definition of sexual penetration provided in section 1 of the Act (RSA 2007), any penetration by the genital organs or an object into or beyond the genital organs, anus or mouth of another person is included.

8 In terms of the definition of sexual violation (RSA 2007), any act which causes direct or indirect contact between the genital organs, anus or breasts of one person and any part of another person's or animal's body or any object is included.

intended conduct of a different nature, such consent might be rendered invalid (Snyman 2006: 453-4; McGrath 1998: 1).

When a person engages wilfully in sexual activities with someone and has second thoughts afterwards, it does not affect the validity of the consent. If, however, harassment persists after the person has expressed a change of mind, there is no consent (McGrath 1998: 1).

Some of the abovementioned circumstances under which consent is deemed to be invalid have been included in the definition of consent in the Criminal Law Amendment Act (RSA 2007). The Act lists the following as circumstances under which consent or submission may not be deemed as voluntary or without coercion (RSA 2007: section 1):

- the use of force or intimidation;
- a threat of harm;
- abuse of power or authority to the extent that the victim is inhibited from indicating his or her unwillingness or resistance;
- the act is committed under false pretences or by fraudulent means, or
- where the victim is incapable by law of appreciating the nature of the sexual act.

The above first two criteria, namely conduct of a sexual nature and unwelcomeness, are sufficient to prove a case of *quid pro quo* sexual harassment. However, to prove hostile-environment harassment, three more criteria must be met:

- The behaviour must be severe, pervasive or persistent;
- The 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.

4.3 Severe, pervasive or persistent conduct

Not all unwelcome sexual conduct creates a hostile environment. Although a single incident of unwelcome conduct may constitute sexual harassment (RSA 2005: section 5.3.3; *J v M Limited (1989), Pretorius v Britz (1997)*)[9] for it to be described as hostile environment

9 Pretorius v Britz 1997 (5) BLLR 649 (CCMA).

harassment, the conduct must be so severe, persistent or pervasive that it adversely affects the learner's education, or that it creates a hostile education environment for a learner or learners (Lewis & Hastings 1994: 9). The behaviour should involve a "pattern of behaviour", as only one or two isolated incidents cannot be labelled severe, pervasive or persistent (Neff 2001: 2). A single incident can, however, create a hostile environment if it is very severe, for example rape or assault (OCR 2008: 4).

In the case of less severe acts, the victim is required to show more than one incident of harassing behaviour. Where a person is continually subjected to demeaning and offensive language from educators or peers, it can be described as hostile-environment harassment because it makes the victim feel unwanted and uncomfortable and may in severe cases even affect the victim's emotional and psychological ability (Lewis & Hastings 1994: 9).

In the American case, *Davis v Monroe Country Board of Education (1999)* referred to earlier, a hostile environment was created by repeated acts of sexual harassment by the perpetrator over a period of five months. The acts included unwelcome touching and verbal requests for sexual relations. More severe acts would, however, constitute a hostile environment even if they occurred only once or twice, or within a short period of time. In another American case, *Franklin v Gwinnett (1992)* referred to earlier, a teacher first developed what was called a "special friendship" with a girl, and made conversation of a sexual nature with her. Later, however, his acts of sexual harassment became more severe and included kissing her forcibly as well as three acts of coercive intercourse.

4.4 Interference with the victim's work or study

When harassment is severe or pervasive, or creates an intimidating, threatening or abusive educational environment, it can be said that such harassment may affect a learner's ability to participate in or benefit from an education programme or activity (OCR 2008: 2). Such circumstances create a hostile environment.

In the case, *Davis v Monroe Country Board of Education,* the female fifth-grade student was submitted to prolonged sexual harassment which ultimately led to her inability to concentrate on her school work and to suicidal thoughts. In the opinion of Russo (2001: 73), the act of depriving a victim of an educational programme is likely to constitute offensive behaviour.

4.5 Reasonableness

Sexual harassment affects the victim's dignity, which involves diminishing his/her self-respect, feeling of chasteness and mental tranquility (*Gerbber v Algorax (Pty) Ltd (2000)*). Although a person's perception of a humiliating act towards him/her is subjective, the objective test that can be applied is to ask whether the same conduct would offend or affect the dignity of any reasonable person (Snyman 2006: 459-60). If the test shows that any reasonable person would experience humiliation or be offended, the acts can be said to cause a hostile environment. In an American case, *Harris v Forklift Systems Inc (1993)*,[10] conduct is described as sufficiently severe and pervasive to constitute sexual harassment when

> ... a reasonable person would find it hostile or abusive, and the victim subjectively perceives it as such.

The question could be asked whether any reasonable person would in the same situation experience the environment as hostile because of the harassment. Several factors may be considered to determine whether the environment can reasonably be viewed as hostile (OCR 2008: 4):

- the nature of the conduct;
- the nature of the relationship between the victim and the alleged harasser;
- how often it occurred;
- for how long it continued;
- the age and sex of the victim;
- the number of alleged harassers;
- the age and sex of the alleged harasser/s;

10 Harris v Forklift Systems Inc 1993 (510) US.

- where the harassment occurred;
- whether the harasser was in a position of power over the victim;
- whether and how often the harassment took place in front of others;
- whether the behaviour adversely affected the victim's education or education environment;
- other incidents of sexual harassment at the school involving the same accused, and
- whether the harassment also included racism.

These factors will influence whether the environment can reasonably be viewed as hostile.

In an article on the reasonable woman in a hostile work environment, Shoop (1992: 1-8) discusses the unsuitability of a "sex-blind reasonable person standard" in testing the reasonability of the victim's feelings. Due to sexual stereotyping, women and men interpret sexual behaviour very differently: the same behaviour that is viewed by men as normal heterosexual behaviour may be unwelcome and offensive to a woman (Shoop 1992: 4). Though a male perpetrator may think that his conduct constitutes ordinary, everyday, friendly, heterosexual or sexual initiation, he may not realise that it takes place in an environment where the woman is not in a position to turn him down or ask the offender to "please disappear" (Shoop 1992: 2). In the education setting, a learner is not in the position to refuse sexual attention from an educator, as she may fear that this will influence his education decisions, and neither is she in a position to tell a peer perpetrator to "get lost", as she has to share the classroom and school space with him everyday.

A US court found that the "reasonable person standard" tends to be male-biased and ignore the experiences of women. It suggested that a "reasonable woman" standard should rather be used (*Ellison v Brady (1991)*).[11] Whereas the reasonable person or male may therefore not experience humiliation or be offended by certain sexual conduct, the acts can be said to cause a hostile environment where the reasonable woman or girl would experience the environment as hostile because of the harassment.

11 Ellison v Brady 1991 (924) F2d 872 (9th Cir).

When the above five criteria are met, a case of hostile-environment harassment can be proved.

The discussion of the criteria for sexual harassment should explain the nature of sexual harassment in schools. In striving to understand learner sexual harassment in schools, some attention should be paid to the specific manifestations of learner sexual harassment in schools. Distinct differences exist in the nature and effect of educator-to-learner sexual harassment and learner-to-learner sexual harassment. These two different manifestations of learner sexual harassment will be explored further.

5. Educator-to-learner sexual harassment

The 2001 investigation conducted by the Human Rights Watch revealed that sexual harassment and violence is a major problem in South African schools (HRW 2001). Various studies and sources have indicated that schools are increasingly confronted with cases of educator-to-learner sexual harassment.[12] The following are examples of sexual harassment of learners by educators:

- During 1999 and 2000, 56 educators were found guilty of rape of minor learners (Anon 2001: 1).
- The Medical Research Board indicated in October 2000 that rape of girls under the age of 15 has doubled since 1990, and that educators were the perpetrators in a third of the cases (Louw 2003: 6, Galloway 2002: 4).
- In 2002 SACE received approximately 30 complaints with regard to educators who are involved in sexual relationships with learners of their schools, and during 2002 15 educators have been dismissed due to this form of serious misconduct (Louw 2003: 6).
- 49 educators have been found guilty of rape, sexual harassment or sexual relationships with learners of their schools between May 2004 and August 2005 (Govender 2005: 1).

12 Cf Anon 2001: 1, Louw 2003: 6, Galloway 2002: 4, Govender 2005: 1, Musaka 1999: 58-60.

Various legislative provisions prohibit sexual conduct between educators and learners under different circumstances:

The first is section 17 of the Employment of Educators Act (RSA 1998a), in terms of which educators are prohibited from having sexual relationships with learners of the school where they are employed. This provision prohibits sexual relationships with learners of the school where the educator is employed irrespective of the learner's age even if the learner has reached the age of majority (18 years). In addition, the possible willingness of a learner to engage in a sexual relationship with his or her educator is also irrelevant since the educator holds a position of authority over a learner from his or her own school, rendering the relationship an unequal one that influences issues of consent as indicated earlier.

The second is the Criminal Law (Sexual Offences and Related Matters) Act of 2007. In terms of section 15 of this act, an educator is guilty of an offence when s/he commits an act of sexual penetration with a learner under the age of 16.[13] In addition, in terms of section 16, an educator commits an offence if s/he commits an act of consensual sexual violation of a learner under the age of 16.[14]

13 Prior to the amendment in 2007, section 14 of the Criminal Offences Act (RSA 1957) rendered it an offence for a person to have sexual intercourse with a child of the opposite sex if the child was under the age of 16, and with a child of the same sex if the child was under 19. This provision has, therefore, been changed to apply to both heterosexual and homosexual relations in an equal manner. In addition, the term "sexual penetration" has been introduced and is defined very widely so as to include any penetration of not only genital organs but also the anus as well as the mouth, and that such penetration is not only by the penis of a male but by any part of the body of another person or by any object.

14 The term "indecent act" used in the Criminal Offences Act (RSA 1957) prior to the amendment in 2007 is widened by the introduction of the term "sexual violation". Sexual violation is widely defined and includes different forms of contact between the genital organs, anus, breasts and mouth of one person and any part of the body of another, or any object. The definition even includes contact between the mouth of one person and the mouth of another. Both the definitions of sexual penetration and sexual violation include repetition of some forms of the conduct, probably to exclude any misunderstanding of certain acts that are intended to be prosecuted.

Thirdly, if an educator commits any act of sexual penetration with a learner under the age of 12, such act constitutes rape in terms of section 3 of the Criminal Law Amendment Act (RSA 2007), of which section 1 states that a child under the age of 12 is rendered incapable of appreciating the nature of such a sexual act.

The above-mentioned provisions are clearly written for the protection of the child. Sexual engagement of an educator with a minor learner may be described as abuse. Based on these provisions and the foregoing discussion of categories and forms of harassment, educator-to-learner sexual conduct may be divided into three categories:

- sexual conduct towards a minor learner, which constitutes child abuse;
- sexual relationships with learners of the school where the educator is employed, which constitutes serious misconduct by the teacher. In this category, consent by the learner and the age of the learner are irrelevant, and
- less severe forms of sexual harassment that occur regularly and create a hostile environment.

5.1 The nature of child sexual abuse

A "child" is defined by the South African Constitution and other applicable acts as a person under the age of 18 (RSA 1996a, 2005b & 2007). In terms of the Children's Act (RSA 2005b: section 17), a child reaches majority upon reaching the age of 18. Therefore, child abuse refers to the abuse of a person under the age of 18 and does not apply to learners aged 18 and older.

Child abuse is defined in the Children's Act (RSA 2005b: section 1) as any form of harm or ill-treatment deliberately inflicted on a child, including sexually abusing a child or allowing a child to be sexually abused, assaulting the child or inflicting any other form of deliberate injury and exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally.

The Children's Act (RSA 2005b: section 1) defines child sexual abuse more specifically and includes sexual molestation and assault of a child, the use of a child for the sexual gratification of another

person, the use or exposure of a child to sexual activities or pornography and commercial sexual exploitation of a child.

Based on definitions of child abuse (De Wet & Oosthuizen 2001: 164, RSA 2005b), sexual abuse (Combating Domestic Violence Act, RSA 2003a, Domestic Violence Act, RSA 1998b) and child sexual abuse (Cates & Markell 1995: 2, Children's Act, RSA 2005b), educator-to-learner sexual abuse can be defined as follows:

> Any physical or non-physical sexual conduct of an educator towards a minor learner that abuses, humiliates, degrades or otherwise violates the sexual integrity of the learner and is intended to take advantage of the learner for the personal or sexual gratification of the educator.

McGrath (2000a: 1) highlights three elements of teacher-to-learner sexual abuse: any behaviour by an adult, directed at a learner that is intended to sexually arouse or titillate the adult or the child.

Child abuse involves coercion, deceit and manipulation to achieve power over the child (Cates & Markell 1995: 2) and the behaviour includes any one or more of the actions from the forms and categories of sexual harassment described above. According to McGrath (2000a: 1), such behaviour may deprive the child of a sense of physical and psychological safety or security and is likely to harm the child.

The effect of a sexualised relationship between the learner and a person who is responsible for the welfare of that child can be traumatic. When the teacher, who is in a relationship of care and trust towards the learner, becomes sexually involved with the learner, the learner may experience a sense of betrayal and shame similar to that experienced in the case of incest (McGrath 2000a: 2).

Sexual harassment or abuse compares with what is called boundary violations (McGrath 2004: 2). Human beings have physical boundaries, which give them a sense of safety and security, and violations of these boundaries by other people may involve marginally inappropriate behaviour. According to McGrath (2004: 2), young people can instinctively recognise when educators violate these boundaries. Though not all physical contact with a learner constitutes boundary violations, behaviour that speaks of disrespect towards a learner's sense of what is appropriate and safe may indicate a problem.

5.2 A sexual relationship with a learner from the educator's school

The nature of the relationship between a learner and his/her educator, who acts *in loco parentis*, makes any sexual involvement inappropriate, and even though the learner may give his/her consent, the learner may still feel betrayed and shamed (McGrath 2000a: 2). In addition, the authority that the educator has over a learner from the school where s/he is employed creates an arena for abuse of power. *Quid pro quo* sexual harassment implies abuse of authority or position to gain something sexual. It occurs when the victim feels that s/he has something to lose if s/he does not submit to sexual conduct (Neff 2001: 2). A learner might, for example, engage or remain in a sexual relationship with her educator because of a promise to give her good grades, or because of a threat to fail her if she does not fulfil his sexual desires.

In addition, the learner may not express discomfort with the situation and may appear to welcome the relationship. Due to the authority the educator has over the learner, s/he may be reluctant to say "no" to unwanted attention. The perpetrator may begin the escalating process of sexual harassment with seemingly insignificant violations of natural boundaries but will go as far as the learner permits (McGrath 2000a: 3).

McGrath (2000a: 1) quotes Roland C Summit as pointing out that the learner cannot be held responsible for sexual relationships with educators, even if s/he entered wilfully into such relationships. He argues that even when

> ... assuming that an adolescent can be sexually attractive, seductive, and even deliberately provocative, it should be clear that no child has equal power to say 'no' to a parental figure or to anticipate the consequences of sexual involvement with a caretaker. The adult in such an unequal relationship bears sole responsibility for the illegal sexual activity with a minor (McGrath 2000a: 1).

Sexual involvement with a learner is described by an American judge in *Doe v Taylor Independent School District* (1994)[15] as "abuse of

15 Doe v Taylor Independent School District 1994 C.A.5 (Tex).

power". Often an abusive adult will target children who are hungry for attention, love and understanding. A tight bond develops between the educator and the learner, based on trust and affection. Ultimately, the educator may start to take advantage of the situation and abuse the trust that exists between them (McGrath 2000a: 3). It may be argued that because of the inherent power differences between the learner and his/her educator, the learner cannot give valid consent to sexual activity with the educator (McGrath 2000a: 2). A relationship between an educator and his/her learner is solely for the sexual benefit of the adult, since a normal relationship is impossible when such a power imbalance exists between the two parties (Louw 2003: 6).

The imbalance of power in certain relationships and the possibility that it may discourage a victim from refusing sexual conduct is also recognised in the Criminal Law Amendment Act (RSA 2007) which defines consent as follows:

> Circumstances [...] in respect of which a person ('B') (the complainant) does not voluntary or without coercion agree [...] include [...] where there is an abuse of power or authority by A to the extent that B is inhibited from indicating his or her unwillingness or resistance to the sexual act, or unwillingness to participate in such a sexual act.

Sexual conduct of educators towards learners does not always constitute child abuse or sexual relationships but may, in some instances, lead to a hostile environment.

5.3 Hostile environment resulting from educator-to-learner sexual harassment

Educator-to-learner harassment does not necessarily involve sexual relationships or child abuse and is not always in the form of *quid pro quo* harassment. Educators may demonstrate less severe acts of harassment but in such a pervasive and persistent manner that it creates a hostile environment for learners. Hostile-environment harassment generally refers to repeated acts of harassment, for example continuous grabbing or groping, teasing or name-calling, sexist remarks, requests for sexual involvement or unwelcome touching, with the effect that the victim finds the school a hostile place. It may, however,

also refer to one or two isolated incidents if those incidents were sufficiently serious to make the school a hostile environment (Neff 2001: 2).

In a study by the African Gender Institute of the University of Cape Town in which learners from a secondary school in Khayelitsha were interviewed (Musaka 1999: 58) as well as a multiple case study in three secondary schools in the Potchefstroom area by De Wet (2008: 129), learners identified the following unacceptable behaviour by educators:

- speaking in a derogatory manner about the female body;
- attacking girls'/women's behaviour while teaching;
- punishing girls in class by pinching them on the thighs and armpits;
- making remarks about a girl's suitability as a sexual partner;
- making unwelcome innuendos such as "ompa neng" (when are you going to give me, referring to sex);
- touching girls on the buttocks and/or breasts when coming from behind, and
- silencing boys in class and calling boys "fags" if they challenge a teacher about his behaviour towards girls.

Learners perceive their educators as role models, and harassing behaviour by educators sends a wrong message to learners. Musaka (1999: 59) points out that during the interviews, a male learner even used exactly the same words used by a teacher who blamed girls for their own harassment. If teacher-to-learner harassment is not confronted and stopped, it may transmit the message to learners that such behaviour is acceptable, which may lead to a higher occurrence of peer harassment.

Harassment and rape by educators have a great impact on the learner, and a betrayal of trust and abuse of power impact greatly on the learner's right to education, let alone the right to a safe environment and the right to be protected from abuse and maltreatment (Oosthuizen & De Wet 2004: 75, OCR 2008: 1). In order to make effective education possible, the school environment should offer learners a place where they feel safe, secure and comfortable. The school should be a secure environment in which learners are free to

learn and grow, but if sexual harassment occurs, it makes the environment unsafe and interferes with the development and learning processes (OCR 2008: 1).

This also applies to peer sexual harassment which, like bullying and victimisation, creates a hostile environment in the school.

6. Peer sexual harassment

Several studies found that not only educator-to-learner harassment but also learner-to-learner harassment (peer harassment) was a problem. Some studies have also shown that girls are sexually harassed and abused significantly more than boys.[16] Some examples of learner-to-learner harassment are the following:

- In a study by the African Gender Institute of the University of Cape Town in which educators and learners from a secondary school in Khayelitsha were interviewed, learner-to-learner harassment was found to be a considerable problem (Musaka 1999: 58-60).
- The Human Rights Watch reported in 2001 (HRW 2001) that sexual harassment of girls by their male peers occurred widely in South African schools.
- In a study of peer sexual harassment and peer violence among 261 South African adolescents aged 14 to 18, Fineran *et al* (2001: 211, 215-6) found that 79% of the students indicated that they experienced some form of sexual harassment by peers.
- De Wet *et al* (2008: 97-122) found in a study in the Free State that verbal and non-verbal peer harassment was common in some schools.
- Leach (2002 & 2003a) and Dunne *et al* (2003) reported high levels of gender violence in schools in sub-Saharan Africa, including South Africa. Leach (2002: 100) claimed that many schools in the region are "the site of high levels of gender violence, mostly directed at girls" and indicated that the existence of serious

16 Cf Finneran *et al* 2001: 212, 214, Abrahams *et al* 2006: 751-4, De Wet 2008, HRW 2001.

harassment and abuse in sub-Saharan African schools has been documented since 1993.

According to the AAUW (1993: 15) and Fineran *et al* (2001: 211, 215-6), sexual harassment experienced by learners in the school environment interferes with their social development and has a negative impact on their mental health and school performance. Both of these studies found that sexual harassing behaviour especially affected girls, who experienced emotions such as embarrassment, fear, self-consciousness and shame. The hostile environment created by male-dominated sexual harassment hinders girls' access to an equal education experience which, in turn, may reduce their academic accomplishment, ultimately limiting their career choices (Fineran *et al* 2001: 215, Khoza 2002: 75).

Fineran *et al* (2001: 211) define peer sexual harassment as:

> Unwanted or unwelcome behaviours, such as making sexual comments, jokes, gestures or looks; showing sexual pictures, photographs, illustrations, messages or notes; writing sexual messages or graffiti on bathroom walls or locker rooms; spreading sexual rumours; calling someone gay or lesbian in a malicious manner; spying on someone dressing or showering at school; 'lashing' or 'mooning' someone; touching, grabbing, or pinching in a sexual way; pulling at clothing in a sexual way; intentionally brushing against someone in a sexual way; pulling clothing off or down; blocking or cornering in a sexual way; and forcing a kiss or forcing other unwelcome sexual behaviour other than kissing.

Peer sexual harassment can take the form of one or a combination of more than one of the forms and categories of harassment mentioned earlier. Though serious forms of sexual violence such as rape and sexual assault occur, it appears that peer sexual harassment more often takes on less severe forms, for example grabbing, teasing, name-calling, and unwelcome touching. In the majority of these cases, however, the behaviour is persistent and invasive, creating a hostile environment in the school (Neff 2001: 2).

6.1 Hostile environment resulting from peer sexual harassment

Hostile-environment sexual harassment occurs when unwelcome sexual conduct reasonably interferes with the victim's school performance, or when such conduct creates a hostile, intimidating or offensive school environment (EEOC 2002: 2). In other words, a hostile environment exists when the unwelcome behaviour of peers is so severe, persistent or pervasive that it affects the ability of the learner to participate fully in or benefit from educational programmes or activities at school, or creates an intimidating, threatening or abusive educational environment (OCR 2006: 1).

Annoying behaviour by peers does not necessarily constitute hostile-environment harassment. An act of sexual harassment should be classified as such only when the five criteria discussed in section 4 are met. However, care should be taken not to brush off sexual harassment as mere flirting. The difference between flirting and harassment is that flirting is flattering and boosts self-esteem, while harassment is demeaning and one-sided and results in feelings of powerlessness. As such, behaviour by peers can make the education environment intolerable for the victim, and educators should be able to distinguish between flirting behaviour and harassment so that they may deal with it swiftly.

6.2 Violent acts of sexual harassment

Wessler (2001: 28, 30) suggests that peer harassment usually has an escalating nature: starting with degrading language which escalates to more focused acts of harassment, together with threats, and eventually physical harassment and assault. Verbal harassment ends in violent acts. Wessler warns that unchallenged verbal harassment creates a culture and environment of ignoring discrimination, prejudice and even violence.

Two sexually related forms of assault, namely indecent assault and rape, are so severe that only one or two such incidents suffice to constitute a hostile environment for the victim who fears coming to school. Indecent assault is defined as (Snyman 2006: 440) "... the unlawful

and intentional assault of another under circumstances rendering either the act or the intention indecent." Rape is committed when (Snyman 2006: 449, De Wet 2003a: 115) "... a man unlawfully and intentionally engages in sexual intercourse with a woman without her consent (against her will)."

However, the Criminal Law Amendment Act of 2007 (RSA 2007) altered the definition of rape. The new definition for rape differs from the above definition in that it aims to omit the gender-specific nature of the definition in order to protect both male and female persons and to prosecute male and female perpetrators equally. In addition, both the acts of rape and sodomy are now included in this definition, as is oral-genital violation involving penetration of a person's mouth by the genital organs of another person. The definition also includes the use of an object for sexual penetration. Section 3 of the Act (RSA 2007) provides that:

> Any person (A) who unlawfully and intentionally commits an act of sexual penetration with a complainant (B), without the consent of B, is guilty of the offence of rape.

According to the definition given in section 1 (RSA 2007), sexual penetration includes:

> ... any act which causes penetration to any extent whatsoever by –
>
> (a) the genital organs of one person into or beyond the genital organs, anus or mouth of another person;
>
> (b) any other part of the body of one person or any object, including any part of an animal, into or beyond the genital organs or anus of another person, or
>
> (c) the genital organs of an animal into or beyond the mouth of another person.

The term "indecent assault" is also extended by introducing the term "sexual violation" which is defined more widely than indecent assault (RSA 2007):

> "Sexual violation" includes any act which causes –
>
> (a) direct or indirect contact between the genital organs, anus or breasts of one person and any part of the body of another person or an animal, or any object; direct or indirect contact between the mouth of one person and the genital organs, anus, breasts or mouth or any other part of the body of another person that

could be used to penetrate, arouse or be aroused; contact between the mouth of the complainant and genital organs or anus of an animal;

(b) the masturbation of one person by another person, or

(c) the insertion of any object resembling or representing the genital organs of a person or animal, into or beyond the mouth of another person, but does not include an act of sexual penetration.

It is unfortunate that serious forms of gender violence, including some of the conduct defined above, also occur in schools and should receive definite attention.

Learners have the right to an education that is free from discrimination on the basis of sex, gender or sexual orientation (RSA 1996a: sections 9, 10, 12, 28(d)). In terms of the South African Constitution, learners also have the right to an environment that is not harmful to their health or wellbeing (RSA 1996a: section 24). Schools and educators therefore need to understand the nature of educator-to-learner and peer harassment and to take immediate action against the perpetrators of these acts.

Some preliminary recommendations will now be made as to how schools should deal with sexual harassment.

7. Recommendations

In many cases, sexual harassment is ignored, and it appears that learners are reluctant to report such behaviour. As educators and learners do not have a clear understanding of what sexual harassment is and are unable to identify the behaviour and circumstances that constitute sexual harassment, the first step should be to educate them on the nature of sexual harassment. This article gives an extended and precise description of how sexual harassment should be understood, and gives clear indicators that may be used to identify sexual harassment. Educators and learners should receive this information, and should be trained to use it in identifying that behaviour which may constitute sexual harassment.

Two different training programmes are suggested below.

7.1 Sexual harassment education for educators

It is important that schools and educators are knowledgeable about different forms and categories of sexual harassment, that their attitude is one of support and protection towards all learners in the school, and that they act against perpetrators of sexual harassment immediately. Educators should receive proper training and information on the nature of sexual harassment and on how to distinguish between sexually harassing behaviour and behaviour that does not constitute sexual harassment.

A training programme for educators should meet the following requirements:

It should equip educators with the knowledge needed to:

- define sexual harassment in its different forms and categories;
- identify sexual harassment;
- explain to learners what sexual harassment is, and exactly which behaviour is unacceptable;
- teach learners to identify sexually harassing behaviour, and
- understand that sexual harassment is a form of discrimination.

A training programme for educators also needs to equip them with the attitudes they need to support learners who complain. Learners who complain about sexual harassment should never feel afraid to speak to an educator about sexual harassment. Educators should never blame or humiliate complainants, and the learner should never feel that the educator does not care about him/her. Educators also need to understand that as sexual harassment is a form of discrimination on the basis of sex or gender, they should develop an attitude of respect for others and set the example to create a culture of respect, equality and human dignity in the school.

Educators should also receive practical guidelines to equip them with the skills they need to prevent sexual harassment proactively in the school, to deal with complaints and to choose the appropriate actions they can take against the perpetrators of sexual harassment in their schools.

7.2 Sexual harassment education for learners

As part of life skills training for learners, and also in separate campaigns, learners should be taught to identify those actions that constitute sexual harassment, be motivated to speak out and act on it and be informed of the actions they should take when they want to lodge a complaint. As a preventative measure, schools should create a culture of respect, equality and human dignity within the school in order to create a healthy environment.

A training programme for learners should meet the following requirements:

It should equip learners with the knowledge needed to:

- identify sexual harassment and unacceptable behaviour that constitutes it;
- understand that sexual harassment is a form of discrimination, and
- report sexual harassment to the right person and in the required manner.

Learners in particular need to be equipped with the attitudes needed for active involvement in the creation of a culture of respect, human dignity and equity in their schools. They should be taught to respect their and others' rights.

Finally, learners need to be empowered to be able to deal with sexual harassment if it happens to them. Learners should receive practical guidelines on how to avoid dangerous situations, how to react to unwanted sexual attention and what steps they should follow in the complaints procedure. Victims should be assisted in dealing with the emotional and psychological effects of the trauma they experienced.

Not only should learners be equipped to deal with the situation when they become victims of sexual harassment, but the perpetrators or potential perpetrators of sexual harassment should also be empowered to change their attitudes and behaviour.

8. Conclusion

The desires and interests of all people should be respected equally. According to Dowling (1997: 42, 44), a person who sexually harasses another person shows disrespect for the intrinsic worth of the latter, as s/he is not respecting the interest of the person who is affected by his/her behaviour. Sexual harassment affects the learner's right to education and to protection against abuse, as well as the right to equality. In addition, it robs the learner of the feeling of security that is vital to effective education (Oosthuizen & De Wet 2004: 5, OCR 2008: 1). Learners should be protected against the danger of sexual harassment, in order to make effective education and equal access to quality education possible for all (Roos & Oosthuizen 2003: 61, RSA 1996a). Therefore, educators and learners need to know the nature of sexual harassment in its various forms so that it can be identified and dealt with.

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