

**LCP411K**

October/November 2009

**EDUCATION LAW (EDUCATION LAW (LLB))**

Duration 2 Hours

100 Marks

**EXAMINERS**FIRST  
SECONDDR I MOODLEY  
MS CA MIENIE

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**This paper consists of three (3) pages****INSTRUCTIONS – PLEASE READ CAREFULLY**

- **Plan your time carefully – you should spend approximately 30 minutes per question.**
  - **Refer to legal authority throughout.**
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**Question 1**

- a) The South African education system is one of the public systems that has undergone substantial and dramatic change. It has been transformed into a single democratic education system in which democratic governance and respect for human dignity, equality and diversity play a paramount role. Discuss this statement. (10)
- b) What is the meaning of co-operative governance? (5)
- c) Discuss how the legislature and executive should cooperate in governing education. (5)
- d) Discuss the status of public schools as “organs of state”. (5)
- [25]**

**Question 2**

- a) The governing body of the high school you are employed at finds out that you are currently busy with the LCP411K course. They ask you to explain to them the legal status of the public school and the public school’s relationship with the governing body. (7)

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- b) Critically discuss the following statement  
The public school admission policy is grounded in human rights and the protection of equality and diversity in the school environment (6)
- c) AFR primary school is an Afrikaans primary school situated in Pofadder. It is the only primary school in the area. The nearest English primary school is in another town situated 50km's from Pofadder. The governing body of the school determined the language policy of the school as Afrikaans. During the registration period for the grade 1 intake of 2009, about 100 English learners were turned away because they did not comply with the language policy of the school. The parents of these English learners are very unhappy as they do not have the available time or funds to drive their children the 50km's to the English primary school every day. They approach you for advice. Advise them on the right of their children to attend AFR and receive their education in English with reference to relevant case law (12)
- [25]**

### Question 3

The governing body expels Thandi after it becomes known that she is pregnant. Her parents are furious. They argue that the governing body may not expel their daughter and that an expulsion on the grounds of pregnancy constitutes an infringement of Thandi's fundamental rights.

- a) On what legal grounds can Thandi's parents rely to support their argument that the governing body may not expel Thandi? (4)
- b) On what legal grounds can Thandi's parents rely to support their argument that an expulsion on the grounds of pregnancy constitutes an infringement of Thandi's fundamental rights? (4)
- c) Evaluate the governing body's decision to suspend the learner according to the *ultra vires* principle and the *audi alteram partem* principle (7)
- d) Discuss the basic elements of procedural fairness (found in common law and statute and protected by the 1996 Constitution) which the administrator has to comply with when applying due process in practice (10)
- [25]**

### Question 4

- a) Critically discuss the following statement  
As a result of the incapacity of parent representatives on school governing bodies and their inability to govern their schools effectively, the Minister of Education decides to elevate the position of the principal on the governing body and to vest principals with more "school governance" powers (10)
- b) The governing body of ABC Secondary School is in the process of finalising the adoption of the code of conduct for learners. Although the bulk of the work has been done and proper consultation took place with parents, learners and educators, a few issues regarding the dress code of the school have yet to be finalised

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However, during consultation with the roleplayers, one group of parents and educators indicated that they are not going to tolerate “weird hairstyles” and “outrageous jewellery”, while another group of parents and learners argued that hairstyles and jewellery are only peripheral matters and seldom detract from the teaching and learning activities of a school. A third group of parents and educators tried to resolve the issue by offering the following dress code rule as a possible solution to the problem: “A code of conduct is not aimed at repressing diversity or the individuality and healthy initiative of learners.”

As the chairperson of ABC Secondary School, you have convened a workshop with roleplayers to address the concerns about the dress code, and to debate whether the proposed rule provides an appropriate way to deal with dress code issues. As chairperson you have to prepare a short and concise comment on each of the arguments above and explain which of these arguments would be legally correct. (15)

**[25]**

**TOTAL:**

**{100}**