

New Perspectives for Learning - Briefing Paper 53

Legal Framework of New Governance and Modern Policy in Education throughout Europe

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Context of the Research

Relationships between schools, government, parents and students are changing within education systems across Europe. Many governments are creating mechanisms for schools to become more accountable to parents and to government through the increased use of quality assurance mechanisms. In some cases running alongside this increased accountability, is the delegation of greater responsibility to individual schools and school governors, often in the form of greater financial control. This also involves the individual school and sometimes volunteer school governors having to take greater legal responsibility for the management of their school, the quality of teaching, and the safety and well-being of their students.

Underpinning all these changes is the legal and legislative framework established in education and other laws – which vary considerably across Europe.

This project has established a network of partners from Belgium (Flanders), the Netherlands, Greece, France, United Kingdom and Germany and other experts from Lithuania, Slovenia, Estonia, Romania, Sweden, the Russian Federation and Austria. It is comparing the various national education systems from a legal perspective in order to identify the best and most used legislative instruments focusing on quality, safety, responsibility and liability.

The key areas of concern of this project include:

- Enhancing the quality of compulsory education.
- Encouraging the use of appropriate means of self-assessment and self-evaluation.
- Promoting greater equity and enhanced access through the assurance of quality in all schools.
- Reducing inappropriate barriers for mobility in Europe at school level through establishing a more consistent promotion of quality and standards.

Initial Conclusions

1. Although there is a general trend in many countries towards a greater emphasis on measuring the “outputs” of the process of education in schools, it

has only reached a high level of intensity in the UK and to a lesser extent the Netherlands, where features of a “market” system are in operation.

2. One of the reasons for the development of targets and performance indicators is to enable judgements to be made about the relative performance of schools, as measured by the results of the pupils. However, for this system of intense scrutiny and accountability to work effectively, it needs to be underpinned by a degree of regulation.
3. As the quality ‘loop’ is also dependent on the inputs – such as the teachers, the curriculum and the school buildings/facilities – these too need to be subject to standards prescribed by law.
4. The use of school inspection regimes of various degrees of intensity and diverse organisational patterns (local or national), combined with rules about the qualification of teachers, form part of national educational traditions. However, it was possible to identify two models that did have comparable elements, but also have quite distinctive characteristics:
 - The Continental model – relies very much on central inspection and control and operates principally by disciplinary and control measures and not by the establishment of school liability;
 - The UK Model – is based on strong elements of central direction, but organises schools as a decentralised market with strong elements of school autonomy and school liability.
5. Under the UK model, the rules on inspection and teacher qualification have become intensified because these matters are seen as integral aspects of the new quality agenda for schools. At the same time, new risks of civil liability have emerged, related to issues of quality in education.
6. States that decide to adopt the UK model as a means to driving up standards of education in their schools will need to expect that an increase in legal claims is a possibility.
7. Concrete and clear provisions governing transferability of general educational qualifications at pre-university level remain conspicuously absent from the European social policy agenda.
8. Whether it would be possible to prescribe or recommend on a Europe-wide level certain minimum institutional and regulatory requirements to ensure that all states take effective steps to improve, monitor and enforce standards of education in their schools is very difficult to assess.
9. Although Article 126 of the EU Treaty makes provision for common European issues to be the subject of broad regulatory aims, it is very much dependent on “political will”. There is a potential conflict with the “principle of subsidiarity”

and the risk that it might undermine national autonomy in terms of cultural and national identity.

10. However, although there may be concern about loss of national identity related to a State's curriculum, it is less clear that national identity would be undermined if there was European Union legislation on matters like school inspections or performance measures.
11. Equally though, it is unclear how EU requirements on those matters would support the aims of free movement and the inculcation of a sense of common European identity, thereby making them incompatible with the subsidiarity principle.
12. In any event, it is difficult to determine whether such a pan-European initiative would be necessary given the strong political, social and economic imperatives to maintain an effective school system, underpinned by national legislation and, in many cases, constitutional requirements.

Initial Recommendations

So far the project recommends that all states should commit themselves to the following minimum general requirements concerning responsibility and liability for education:

1. Legislation should provide for the goal of high standards in the provision of education and the development of mechanisms and policies, and adequate allocations of public funding, to support this aim; but it would probably need to leave the degree of specificity for national standards to be determined by individual states.
2. In relation to all schools (whether in the public or private sector), states should prescribe and enforce minimum standards for the quality and safety of school buildings and premises and should require that teachers have a contractual or statutory duty to ensure the safety of school pupils.
3. Adequate arrangements should be required in every state, at national or local level, to ensure that there is proper insurance cover in respect of accidents to pupils (and staff, if not covered by teaching association or other schemes) in the course of educational and associated recreational activities at all schools or during school excursions.
4. Europe-wide minimum qualifications for qualified teacher status and for entry to the teaching profession could be specified, building on EC legislation on mutual recognition of professional qualifications; but the legal status of teachers as either employees or civil servants does not appear to need attention at present.

5. States could be required to make provision for regular government-independent school inspections and to ensure that appropriate action is taken with schools that are not meeting their requirements.
6. National legislation could stipulate that information relevant to the quality of educational provision in schools, including the results of examinations aggregated at school level, should be made publicly available. However, results should also take into account pupils' backgrounds and their progress over time.
7. Issues of legal liability, while of growing importance, are unsuitable for prescription at an international level given the distinct legal cultures and traditions in different states. However, these issues should continue to be monitored closely, particularly those concerned with the emergent field of liability for breach of professional duties of teachers in areas such as teaching, meeting the special needs of pupils, discipline and pupil welfare.
8. The relevant forms of liability need to be better understood by teachers and other staff, including administrators, to help ensure that educational practice can operate in a lawful manner and with due respect to the rights of school pupils and their parents. Therefore, the initial and further training of teachers (and the further training of head teachers and senior administrators) should include coverage of the legal context to teaching and should focus on issues of liability.

Further Information

The full title of the project is: "Legal Framework of New Governance and Modern Policy in Education throughout Europe". The final report is due in July 2004.

Further details are also on the project web site at <http://www.lawandeducation.com>

[Partner details](#)

Key Publications

Books

Glenn Ch. & De Groof J., *Freedom, Autonomy and Accountability in Education*, Lemma, 2002, Volume 1, 595 p., Volume 2, 528 p

De Groof J., Lauwers Gr., Dondelinger G., *Globalisation and Competition in Education*, Wolf Legal Publishers, 2003, 318 p.

Articles in a journal

Volume 6 of the European Journal of Education Law and Policy is dedicated to the issues of responsibility and liability in education EJELP, Vol. 6, no. 1/2, Kluwer, 2002

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- Responsabilité civile et pénale des personnels de l'enseignement primaire et secondaire en cas d'accidents : Etat des lieux et perspectives - Martine Denis-Linton
- General developments in our society linked to responsibility and liability - Charles Glenn
- Civil liability within the education system : The Belgian Framework - Daniëlle Deli
- Liability under education law in the UK – How much further can it go? - Neville Harris
- La sécurité des établissements scolaires : Etat et collectivités face au partage de responsabilités - Jean Marie Schleret
- Occupational accidents in education - Ria Janvier
- Responsibility and Liability for the Behaviour of Minors - E.M.V. Dubelaar
- Liability issues in American Schools - Charles Russo
- The new challenges of education and the law - Kishore Singh
- Responsibility and liability in education in Austria - Werner Hauser
- Responsibility and liability in education in England and Wales - Paul Meredith
- Réponse Française au questionnaire - André Legrand
- Liability and responsibility in education. A German perspective - Georgios Gounalakis
- Responsibility and Liability in Education in Greece - Panayiotis Poulis and Theodore Fortsakis
- Responsibility and liability in education in Ireland - Dymrna Glendenning

Research Institutions

College of Europe, Belgium

Interuniversitair Centrum voor Onderwijsrecht (ICOR), Belgium

Erasmus University, Netherlands

University of Southampton, United Kingdom

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