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Managing the disclosure of school learners' HIV status

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This paper deals with school governing bodies' (SGBs) understanding and implementation of legislation and policy on HIV/AIDS. It is based on research conducted in Mpumalanga by means of an authentic but hypothetically constructed case study relating to critical aspects of HIV/AIDS in the school context. School governing bodies were asked to respond to the case in terms of the action they would take if such a case occurred in their schools. Using focus group interviews with selected members of the SGBs, this research clarifies the level of understanding of HIV/AIDS legislation and policy in South African schools, and the practices likely to result from such understandings. The findings reveal the distance between policy and practice, and the need for vigilance with respect to the legal challenges which schools may face if they act without adequate knowledge and information on the pandemic.

Die bestuur van die openbaarmakingsproses van leerders se MIV-status in skole

Die artikel fokus op skoolbeheerliggame (SBL'e) se begrip en implementering van wetgewing en beleid ten opsigte van MIV/vigs. Dit is gebaseer op navorsing wat in Mpumalanga gedoen is deur middel van 'n hipotetiese en outentieke gevallestudie wat fokus op kritiese gevalle van MIV/vigs binne die skoolkonteks. Skoolbeheerliggame is gevra om te reageer op die geval in terme van stappe wat hulle sou neem indien so 'n geval in hulle skool voorkom. Deur gebruik te maak van fokusgroeponderhoude met geselekteerde SBL-lede toon die navorsing die mate van begrip ten opsigte van MIV/vigs-wetgewing en beleid duidelik, asook die moontlike gevolge wat uit sodanige begrip en/of onbegrip in Suid-Afrikaanse skole kan ontstaan. Die bevindinge beklemtoon die diskrepansie tussen beleid en praktyk en die behoefte aan waaksaamheid met betrekking tot die wetlike uitdagings wat skole die hoof mag bied sonder genoegsame kennis van en inligting oor die pandemie.

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In recent years South Africa has experienced much violence and abuse directed towards children. Violence and abuse increase every time a child feels the impact of HIV/AIDS (Human Rights Watch 2001). For some the experience is distant, while for others it takes place within them, destroying their immune system and eventually leading to death. Although most AIDS deaths affect adults (South African Medical Research Council 2001), much of the impact is felt by children. Children experience the deaths of their parents, other family members, educators and their peers at an increasing rate.

One of the most significant challenges for many school learners is the threat of living with the HIV virus. This is also a dilemma when viewed from the perspective of providing education for all learners. The impact of HIV/AIDS on children directly jeopardises a number of their rights, such as access to education, to information, the right to participate in learning and sports activities, and the right to protection (German 2002: 5). The dilemma becomes clear when one realises that educators have to act "in the learner's best interests" (De Waal *et al* 2001) while at the same time having a duty of care which entails protecting the child from harm and danger (De Wet & Oosthuizen 2001).

The dilemma increases as a result of the stigma associated with AIDS and the exploitation of HIV-positive people. Ignorance and the belief that AIDS is a punishment for immoral behaviour contribute to discriminatory behaviour towards children. Some people believe that a child whose parent has died of AIDS will infect them and their children (Mckay 2002: 3). Even at school, learners who are HIV-positive are isolated, and those who disclose their HIV status allow other children to humiliate them. Incidents of this nature are regularly reported. For instance, Mkhize-Matjila (2002: 2) reports in the case of an HIV-positive boy who dropped out of school after a year of gruelling discrimination during which he was beaten up merely because "he had AIDS". His HIV status had been made known by his HIV-positive mother as part of a campaign to educate the community.

In the light of this situation, this paper deals with managing the disclosure of learners' HIV status at school.

1. Rationale

In South Africa little research has been done on HIV/AIDS and education (Hartell 2002). A cursory study of the comprehensive proceedings of the International Conference on AIDS held recently in Durban, reveals a preponderance of studies on the clinical and bio-medical aspects of HIV/AIDS with very little on the attendant psychological, cultural, legal or policy concerns related to the pandemic. The few educational studies available tend to focus on "AIDS awareness" and "AIDS education" with very little empirical work on the broader social issues, or on how school governing bodies deal with HIV/AIDS.

Arguably, where the pandemic itself is the most critical variable in determining the availability of subjects for study, and where the urgency of activism and intervention overshadows the need for systematic, disciplined research endeavours, it may be deemed unreasonable to expect many long-term studies on education law and policy in relation to HIV/AIDS. Yet, without careful studies of the rights of learners who are serum-positive, educational institutions are not only vulnerable to legal action and discipline, but could also undermine the human rights and dignity of such people within society. It is important, therefore, not only to gain insight via an inquiry into how educational institutions understand and act on the law and policy on HIV/AIDS in their daily routines and practices, but to provide, through careful research, the kinds of information that can assist educational practitioners to act in accordance with their rights and obligations.

The existing body of literature (Prinsloo 2002 & 2001; Bennell *et al* 2002 and Maman *et al* 2001) reveals that research is concentrated on the social aspect of HIV/AIDS. Significantly, very little research focuses on the legal aspects of HIV/AIDS. Achmat *et al's* (1997) report is not based on empirical investigation. There is also a gap in research on how school governing bodies (SGBs) understand and implement legislation and policy on HIV/AIDS.

The aim of this study, therefore, was to establish how SGBs understand and implement legislation and policy on the disclosure of HIV/AIDS status in public schools.

2. Research strategy

The researcher sampled five schools in Mpumalanga in a series of focus group interviews based on a case description (below). The schools sampled included two primary schools and three secondary schools.

The following case study was used for the focus group interviews:

Two learners (Y and Z) of your school contracted AIDS. Because they were mindful and considerate of the implications of their children's state of health for others around them, the parents of Y and Z called on the doctor to disclose this information to the class teacher, Ms X. Ms X was requested to regard the matter as confidential. No one else at school or in the community was to be informed at all. Now, at the end of the term, the principal and the governing body of the school call on the learners and educators to donate blood at the school's blood donation rally. Learners Y and Z, ignorant of the consequences of their HIV status, are eager to contribute to the urgent need for blood. A nurse collects their blood. Ms X is confronted with the fact that she has promised to say nothing about the learners' health status.

This case description is based on a hypothetical event involving HIV/AIDS. It embodies underlying education law principles, and is designed to solicit a reaction from the school community as to its corporate understanding and operational policy on dealing with such a "case" in the context of education law and policy.

The researcher selected stakeholders from SGBs for focus group interviews. For the primary schools, the stakeholder group comprised the school principal, educators and parents. In the case of secondary schools it included learners as well. The SGB was presented with the case study. The researcher read the case description and in some cases also provided translations. Each member of the SGB was asked to respond to the following questions:

- Does Ms X have a responsibility to disclose the information about learners Y and Z?
- What would you as a governing body expect from Ms X with respect to disclosure?
- Whom exactly should Ms X inform, if anyone at all?
- What do you think the Department of Education would expect of Ms X?

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- What do you think the Department of Education would expect of you as a governing body in this case?
- Should learners X and Y be expelled from the school for endangering the lives of others?
- Should learners X and Y be allowed to participate in school sport activities?

The responses were transcribed and sent to the respondents to check their validity.

The researcher analysed the data by means of the comparative method, which combines inductive category coding with simultaneous comparison of all units of meaning obtained across categories (Maykut & Morehouse 1994: 126). The researcher looked for underlying similarities between the themes. The comparative method involves the selection of units of meaning for analysis and a comparison of all other units of meaning, then grouping them with similar units of meaning. In real terms this means making sense of large chunks of information. The researcher consolidated, reduced and interpreted what the respondents had said. Next, the data were organised into categories (Maykut & Morehouse 1994: 134). The following categories were identified:

- responsibility to disclose,
- an SGB's expectations of educators,
- whom to inform,
- the Department's expectations of educators,
- the Department's expectations of an SGB,
- expulsion of learners, and
- permission to participate in sport.

These categories were arrived at after comparison of units of meaning and were grouped according to the level of similar understanding of each item.

3. Findings

The identity of the respondents is kept anonymous in this report. The researcher will refer to them as A, B, C and D in schools A, B,

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C, D and E, where respondent A represents a principal, B an educator, C a learner and D a parent.

3.1 Responsibility to disclose

This unit refers to the responsibility of educators to disclose learners' HIV-positive status, which the SGBs were asked to indicate. Most SGBs agree not to disclose such status. Their opinion is that an educator who has information about a learner's HIV-positive status must not disclose it to any person. Respondent B in school A argues: "It is not her responsibility to disclose. She must keep confidentiality." The respondent concedes that the educator may tell the principal. This opinion resonates with the view of respondent A in school B: "She must be given permission by the principal. She must follow procedures." There are those who categorically maintain that the educator must not disclose HIV status but must keep confidentiality.

3.2 SGBs' expectations of educators

In this unit the SGBs were asked their expectations of educators with regard to disclosure by learners at the school level. Their unanimous expectation was that an educator with information about any learner's HIV-positive status must "Keep confidentiality; inform one member of the SGB or the principal; not discriminate". One SGB insisted on confidentiality and felt that the educator should not "inform any person" but keep the information to herself.

3.3 Whom to inform

This question relates to accountability. There is a need for disclosure to be managed by a specific person. By means of this question the researcher wanted to determine whether the SGB knew of any person in their school having been assigned to handle disclosure. The respondents revealed a diversity of opinions. Respondent A in school D maintained that: "No one should be told because it is confidential". To the respondents in school D HIV/AIDS is a confidential matter, like keeping a secret. However, most respondents disagreed. For instance, respondent B in school A believed that the principal could be informed about disclosure. This response is consistent with that of respondent A in school E. In the same vein, respondent A in school

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B argued that the principal and learners must be informed: "Learners must be informed for educational purposes and alertness. They must know that AIDS exists and it kills." Some SGBs appear to be open about HIV/AIDS. Similarly, respondent D in school C believes that "the principal and members of the SGB must be informed".

3.4 The Department's expectations of educators

Most respondents seem to agree that the Department of Education expects them: "To keep confidentiality; to follow protocol; to treat learners equally". The question was asked to see whether SGBs knew of specific provisions in legislation and policy on the disclosure of HIV-positive status. The SGBs appear to have guessed rather than giving accurate answers. They used general knowledge about legislation and policy on HIV/AIDS.

Certain SGBs are probably not familiar with legislative and policy provisions. For instance, respondent D in school D stated that the Department of Education expects educators: "Not to disclose because the school will close; no-one will attend". This response is similar to that of respondent A in school E who said: "The Department of Education expects us to tell the learners not to come to school but to stay at home".

5.5 The Department's expectations of an SGB

The question asked in this unit aimed to establish whether the SGBs were *au fait* with what the Department of Education expects them to do in managing disclosure. A quick glance at the responses reveals that SGBs were not sure. Answers given included the following: "To give support and HIV education; to have knowledge about HIV; to inform people about HIV".

However, the SGBs agreed unanimously that:

There are no clear guidelines from the Department for the SGB and we feel we should be trained. What is confusing in the existing guidelines is that all parties' (learners, educators and parents) roles are addressed simultaneously. We don't know what is our actual role.

SGBs have no competence to deal with HIV/AIDS, hence respondent A in school B argues: "The Department expects us to have knowledge

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about HIV but they do not train us. How can we give support to HIV people if we are not trained?”.

It appears that the Department has not communicated its National Policy on HIV/AIDS for Learners and Educators in public schools well. Some SGBs are not even aware of this policy document. For instance, respondent A in school E said: “We do not know [of] any departmental expectation, but I believe there must be laws of the land governing HIV/AIDS”. Similarly, respondent D in school D said:

We do not know if there are guidelines available for us. I mean those that specifically address the SGB's role in managing the disclosure of HIV-positive status.

3.6 Expulsion of learners

In this unit the researcher asked the SGB whether they would expel a learner who was found to be HIV-positive. All agreed that no learner should be expelled from school because of HIV status. Respondent B in school A stated: “Expulsion [would] be discriminatory”, adding: “There is no danger [from] their presence”. The SGBs agreed that the learners must be accepted in schools because “they have the right to education”. However, respondent D in school B stated that although learners have the right to education and therefore cannot be expelled from school, they must be “educated about HIV/AIDS” to prevent infections in the school.

3.7 Permission to participate in sport

All SGBs agree that HIV-positive learners must be allowed to participate in sport. However, participation should be conditional. For instance, respondents in schools A and B said:

We will allow the learner to participate in sports, but with reservations. Only in certain sports. We will not allow them to participate in boxing or rugby.

Respondent B in school C added: “Where physical contact is needed we will not allow the learners to participate”. This is consonant with the need for safety. In sports where there is physical contact, like boxing or rugby, the SGB would probably be correct in the way they handle this matter. Incidents of blood-letting often occur in these

sporting codes. This could be dangerous to other learners if not carried out according to the required standards as provided in the Department of Education (1999) policy guidelines. Generally there is a need to exercise safety precautions (see below). Respondents in School D said: "We will allow them to participate but not in all sports; they must participate under the supervision of an educator". Sports at school level always occur under supervision. What the respondents meant is that the degree of supervision would differ in this case because the educators would probably be on the look out for potential risks and manage them immediately.

4. Discussion

4.1 Responsibility to disclose

The SGBs interviewed agreed that when an educator has information on the status of HIV-positive learners he/she must not disclose it. They argue that it is not the educator's responsibility. This is ethically correct because such information (especially about HIV-positive status) cannot be passed onto a third party without parental consent (Achmatt *et al* 1997: 49). Disclosure is precluded for various reasons.

First, the Department of Education (1999) forbids disclosure. Paragraphs 6.3-6.5 offer the following provisions for handling disclosure:

Any person to whom any information about the medical condition of a learner, student or educator with HIV/AIDS has been divulged must keep this information confidential.

Disclosure to third parties may nevertheless be authorised by the informed consent of the learner or by written consent of the educator, or be justified by statutory or other legal authorisation.

Unauthorised disclosure of HIV/AIDS-related information could give rise to legal liability.

The provisions raise important issues about the disclosure of HIV status. Anyone who handles disclosure or to whom the HIV-positive status is disclosed must preserve confidentiality. However, the information may be disclosed if authorised or by the written consent of the learner's guardian. Because of his/her lack of *judicium* the learner's contractual capacity (to give consent) and *locus standi in iudicio* are restricted (Prinsloo & Beckmann 1988: 68). In this way the learner's

rights are protected. Consent to disclose may be obtained from parents, who will act in the best interests of the child. This is very important in the case of a learner who has not yet reached maturity. The consent of the learner may not be sufficient. If an educator wishes to disclose the information about the learner, he/she should follow the principle of reasonable expectation (Oosthuizen 1998: 47). This implies that:

- Even before a decision affecting the rights of a person is taken, the doctrine of legitimate person has under certain predetermined circumstances the right to be heard.
- In order that this doctrine may be applied, it is not necessary that a right, privilege or freedom should have been infringed for a person to be heard. The person should first be consulted before a decision is made about disclosure.

In protecting the learner, the educator must act *in loco parentis*. This principle implies that an educator should act like a reasonable parent in protecting the child from the risks to which disclosure would expose him/her (Bondesio *et al* 1989: 11).

Secondly, the learner has the right to privacy. Disclosure is a personal decision that an individual is entitled to make autonomously and in private. Disclosure is rooted in the right to privacy, which is intended to protect citizens from the disclosure of data that they have to provide in the context of medical assistance. The protection of personal data is regulated by administrative legislation. This means that disclosure should be managed according to strict administrative codes as prescribed in the law, such as the Promotion of Access to Information Act, No of 2000, and the Promotion of Equality and Prevention of Unfair Discrimination Act, No 3 of 2000. These provisions must be read together with the laws that protect individual rights, such as Section 14 of the Constitution, Act No 108 of 1996, which provides that:

Everyone has the right to privacy, which includes the right not to have —

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized, or
- (d) the privacy of their communications infringed.

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The right to privacy is protected by common law. The right to privacy protects personal information concerning an individual's state of seclusion and is excluded from the knowledge of others; and it is for individuals themselves to decide on the content and extent of their interests in their privacy. An educator to whom confidential information regarding HIV status is divulged is ethically and legally bound to keep the information confidential. In conclusion, the educator must obtain permission to disclose from a parent or guardian because learners (especially those who are still minors) lack discretion. Consent must come from the parent of the HIV-positive learner as the guardian of the rights of the child. Failure to uphold the legal provisions stated may result in liability, as in *Jansen van Vuuren and another NNO v Kruger* 1993(4) SA 842 (A).

In this case the plaintiff who had contracted AIDS instituted, in a Local Division, an action for damages for breach of privacy against his general medical practitioner because the doctor had allegedly disclosed his condition to two of his colleagues during a golf game. The news spread, and the respondent, having realised that there had been a leak, instituted proceedings against the doctor and the owner of the laboratory that had performed the blood test. The case was pleaded in the following terms: the respondent, as the doctor, had owed the plaintiff a duty of confidentiality. The plaintiff was awarded R5 000 in damages.

4.2 An SGB's expectations of educators

SGBs expect educators to preserve confidentiality in respect of learners' HIV-positive status and not to discriminate against HIV-positive learners. These expectations are based on provisions in the Constitution, Act No 108 of 1996, and the Department of Education's (1999) National Policy on HIV/AIDS for Learners and Educators in Further Education and Training Institutions. The Department of Education (1999: 13-4) provides in paragraph 6.1 that:

No learner or student (or parent on behalf of a learner or student), or educator is compelled to disclose his/her HIV/AIDS status to the school or institution or employer. (In cases where the medical condition diagnosed is the HIV/AIDS disease, the Regulations relating to communicable diseases and the notification of notifiable medical conditions [Health Act, 1977] only require the person performing

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the diagnosis to inform the immediate family members and the persons giving the information to the person and, in cases of HIV/AIDS-related death, the persons responsible for the preparation of the body of the deceased).

It seems the SGBs' expectation that educators will preserve confidentiality is correct. However, if a learner chooses to disclose his/her status, the school manager or SGB should welcome this disclosure and create an enabling environment in which confidentiality is ensured and unfair discrimination is not tolerated.

With regard to discrimination it must be noted that learners living with HIV/AIDS are a vulnerable group who need protection from discrimination, especially at a time when HIV-positive people are suffering from stigma and discrimination (Dept of Education 2000; World Health Organisation 2001 and Dept of Health 2001). A stigma such as that associated with HIV/AIDS does not naturally exist; it is created by individuals and communities. Stigmatisation entails devaluation and reinforces existing prejudices, frequently leading people to do (or refrain from doing) something, in effect denying services or entitlements to another person.

The SGBs are correct in expecting educators not to discriminate against learners who are HIV-positive. In terms of section 9 of the Constitution, Act No 108 of 1996, HIV-positive learners have the right to equality and to freedom from unfair discrimination. Discrimination is a particular form of differentiation, thus any differentiation of learners on the basis of their HIV status is illegitimate. There is a list of illegitimate grounds for differentiation in Section 9(3), and any differentiation on grounds analogous to those listed constitutes discrimination (De Waal *et al* 1999: 2000 and Davis *et al* 1997: 56). This expectation is consonant with the Department of Education's (1999) provisions in paragraphs 3.1-3.4 which stipulate that:

No learner, student with HIV/AIDS may be unfairly discriminated against directly or indirectly. Educators should be alerted to unfair accusations against any person suspected to have HIV/AIDS.

Learners, students, educators and other staff with HIV/AIDS should be treated in a just, humane and life-affirming way.

Any special measures in respect of the learner, student or educator with HIV should be fair and justifiable in the light of medical facts; established legal rules and principles; ethical guidelines; the best interest of the learner, student and educator with HIV/AIDS; school

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or institution conditions; and the best interest of other learners, students and educators.

To prevent discrimination, all learners, students and educators should be educated about fundamental human rights as contained in the Constitution of the Republic of South Africa, 1996.

4.3 Whom to inform

The researcher found that the SGBs interpret the fact that HIV/AIDS is confidential to mean that no-one must be told. This is probably wrong, since no right is absolute and the right to confidentiality may be limited through legal procedures. Section 1 of the Constitution Act, No 108 of 1996, provides that:

Everyone has the right of access to –

- (a) any information held by the state; and
- (b) any information that is held by another person and that is required for the exercise or protection of any right.

From this provision one may learn that the right to confidentiality may be limited. The question is: who should have access to medical records about the learner. The South African Medical and Dental Council Act, No 56 of 1974, provides ethical guidelines for confidentiality. This act established the South African Medical and Dental Council, which prescribes a doctor's obligation to keep information confidential. Medical records are confidential. No doctor may divulge information regarding the ailments of a patient except with the express consent of the patient, or in the case of a minor, with the express consent of his/her guardian or parent. When consent is obtained the information can be passed on to a third party. Once a parent or learner decides to inform an SGB about a learner's status the information should be kept confidential. Only the management staff, including class educators, may have access to such records. However, the law is silent on whom should be informed at school (South African Law Commission 1998: 115). This creates a problem because information on HIV-positive status involves people's rights, and creates confusion when the school has to provide information as required by the South African Schools Act, No 84 of 1996, section 59(1-2), which states:

A school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights.

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Every school must provide such information about the school as is reasonably required by the Head of Department.

The relevant person to inform would appear to be the principal since he/she represents the Department. He/she is also in contact with learners on a daily basis. The South African Law Commission (1998: 115) suggests that “in view of the increasing democratisation of education and participation of parent bodies, SGBs should be given equivalent rights of disclosure to information”.

4.4 The Department's expectations of SGBs

It seems the SGBs do not know what the Department of Education expects of them concerning HIV/AIDS. This is spelled out in Department of Education (1999: 23):

Duties and responsibilities of learners, students, educators and parents, which includes

- to respect rights of learners, students and educators;
- to adopt a Code of Conduct for learners prohibiting HIV risks of transmission;
- to access medical opinion to assess whether the learner, student or educator, owing to his/her condition or conduct, poses a medically recognised significant health risk to others; and
- to ensure the rights and dignity of all learners, students and educators.

School and institutional plans which entail:

- developing and adopting an implementation plan on HIV/AIDS to give operational effect to national policy;
- using provincial policy guidelines when compiling the implementation plan;
- involving major role-players in the wider school or institution in developing the implementation plan;
- taking into account the needs and values of the specific school or institution;
- discretion regarding mandatory sexuality education or accessibility of condoms.

Health advisory

- Each governing body must establish a health advisory committee.

SGBs need to be *au fait* with these expectations if they are to function properly and effectively. The provisions need to be communicated to all and sundry. The integration of learners', educators' and

parents' provisions in the law and policy appears to create confusion. It would be better to treat each group's provisions separately, so that each would clearly understand what is expected of it.

4.5 Expulsion of learners

The SGBs agree that no learner must be expelled from school because of his/her HIV-positive status. Expulsion would be discriminatory and a violation of the child's right to education. HIV-positive learners should be allowed to continue their education if deemed well enough to do so. Hence paragraph 2.6 of the Department of Education (1999: 7) stipulates:

Learners and students with HIV/AIDS should lead as full a life as possible and should not be denied the opportunity to receive an education to the maximum of their ability.

Those who fear that the presence of HIV-positive learners will endanger other learners' lives must refer to Department of Education (1998), paragraphs 2.6.1-2.6.5, which provide that the risk of transmission of HIV in the day-to-day school environment is insignificant if the precautionary measures prescribed in the policy guidelines are adhered to. To be safe, schools must follow infection-control procedures, take universal precautions and supply adequate information. Department of Education (1999) also provides in paragraph 3.1:

No learner, student or educator with HIV/AIDS may be unfairly discriminated against directly or indirectly.

SGBs are expected to deal with learners, students or educators who refuse to study with or teach a learner or student with HIV/AIDS, or to work with or be taught by an educator with HIV/AIDS.

It is not expected of schools to be able to give physical care and support except in basic functions like knowing how HIV affects the body, and the progress of HIV infection in learners; helping to prevent illness through early identification; maintaining good nutrition; knowing the diseases common in HIV-infected learners; providing first aid, and managing playground and sport injuries (Dept of Health 2001). HIV-positive learners also need academic support in order to cope.

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4.6 Permission to participate in sport

The SGBs agree that HIV-positive learners may be allowed to participate in sport. This response is consonant with the Department of Education's (1999: 20) provision (8.1):

The risk of HIV transmission as a result of contact play and contact sport is generally insignificant.

The risk of HIV transmission increases where any open wounds, sores, breaks in skin, grazes, open skin lesions or mucous membranes of learners are exposed to infected blood. Where certain types of contact in sport increase the risk of HIV transmission, HIV-positive learners may not be allowed to participate. Universal precautions must be followed. During play and sport the school must have a first-aid kit ready. Where necessary, medical counselling should be sought. HIV-positive learners must not be allowed to participate.

5. Conclusion

The following are the major findings of this research:

- Educators believe that they do not have the responsibility to disclose a learner's HIV status.
- SGBs expect educators to maintain confidentiality at all times, but believe that disclosure is warranted in certain cases.
- The law gives no indication of the particular responsibilities of the SGBs.
- The SGBs do not have knowledge of who should handle disclosure at school.
- The SGBs probably do not know the expectations of the Department of Education.
- The SGBs may not expel a learner on the grounds of his/her HIV status.
- HIV-positive learners are allowed to participate in sport, but not in all sports.

These findings indicate that the management of HIV in schools is not in good shape. There are inadequacies that must be addressed immediately. For educators to think that their responsibility to

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maintain confidentiality means no disclosure at all is wrong. No right is absolute, and rights can be limited by constitutional procedures. It is important that the Department of Education make it clear who should handle disclosure in order to avoid liability claims against schools. The success of any policy depends on communication; thus the Department of Education should make its policy provisions known to the SGBs through workshops or training. For SGBs to say that there are provisions for the management of HIV/AIDS at school is misleading. The provisions are available, but not known to them. Policy and legislative provisions relating to learners, educators and parents must be made separately so that each party can know its responsibility. All in all, the SGBs must be commended for upholding the right of every child to education by allowing HIV-positive learners to attend school and to participate in sport.

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