**Commentary Reviewer A**

**REVIEW REPORT**

Number of article submitted for evaluation: 7 (Reviewer A)

Title of article: **Inconsistencies between the South African Schools act and the Child Justice Act in Realising the Child’s Best Interest**

**CONTENT (mark with X)** Excellent Good Moderate Poor

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 1. | Contribution to the field of Education Law |  |  | x |  |
| 2. | Legal content, analysis and argumentation |  |  | x |  |
| 3. | Link of article to theme of this edition: *Education, law and the Constitution.* |  | x |  |  |
| 4. | Appeal to the Education Law scholarly community |  |  |  | x |
| 5. | Originality of the central claim / argument |  |  | x |  |
| 6. | Coherence and clarity of argumentation |  |  |  | x |
| 7. | Clarification of concepts |  |  | x |  |

**PRESENTATION AND READABILITY** Excellent Good Moderate Poor

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 8. | Statement of problem / claim / objective(s) |  | x |  |  |
| 9. | Relevance of sources consulted / analysed |  |  | x |  |
| 10. | Language usage, style and clarity |  | x |  |  |

**RECOMMENDATION** (please add motivation in a narrative as guideline for authors)

**This contribution is not suitable for publication. The two acts have very different aims and by comparing the two is like looking through a key hole and predict the whole picture on the other side. The over emphasis on criminal cases and the lack of understanding/ discussing civil, quasi-judicial and administrative procedures do injustice to the procedures in both these acts. There are a number of sweeping statements without any legal authority or a misunderstanding of the operation of school discipline. The author focus so much on the alleged “victim” that the rights of all the other learners are simply ignored. There are mistakes in the interpretation of the Welkom case in footnote 82. I cannot agree with the rationale in the conclusion.**

**Maybe the editor should to send this contribution to another referee!**

Please indicate in your comments whether the

* quality of the research is acceptable;
* research adds to the current knowledge within the field;
* author’s goals are clearly stated and whether the contribution follows through by achieving these goals consistently and cogently; and
* author’s assumptions and methodology are acceptable and theoretically justified.

On the basis of the above evaluation, please indicate your recommendation by choosing one of the following (mark with ‘X’):

|  |
| --- |
| [ ] ACCEPT WITHOUT REVISIONS.  [ ] ACCEPT WITH MINOR REVISIONS AS INDICATED  [ ] RESUBMIT WITH MAJOR REVISIONS AS INDICATED  [ x ] REJECT (PLEASE GIVE REASONS) |

My name may be added to PER's list of referees [Yes] / [No]

In instances where the article requires editing regarding language or formulation, please indicate this in the report as per general remark. It is therefore not expected from the referee to indicate all or even most of the suggested changes.

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Commentary: Reviewer B

# This peer review process is steered by the guest editor and editorial board of the law journal Potchefstroom Electronic Law Journal ISSN 1727-3781

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**REVIEW REPORT**

Number of article submitted for evaluation: (Type here)

Title of article: INCONSISTENCIES BETWEEN THE SOUTH AFRICAN SCHOOLS ACT AND THE CHILD JUSTICE ACT IN REALISING THE CHILD’S BEST INTERESTS

**CONTENT (mark with X)** Excellent Good Moderate Poor

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| 1. | Contribution to the field of Education Law | x |  |  |  |
| 2. | Legal content, analysis and argumentation | x |  |  |  |
| 3. | Link of article to theme of this edition: *Education, law and the Constitution.* | x |  |  |  |
| 4. | Appeal to the Education Law scholarly community | x |  |  |  |
| 5. | Originality of the central claim / argument | x |  |  |  |
| 6. | Coherence and clarity of argumentation | x |  |  |  |
| 7. | Clarification of concepts | x |  |  |  |

**PRESENTATION AND READABILITY** Excellent Good Moderate Poor

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| --- | --- | --- | --- | --- | --- |
| 8. | Statement of problem / claim / objective(s) | x |  |  |  |
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Commentary: Reviewer C

**REVIEW REPORT**

Number of article submitted for evaluation: (Type here)

Title of article: INCONSISTENCIES BETWEEN THE SOUTH AFRICAN SCHOOLS ACT AND THE CHILD JUSTICE ACT IN REALISING THE CHILD’S BEST INTERESTS

**CONTENT (mark with X)** Excellent Good Moderate Poor

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 1. | Contribution to the field of Education Law |  | X |  |  |
| 2. | Legal content, analysis and argumentation |  | X |  |  |
| 3. | Link of article to theme of this edition: *Education, law and the Constitution.* |  |  | X |  |
| 4. | Appeal to the Education Law scholarly community |  |  | X |  |
| 5. | Originality of the central claim / argument |  | X |  |  |
| 6. | Coherence and clarity of argumentation |  | X |  |  |
| 7. | Clarification of concepts |  | X |  |  |

**PRESENTATION AND READABILITY** Excellent Good Moderate Poor

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| 8. | Statement of problem / claim / objective(s) |  |  | X |  |
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| 10. | Language usage, style and clarity | X |  |  |  |

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Interesting, thought-provoking argument. Will contribute to field of research, but I suggest some adjustments need to be made. Section 36 needs to be discussed where applicable. The best interest of the child is paramount, yet not without its difficulties. The paramountcy principle is clearly not absolute (see S v M). Schools are filled with individuals that form groups and that function in a society very much to serve the community and fulfil a specific task. This implies that it could become very difficult if one elevates the individual’s rights above those of the community consistently and indiscriminately , even if that individual is a child. Obviously the importance of children’s rights cannot be set aside or marginalised, yet one feels there will be situations where Section 36 can, and should be used to cast light. The article does not seem to consider this and I feel this should be addressed.

Added to this can one simply equate the CJA and the SSA ? Do these two pieces of legislation aim to achieve exactly the same objectives? I agree with the author that the SSA can learn from the CJA with regards to administering justice, but a simple blanket elevation of the indivual child’s rights above those of the all the others which attend schools (which are mostly children as well) puts us on a slippery slope. If the SGB disciplines an individual child, obviously his/her interests must be considered, but school discipline seldom occurs in a vacuum, it impacts on others because the school is a community. Do we then simply just plough ahead and look only at the individual, and the impact it has on him or her?

Another area that needs attention is the issue of the adult learners. The problem is clearly highlighted but one feels that a bit more might be added to cast light on a possible manner in which this can be dealt with, or is the author basically suggesting we should make a clear distinction between a child and an adult although they could both be in the same grade and same school ? Or will the difference merely be in the manner we discipline them?

And then of course the question – is education merely child-centred, and to which extent does the community function in education? Again section 36 might be useful. Policies, decisions involving education are not determined by children, adults do this, and we are very adamant in insisting that they always have the best interests of the child at heart - yet the child’s interests are not the only interests to be considered, and once again Section 36 will be helpful.