



MINIMUM SERVICE LEVELS IN
EDUCATION:
SUBMISSION TO THE ESC

Executive Summary

The DA believes that learners are entitled to care and protection during school hours. Specifically, we must ensure that:

- School leaders are on hand to provide leadership during strike situations and to communicate with necessary authorities during emergency situations
- Learners are supervised during the school day; and
- The nutrition and health needs of learners are not compromised.

Unfortunately, teachers' unions have shown a blatant disregard for this duty of care, frequently engaging in union meetings and unplanned strikes during school hours. Learners are abandoned, unsupervised, thereby compromising their safety.

We therefore request that the Essential Services Committee (ESC) makes a formal study of the situation, and declare a minimum service level for school staff to ensure the safety and wellbeing of children at school.

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1. Introduction

Education sector strikes are a frequent and often violent feature of the South African schooling system. Some in the education sector have come to view learners as pawns to be used in wage negotiations. This has resulted in our children losing more days to strikes than the other 14 countries participating in the Southern and Eastern Africa Consortium for Monitoring Educational Quality (SACMEQ) III study.¹

Schools have a duty of care to learners – as daily guardians of children in the absence of their parents and guardians. While the DA supports the right of workers to strike, our greater concern must be the fact that education sector strikes negatively impact on children’s wellbeing, health and safety. The rights of learners must always come first. That is why employees in the education sector who are specially tasked with learners’ welfare must not be able to simply abandon learners without thought for the consequences.

Unfortunately, school staff frequently fail in this duty of care when an education sector strike is called or union meetings are scheduled during school hours. It is thus urgently necessary to establish a minimum service level in terms of the safety, supervision, nutrition and hygiene of learners.

2. Learners’ rights

The Bill of Rights contained within the Constitution of the Republic of South Africa (1996) specifically states that every worker has the right to strike. However, in determining whether or not a specific case warrants a limitation on this right, other rights must be considered – in this instance, the rights of school learners. It is thus important to establish what these rights are.

Many will be familiar with the provision in Section 29 (1) (a) that everyone has the right to a basic education. There are further specific constitutional obligations regarding children’s welfare:

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(1) Every child has the right – ...

(c) to basic nutrition, shelter, basic health care services and social services;

(d) to be protected from maltreatment, neglect, abuse or degradation;...

In Section 28 (2), the Constitution explicitly states that “*A child’s best interests are of paramount importance in every matter concerning the child.*” The Children’s Act, No. 28 of 2005 confirms in Chapter 2, Section 9:

9 Best interests of child paramount

In all matters concerning the care, protection and well-being of a child the standard that the child’s best interest is of paramount importance, must be applied.

It is clear from these legislative provisions that the welfare of children, and in this case school learners, must be considered most seriously when weighed against other rights. Children have the right to a safe, hygienic environment and to nutrition, and those entrusted to ensure this should not be allowed to abandon their duty. It is with this in mind that we propose establishing specific service levels that must be delivered in the education sector, even when school staff wish to go on strike.

3. Minimum service levels

It is common practice to designate parts of a sector as an essential service, as opposed to a whole sector or industry. An example of this can be found in the health sector. Nursing staff are freely able to strike with the exception of a crucial subset – the nursing staff of Intensive Care Units (ICUs). In this instance, only a small percentage of nurses work in our country's ICUs, therefore when other nurses go on strike, they do so on behalf of the essential service nurses that are desperately needed to perform life-saving nursing roles.

The International Labour Organisation (ILO) argues that this practise can be implemented in education and the DA agrees with the principle that certain education sector occupations are crucial in ensuring the welfare of school learners.

Unsurprisingly, the largest teachers union – the South African Democratic Teachers Union (SADTU) – rejected any suggestion of limiting strikes for education workers and downplayed the impact of education sector strikes.

Education sector strikes, however, have serious implications for learners. Striking union members have, in the past, seriously damaged school property, as occurred during the extensive 2010 strike. SADTU members also frequently intimidate non-striking education workers, illegally accessing schools and harassing learners.²

There are also specific circumstances in which the consequences of strike actions might be more dangerous than others. We have encountered concerns from schools and members of the public on the following key issues affecting school learners:

- Safety, especially in emergency situations;
- Supervision of learners; and
- Nutrition and hygiene.

3.1. Leadership and safety

In any emergency situation, children are especially vulnerable, and look to responsible adults to ensure that their wellbeing and safety is maintained. A school leader with sufficient authority and experience – such as the principal or deputy principal – must be available whenever learners are present, to communicate with emergency services, provincial department officials, or any other relevant authorities. Responsible adults must also be on hand to assess the situation and direct other staff and learners appropriately, making alternate arrangements where necessary.

In non-emergency situations, good principals and deputy principals play a pivotal role in ensuring the success of a school. They must provide a strong leadership presence, to ensure that learners are able to continue learning through alternate arrangements and in safety during a strike.

Consider the example of an Umlazi school during the devastating public sector strike of 2010 – the principal remained at the school after sending teachers home for their safety, bravely facing down SADTU members attempting to forcibly close the school, so that matric learners could continue their studies unhindered.³

Principals in this situation would be empowered by having legislative backing for their refusal to strike. This contrasts markedly with another, SADTU-aligned, principal who abandoned her post in Mpumalanga during a recent strike and left children to fend for themselves.

3.2. Supervision

As the Minister of Basic Education, Angie Motshekga, has rightly pointed out, learners being left alone without adult supervision is a problem. Parents, guardians and caregivers expect learners to be supervised during school hours by adult staff members – especially in an education sector where learners are exposed to ever increasing levels of violence and crime in schools.

A recent example is that of Eldorado Park Secondary School, where a violent altercation between two learners was captured on video. It transpired that as part of a stay away by educators in the area, leading to two unsupervised children stabbing each other with scissors.⁴

The role played by school transport also plays into the supervision issue. Transport services often drop learners off at school some time before the school day starts, whether the school buildings are open at that time or not. If learners subsequently discover that striking staff have abandoned the school, they have little option but to wait around until transport arrives at their usual end of the school day, or walk home – often through unsafe areas.

3.3. Nutrition and health/hygiene

Permanent staff members, particularly at boarding schools, who supply food are crucial in ensuring that school-age children receive proper nutrition and stay healthy.

A Mpumalanga school⁵ faced a difficult situation in 2013 when school hostel support staff – including those who were supposed to manage the hostel kitchen and ensure that children received meals – went on strike, without considering the implications for learners' health. Normal teaching staff scrambled to cope by taking shifts after a full teaching day to make sure learners were fed and looked after.

Similarly, the cleaning of school properties plays a significant role in health and hygiene in the school environment. When these services are withdrawn due to strike action it has a direct negative effect on learners.

Staff providing food and cleaning of school premises are essential in making sure that children have access to a safe and healthy learning environment. The idea that learners in boarding schools are left without meals is chilling – staff cannot simply abdicate their responsibility to these children.

Certain learners also have very specific health requirements. Some need to receive chronic medication, have health conditions that may result in medical emergencies, or severe allergies. School staff must be aware of these requirements and be on hand to address them.

Learners at schools for special needs education are especially vulnerable and need round-the-clock care – abandoning these learners in order to strike is simply unacceptable.

Education sector strikes pose a significant threat to the welfare of school learners that goes above and beyond a loss of teaching time and the potential damage to their education. It becomes a matter of safety, health and wellbeing. We must, therefore, take a stand against the tendency to abandon learners at short notice for Union Meetings, unprotected strikes and the like. We need to re-set our focus in the education sector to place learners first.

4. ILO precedent

The ILO itself has deemed specific roles within the education sector to be crucial to learner welfare.

According to the *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (5th revised edition)*, there are two instances in which the right to strike might be restricted:

*576. The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).*⁶

South Africa is a member state of the ILO, and a signatory to the organisation's relevant conventions in labour law. As a member country of the ILO, we cannot act contrary to the spirit and letter of these decisions and principles.

The ILO does not make blanket declarations of an entire industry being an essential service. For example, while it is agreed that the hospital sector might constitute an essential service, certain employees (such as hospital gardeners or labourers) should not be restricted as they do not fulfil a health and safety role (see paragraph 593).⁷

In terms of the categories outlined in the introduction, the Digest states clearly that certain school staff members can be declared an essential service and have limitations placed on their right to strike:

*585. The following may be considered to be essential services: ...
– the provision of food to pupils of school age and the cleaning of schools (see 324th Report, Case No. 2037, para. 102)*⁸

In addition, while the ILO has not yet recognised the education and teaching sector as a whole as an essential service, the Freedom of Association (FoA) committee has agreed that principals and deputy principals may have their right to strike limited:

*588. While the Committee has found that the education sector does not constitute an essential service, it has held that principals and vice-principals can have their right to strike restricted or even prohibited.*⁹

4.1. School leadership

The ILO's resolution of the status of principals and deputy principals stems from Case 1528 of 1991¹⁰ before the FoA Committee. In this case, the German government had taken disciplinary steps against teachers, who were also designated as civil servants, when they went on strike due to a collective agreement not being upheld by the state in respect of these specific educators. The Unions argued that this was a violation of their freedom to organise, while the state argued that the right to strike of civil servants as agents of the state could be restricted.

The Committee held that such a blanket restriction did not apply to all education workers who had been designated as civil servants by the German state – the Committee felt that the way in which a country chooses to designate education workers (i.e. as civil servants or not) could not automatically restrict their right to strike.

However, the Committee raised an exception in terms of principals and deputy principals:

*The Committee considers, however, that the situation of the deputy school principals and principals is different in so far as they exercise the prerogatives of the public authority; because of this, they may have their right to strike restricted, or even prohibited.*¹¹

Principals and deputy principals are the most senior employees at a school, and have the greatest responsibility placed on them: they must ensure that their school delivers education to the learners in a safe environment conducive to learning.

They must be on hand to secure schools and coordinate with education officials during education sector strikes. As agents of the state's authority, these officials are responsible for ensuring that learners and school property remain safe and free from harassment, and placing restrictions on strike action at such times is legitimate and necessary.

When the most senior leaders of the school leave their posts without making every possible arrangement for the physical safety and health of their learners, they betray the children entrusted to their care.

4.2. Cleaning staff and staff providing food for learners

The ILO's statement that staff required to provide food at schools may be designated an essential service originates from arguments in Case 2037 in 2001¹², regarding a strike by workers in Argentina. The Congress of Argentine Workers (CTA) and the Association of State Workers (ATE) brought a complaint against the Government of Argentina, after a new provincial regulation was issued that limited union meetings to the end of the working day.

This resulted in an open-ended strike by workers in the education sector whose main duties involved the provision of school meals and the cleaning of the school premises. The Committee determined that in that case, the strike seriously affected the well-being of learners: one of the main sources of nourishment for school-age children in the country was school meals, making the provision thereof necessary for the health and well-being of underprivileged learners. The Committee stated in its conclusions:

102. In this respect the Committee considers that the activities performed by maintenance and service workers employed by the public administration of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur, which have been described in similar terms by the complainant organizations and the Government, fall within the definition of essential services. In effect, the provision of food to pupils of school age – particularly in areas located away from the main urban centres – and the cleaning of schools are services which if interrupted could endanger the life, personal safety or health of pupils.¹³

5. Request to the ESC

The DA believes that a minimum service level must be established in terms of ensuring that:

- School leaders are on hand to provide leadership during strike situations and to communicate with necessary authorities during emergency situations
- Learners are supervised during the school day; and
- The nutrition and health needs of learners are not compromised.

This service level may include a limitation on the right to strike of key employees in the sector – a step that would be considered legitimate considering the rights that must be balanced. The safety and wellbeing of learners should be of paramount importance.

Concerns about absent educators have been raised in attached submissions by:

- G R Stokell – Principal, Edgemean Primary School, Western Cape
- P Mokholo – Lakeside Estate Primary School
- D Buys – Fred Norman Secondary School

Our petition to improve school safety (as part of our #SafeSchools campaign) also includes a request for a declaration of a minimum service level as a limit on the right to strike – the petition and its signatories can be viewed at: <https://protectourchildren.co.za/> (as of 17 April 2018, the petition received over 2 500 signatures).

The Minister of Basic Education has stated in her reply to a Parliamentary question that her department would support the declaration of minimum service levels for school staff by the ESC:

“The Department of Basic Education has the view to support the declaration of a minimum service level agreement for school staff by the Essential Service Committee (ESC) when children are left unsupervised during school hours, but can only do so with the support of the teacher trade unions in the Education Labour Relations Council (ELRC) and with a directive from the ESC, since the jurisdiction to do so lies with the ESC as determined in the LRA.”¹⁴

We therefore formally request that the ESC undertake a study regarding the safety and wellbeing of school learners during strike action, with a view to ensuring a minimum standard of supervision and care that must be provided by school staff.

¹ Willis, G. (2014). *The Effects of Teacher Strike Activity on Student Learning in South African Primary Schools*. Stellenbosch Economic Working Paper 01/14. Stellenbosch, University of Stellenbosch.

² Department of Labour. (2011). *Annual Industrial Action Report 2010* (Online). Available: http://www.labour.gov.za/DOL/downloads/documents/annual-reports/industrial-action-annual-report/2010/Industrial%20Action%20Report%202011_revised.pdf [accessed: 25 May 2017]

³ Willis, G. (2014). *The Effects of Teacher Strike Activity on Student Learning in South African Primary Schools*. Stellenbosch Economic Working Paper 01/14. Stellenbosch, University of Stellenbosch.

Middletown, Connecticut.

⁴ Sifile, L. (2018). “Eldorado Park pupils left idle after teachers down tools, investigation ordered”, IOL, 28 February (Online). Available: <https://www.iol.co.za/the-star/news/eldorado-park-pupils-left-idle-after-teachers-down-tools-investigation-ordered-13450079> [accessed 17 April 2018]

⁵ Willis, G. (2014).

⁶ International Labour Organisation (ILO) (2006). *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (5th revised edition)*. Geneva: International Labour Office (p118)

⁷ ILO (2006): p122

⁸ ILO (2006): p129

⁹ ILO (2006): p121

¹⁰ International Labour Organisation (ILO) (1991). *Case No. 1528 – Complaint against the Government of Germany presented by the German Confederation of Trade Unions (DGB) and the Educational and Scientific Trade Union (GEW)* (Online). Available: [http://www.ilo.org/public/libdoc/ilo/P/09604/09604\(1991-74-series-B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09604/09604(1991-74-series-B).pdf) [accessed 18 August 2017]

¹¹ ILO (1991): p92

¹² International Labour Organisation (ILO) (2001). *Case No. 2037 – Complaint against the Government of Argentina presented by the Congress of Argentine Workers (CTA) and the Association of State Workers (ATE)* (Online). Available:

<http://white.lim.ilo.org/spanish/260ameri/oitreg/activid/proyectos/actrav/sindi/english/casos/arg/arg200101.html> [accessed 17 July 2017]

¹³ ILO (2001)

¹⁴ Reply to written Parliamentary question 885 (12 April 2018)