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The Application of Professional Discretion by South African Public School Principals

Abstract

This paper reports on a section of the findings of a study of which the purpose, among others, was to investigate and analyse the application of professional discretion by public school principals. The study adopted a mixed-methods approach from within a pragmatist research paradigm. Data was collected by means of quantitative and qualitative data collection techniques, namely survey questionnaires followed by semi-structured interviews within the Gauteng province. The findings suggest that there are multiple scenarios in which principals are required to apply professional discretion. Factors that influence principals' professional discretion were also identified.

Keywords: professional discretion, school context, decision-making, duty of care, learners' best interests, contextual intelligence

Introduction

Professional discretion refers to the ability and obligation of a principal to determine what actions are appropriate, and the capacity to take certain actions (Boote, 2006). Pinkele (1985, p. x) explains the application of professional discretion as follows:

When an individual or a set of individuals has the capability of making decisions based on personal choices or preferences without being behaviourally constrained in their actions by rules or by others in positions of greater authority, the resulting behaviour is discretionary in nature.

According to Heilmann (2006) principals are expected to and called upon to use their discretion many times each day. It is imperative for principals to be knowledgeable about legislation applicable to schools as it could empower them to apply adequate professional discretion in a less restrictive manner.

When are principals required to apply professional discretion?

The participants indicated various scenarios in which they apply professional discretion. These are discussed in the following sub-sections. For the purpose of the discussion, participants' responses are paraphrased and not indicated as direct quotations.

Professional discretion is applied on a daily basis

It is important to recognise that principals are constantly confronted with situations in which they are expected to apply their discretion. This study revealed that the participants exercise professional discretion every day and that they often apply their discretionary power unknowingly. While Principal 13 acknowledged that it is difficult to determine when and how she exercised professional discretion, she often felt obligated to do so.

Principals apply professional discretion when policies are vague

Heilmann (2006) asserts that discretion exists when rules and regulations do not provide a clear indication of how to proceed in certain situations. One of the participants (Principal 12) who has between 11 and 15 years of experience as a principal, explained that principals frequently face difficulties and situations that are not addressed by policies and regulations. This study found that laws and policies serve as the foundation for all decision-making by the participants; nonetheless, a principal's judgement should be subject to the situation and context. It is worth noting that it is impossible to incorporate all potential scenarios and situations into policies. Therefore, it is evident that discretion should be used when policy descriptions are ambiguous.

Principals apply professional discretion when immediate action is required

Principals are advised to be cautious in emergency situations as they will be held accountable when instant action has the wrong outcome. Their responses to emergencies will be measured against regulatory and policy prescriptions. This is supported by Principal 7 who explained that typically, principals would be inclined to take immediate action in emergency situations.

The data also suggested that in emergency situations, some principals are not hesitant to contravene or deviate from regulations or policies (*ultra vires*), to act in the best interests of learners. According to Principal 4, it is occasionally necessary to make either minor or significant decisions right away. For example, Principal 13 had to act immediately when one of the learners had an epileptic fit. She decided to act *in loco parentis* and accompanied the learner in an ambulance to the hospital because the learner's parents were far away from the school when the epileptic fit occurred.

Principals apply professional discretion in the best interests of the learners

Generally, the participants indicated that they apply discretion in the best interests of learners while also taking into consideration their duty of care and *in loco parentis* obligations. In addition, the data indicated that principals should take responsibility for a learner's physical and educational well-being and must be conscious of being potentially liable for the consequences of decisions made for the learners in their care. Principal 7 argued that a principal cannot apply professional discretion without considering the issue of accountability. As a result, it is essential that when principals exercise professional discretion in the learners' best interests, they should not only be competent to do so, but must be able to justify their decisions.

Principals apply professional discretion for the academic well-being of the learners

According to De Waal (2011), principals should accept accountability for a learner's academic and psycho-physical well-being. It is expected of an educator to adapt to situations with regard to school curricula in order to meet a learner's academic needs. Similarly, Principal 9 explained that she expected her educators to apply professional discretion when it came to the implementation of the curriculum. Her educators are given freedom to choose the tools and instructional materials they want to utilise as long as it is in the learners' best academic interests. Boote (2006) confirms this notion by stating that educators and principals' professional discretion should be centred on being able to decide what should be taught and being able to teach it. It therefore seems as if the participants are appropriately applying professional discretion with regard to curriculum decisions aimed at the academic well-being of the learners.

Principals apply professional discretion when promoting learners to the next grade

Several participants apply professional discretion when they have to decide whether to promote, or retain a learner in a grade. It is worth noting that this subsection can be linked to the principals' application of professional discretion in terms of the academic well-being of learners. The data suggested that when considering whether a learner must be promoted to the next grade or retained in a grade, principals often rely on experiential knowledge when applying professional discretion. Principal 4 argued that he has the discretionary power to retain or promote learners in a grade, if it is in their best interests. However, he acknowledged that he must first determine if learners meet all the prescribed requirements and standards before exercising his discretion, to promote or retain learners. Nothing prevents a principal to, in the best interests of a learner, recommend to the education authorities and parents that a learner who for example do meet the criteria to be promoted, be retained in a specific grade and vice versa. In addition, nothing prevents a principal consulting with the educators of such a learner. It is also important that principals consider the context of individual learners, in order to make recommendations that are in the best interest of a learner. The most important aspect that principals should remember when promoting or retaining learners, is that they must be able to justify their decisions.

Principals apply professional discretion when admitting learners to their schools

Various factors come into play when principals decide whether to admit learners to their schools. For example, Principal 14 indicated that she had turned down the district official's request to increase learner enrolment at her school. She asserted that having a class of more than 35 learners may present challenges with discipline, health, and safety. This implied that principals do have some discretionary power to deviate from the provincial education department's admission policy. This notion is recognised by the courts. For instance, in *Member of the Executive Council, Eastern Cape Province and Others v Queenstown Girls High School* the court stated the following:

Nor, for that matter, is it the responsibility or function of other officials in the department to second guess the principal's decision. If, [for example] in the

administration of the school's admission policy, the Head of the Department appoints the principal of the school to act under his authority in giving practical effect to the school's admission policy, other officials in the department have no authority to instruct the principal to change his decision or to instruct him to admit a particular learner to the school. (Court Case 2007) (Paragraph 72)

One could argue that a principal would be violating learners' right to education if they were to refuse them admission to a school. Therefore, while exercising their professional discretion in terms of admissions, principals must not only be knowledgeable about the legal and policy requirements, but also be able to balance their decisions between what is best for the school as a whole and what is best for individual learners.

Principals applied professional discretion during the COVID-19 pandemic

It is apparent that the COVID-19 pandemic presented various challenges to schools. The majority of the participants indicated that they often applied professional discretion in matters pertaining to COVID-19. Principals were initially prohibited from opening their schools during the initial lockdown period that commenced on 26 March 2020. This rationally limited the principals' professional discretion. After the restriction levels were lowered, the Department of Basic Education wanted schools to resume. As a result, principals were permitted to use some professional discretion in deciding when their schools would reopen to their full capacity. While many school principals exercised their discretion and decided to gradually allow their learners to return to school, some participants were hesitant to return to full capacity since it could compromise the health and safety of both the staff and the learners.

Principal 14, for example, indicated that she applied professional discretion by allowing staff members to take additional sick leave, due to being ill with COVID-19, even when it extended beyond the allocated 36 days. Principal 12 contended that the Department of Basic Education should acknowledge that schools have unique COVID-19 contexts and that principals should be free to manage their schools in accordance with those contexts. Therefore, enabling principals to exercise discretion in their specific COVID-19 situation (allowing them to make decisions in the best interests of their learners' health and safety) seems necessary.

Factors that influence when a principal applies professional discretion

A principal's application of professional discretion is influenced by several factors. For the purpose of this paper, three factors are discussed, namely:

- Principals apply professional discretion in terms of legislation;
- Principals rely on intuition and common sense when applying professional discretion; and
- The situation or context matters.

Principals apply professional discretion in terms of legislation

All the participants acknowledged that the legal framework applicable to schools in particular and education in general, is a major factor which influences how and when they apply professional discretion. The Protection of Personal Information (POPI) Act, 4 of 2013 is used as an example in this discussion.

The POPI Act gives effect to the constitutional right to privacy by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at balancing the right to privacy against other rights, particularly the right of access to information, and protecting important interests, including the free flow of information within the Republic and across international borders (RSA, 2013). The POPI Act requires school principals to establish an information committee and information officer to ensure the proper protection and use of personal information (RSA, 2013). It came to the fore that the POPI Act has added to the complex legal environment in which principals must apply their discretion. It has underscored the importance of principals being legal-wise.

Principals who have received adequate POPI Act training are more confident in their decision-making processes. This was echoed by Principal 4, who asserted that by being knowledgeable about the POPI Act's procedures, he could apply appropriate professional discretion and preserve learners' and staff members' right to privacy (Section 14 of the Constitution) (RSA, 1996). He further explained that if entrusted personal information is disclosed, he will be held liable. However, the Children's Act 38 of 2005 requires principals to notify relevant authorities if they suspect abuse of a learner (RSA, 2005). Hence, principals will be permitted to share personal information in these situations to safeguard the learners' psychological and physical well-being.

Principals rely on intuition and common sense when applying professional discretion

Principals are often expected to intuitively exercise their discretion while upholding expert standards of judgement. According to Kutz (2008), this implies that principals must be able to extract wisdom or knowledge from different and possibly unrelated contexts. In making decisions and applying discretion, several participants appeared to be comfortable with their knowledge, experience or personal intuition, as opposed to one participant who never seemed to use common sense or intuition while exercising professional discretion. This study found that principals' intuition and common sense guide them through situations where there are no obvious answers available. Most participants seemed to comprehend that they are empowered to use their decision-making autonomy and common sense to influence a situation by deciding when and how to behave, think, and when to act.

According to Dane and Pratt (2007), intuition as used to describe contextual intelligence and involves being proficient at instantly assimilating past events into the current context, irrespective of the context in which the original event occurred. Intuition seems to be an asset for principals to make appropriate decisions in the best interests of their learners. Principal 3 emphasised that principals should use "cautious amounts" of common sense to evaluate circumstances and contexts while remaining within the boundaries of the law. Moreover, Principal 9 argued that she only relies on her common sense when there is no proper policy in place to guide her decision-making. Principal 4 explained that common sense may only be applied if it is written in certain policies. Hence, he argued that school policies should be open and transparent.

A number of the participants believed that there is room for discretion or space of autonomy in professional decision-making and that common sense must be used when policies do not explicitly dictate what should be done in particular scenarios or contexts. Every situation provides its own challenges. Therefore, principals should be

confident in and trust their intuition when making decisions in order to ensure the well-being of the learners and staff members.

The situation and/or context matters

The majority of the participants indicated that the application of their professional discretion is dependent on the situation. Boote (2006) agrees that professional discretion should be appropriate to a specific context. In exercising professional discretion, participants used the terms ‘situation’ and ‘context’ interchangeably. Marishane (2020, p. 4) argues that the concept ‘context’ is one of the most used concepts in the field of education where it is used interchangeably with concepts such as ‘situation’, ‘conditions’, or even ‘environment’. The definition of context varies from physical space ‘geographical’, and time ‘temporal’ to an individual’s state of mind ‘psychological’ (Marishane, 2020, p. 4). Although Principal 12 believes that he has enough experience, contexts and situations often change. Molander et al. (2012) argue that the same case can be judged differently at different times, in different situations and by different persons, even if it is an unchanged case and the case has been handled in a thorough, conscientious, and reasonable manner. For this reason, it seems crucial for principals to adapt their discretionary decision-making to suit the situation.

Concluding remarks

In view of the aforementioned, there seem to be countless situations in which principals apply their professional discretion. Therefore, applying professional discretion or appropriate judgement in decision-making is an essential component of a school principal’s role. It was evident that principals are expected and relied upon to frequently exercise discretion during the course of a day, and that discretion is applied in a particular context. Hence, it is important to provide principals with some freedom to apply their professional discretion. Without discretionary powers, it would be impossible to be a principal. However, it is also important that principals weigh every decision they make carefully to comply with the expected standards.

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