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Policy-making by public school governing bodies: law and practice in Gauteng

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The South African Schools Act stipulates that school governing bodies are responsible for drafting certain school policies. This article reports on a qualitative research study conducted in 50 schools in Gauteng to trace the functionality of the school governing bodies with regard to policy-making. A critical evaluation of the admission, language and religious policies as well as codes of conduct provides substantial evidence that school governing bodies are committed to the values of equality and human dignity, and actively promote non-racism and non-sexism in their policies.

Beleidsmaking deur skoolbeheerliggame van openbare skole in Gauteng: die reg en die praktyk

Die Suid-Afrikaanse Skolewet bepaal dat skoolbeheerliggame verantwoordelik is vir die daarstelling van sekere skoolbeleide. In hierdie artikel word verslag gedoen oor kwalitatiewe navorsing wat in 50 skole in Gauteng gedoen is om die funksionering van skoolbeheerliggame met betrekking tot beleidsmaking na te spoor. 'n Kritiese evaluering van die toelatings-, taal- en godsdiensteleide asook gedragskodes verskaf wesenlike bewyse dat skoolbeheerliggame hulleself verbind het tot waardes van gelykheid en menswaardigheid, en aktief nie-rassisme en nie-seksisme in hul beleid bevorder.

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In South Africa the new education legislation and policy have significantly changed the way in which schools are governed. The development of democratic, decentralised school governing bodies is an attempt to devolve more authority over education matters and decisions to individual schools and their communities. This is based on the assumption that governors are in the position to make decisions that suit the specific needs of the school community as they best understand the context, culture and needs of the school.

The first governing bodies were elected in 1997 and subsequent elections were held in 2000, 2003 and 2006. In terms of the South African Schools Act (RSA 1996b) (hereafter Schools Act) the HoD in each province is required to provide introductory training for newly elected governing bodies and continuing training to governing bodies in order to promote the effective performance of their duties. Despite training of school governing bodies (SGBs) over a number of years, research, surveys and reviews on the status and functionality of SGBs in the country and in individual provinces reveal that conceptualisation of what role the SGB has to play in executing its functions remains a challenge (Bush 2004: 24, DoE 2004: 170).

The Schools Act stipulates that school governing bodies, as the elected representatives of school communities, are responsible for drafting certain school policies. The value orientations of each community influence the development of a school's policy. The main values that affect policy formulation are choice, quality, efficiency and equity (Nieuwenhuis 2007: 56). The way in which a community expresses its values — setting principles and developing rules (policies) — reflects what the community regards as right or wrong (Nieuwenhuis 2007: 18). School governing bodies have to reconcile those aspects that their constituencies value with constitutional values.

Participative decision-making has different meanings for different people and in different contexts. The notion of participation and democracy is still in vogue (Sayed & Carrim 1997: 91). Participative decision-making and democracy are highly desirable, although very few school governors have the experience or capacity to fulfil these roles. Debate, argument, compromise, decision-making and accountability are key characteristics and skills required for effective

participation and exercising the powers and functions given to school governors (DoE 2004: 173).

1. The functioning of school governing bodies: conceptual framework

Critical evaluation of the functioning of school governing bodies, in particular their policy-making function, requires an understanding of the founding values of the Constitution which form the basis of the legislative provisions for school policies. The development of school policies cannot be separated from the government's transformation agenda for education. Therefore constitutional rights and values, the provisions in the Schools Act that guide the functioning of school governing bodies, and the government's rationale for establishing school governing bodies have been chosen as frameworks for this study.

1.1 Constitutional rights and values

The Constitution of South Africa (RSA 1996a) enshrines values such as human dignity, equality, non-racialism and non-sexism. It includes an entrenched Bill of Rights which guarantees a wide range of rights and freedoms, including the right to equality before the law and equal protection and benefit of the law, and unfair protection from unfair discrimination, on the basis of various listed grounds (Section 9). Section 7 of the Constitution states that the state (and its representatives) must respect, protect, promote and fulfil the rights contained in the Bill of Rights. When interpreting the Bill of Rights a forum, such as the school governing body must promote the values that underlie an open and democratic society based on human dignity, equality and freedom (Section 39).

The Constitution contains specific provisions in respect of education: everyone has the right to a basic education, including adult basic education and to further education, which the state, by means of reasonable measures, must make progressively available and assessable (Section 29(1)). Section 29(2) states that everyone has the right to receive an education in the official language or languages of his/her choice in public educational institutions where that education

is reasonably practicable. In order to ensure the effective access to this latter right, the state must consider all reasonable alternatives, including single-medium institutions, taking into account equity, practicability and the need for redress.

The Bill of Rights explicitly recognises that everyone has the right to freedom of conscience, religion, thought, belief and opinion. Religious observances may be conducted at state or state-aided institutions provided that these follow rules made by appropriate public authorities, that they are conducted on an equitable basis and that attendance of them is free and voluntary (Section 15).

All the rights in the Constitution are subject to reasonable limits. Reasonable limits may be imposed in terms of a “law of general application” provided that the limitation is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom [...]” (Section 36(1)). This notion of reasonable limits is concerned with the balancing of competing interests and represents a mechanism to arbitrate between individual human rights and the right of government to legislate or take action in the public interest.

The rationale of the South African government for the establishment of school governing bodies was to address the inequalities of a divided education system. The government’s call for greater participation in education has widespread support. This call is based on the assumption that, if more people were included in school governance, democracy in education would be propagated and equality among schools would be ensured (Dieltiens & Enslin 2002: 5). They argue that the ideal underpinning democratic school governance is that “if education shapes democracy, democracy must shape education”.

1.2 Policy-making and the transformation of education at national level

The democratic government’s transformation agenda for education was set out in the first White Paper on Education and Training which addressed South Africa’s need for a unitary, non-racial, non-sexist and equitable education system of sustainable quality (DoE 1995). The second White Paper dealt with the organisation, governance and

funding of schools (DoE 1996). In terms thereof the new organisation of schools will by means of their governing bodies promote redress by equitably using public sources, improving educational quality and providing for democratic school-based decision-making (DoE 1996). This policy document gave birth to the South African Schools Act (RSA 1996b).

The policy-making process in South Africa is characterised by distinct discourses or frameworks. Different forms of ideological, economic and political discourses influence the policy-making process. Soudien *et al* (2001: 80) explain these discourses as the intersection of “what we hope society will become and what we think it really is between political ideals and economic realities”. At least three groups of discourses, values and ideals can be identified within the South African policy context, namely social equality, resource efficiency and social reconstruction.

The social equality discourse argues that schools have a role to play to prepare all learners to accept their full social responsibilities. The resource efficiency discourse is concerned with achieving educational objectives as far as possible within the economic resources available. It includes demand and supply factors that determine the quality of what is available and might be competed for. In other words, the education one pays for is the education one receives. The social reconstruction discourse is mostly a normative argument. These are the norms and values according to which individuals are expected to behave. The entire process of reconstruction of society is to re-order the education system by focusing on the rights and capabilities of educators, learners and parents.

The arrival of the new democratic order has brought a commitment to social justice into all decision-making processes (Soudien *et al* 2001: 90). However, the commitment to social justice has been severely compromised and the discourse of resource efficiency appears to be preferred to the discourses of social redress and renewal.

Community participation has emotional and popular appeal but communities divided by class, race, religion, gender and nationality often find it difficult to participate and sustain feelings of group

solidarity (Mbasa & Themane 2002: 89). Sayed & Carrim (1998: 2) claim, among others, that increasing participation in school governance will empower disadvantaged communities. However, participation itself does not guarantee that disadvantaged communities are able to change their conditions or effectively promote the constitutional rights and values in their schools.

1.3 Legislative provisions for school policies

The National Education Policy Act 27 of 1996 (RSA 1996c) authorises the Minister of Education to determine education policy with regard to the planning, financing, staffing, management, monitoring, accreditation of educators, the organisation, management and registration of education institutions, the admission of learners to schools, the educator-learner ratio, compulsory school education, curriculum frameworks, the certification of qualifications, the provision of education support functions, and the evaluation and well-being of the education system.

In terms of the Schools Act, policy-making authority has been allocated to school governing bodies in a number of specific areas. All functions of governing bodies, whether they are general or allocated, can be divided into two categories, namely functions of an obligatory nature and functions of a discretionary nature. There are limits on the governing body and the DoE to make policy. All policies must be in accordance with the Constitution, national legislation, provincial legislation and the relevant regulations. The policy-making functions of school governing bodies include the following.

1.4 The school's admission policy (Section 5 of the Schools Act)

The process of admission of learners is complex and nuanced. It is obvious that there are various interpretations of the obligations of schools regarding the admission of learners. The Schools Act determines that no learner may be refused admission to a public school on the grounds that his/her parent:

- is unable to pay or has not paid the school fees determined by the governing body under section 39;
- does not subscribe to the mission statement of the school, or
- has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.

The admission policy may determine the feeder areas and the admission age in compliance with the Schools Act, *Admission policy for ordinary schools* (DoE 1998c). No admission tests may be administered by the governing body or the school. Parents who cannot afford to pay the school fees must apply for exemption. All applications for the admission of learners to public schools must be made to the education department in a manner determined by the HoD.

1.5 The school's language policy (Section 6 of the Schools Act)

The governing body may determine the language policy of a school but may not practise any form of racial discrimination. Learners must choose the language of instruction when applying for admission to a school. The Constitution provides for instruction in an official language or languages of choice only if practicable. Accordingly, the *Norms and standards for the language policy in public schools* (DoE 1997) states that the minimum number of learners required for a class of second-language instruction is 40 learners in a grade in a primary school and 35 in a class in a secondary school.

In terms of the constitutional principle of legality, the governing body may validly exercise those powers granted to it by law. In a number of court cases the DoE has usurped the governing body's right to make policy without the legislative authority to do so. In the case of the Western Cape Minister of Education *vs* Governing Body of Mikro Primary School¹ the judges found that determining the language policy of an ordinary public school is the function of a governing body and that the DoE has no power to determine such language policy.

1 Western Cape Minister of Education *vs* Governing Body of Mikro Primary School 2005 (10) BCLR 973 (SCA).

1.6 The school's religious observance policy (Section 7 of the Schools Act)

Religious observances in a public school may be conducted under rules issued by the governing body if such observances are conducted on an equitable basis and their attendance by learners and members of staff is free and voluntary. Religious education, however, forms part of the national curriculum and is therefore compulsory for all learners in public schools. The *National policy on religion and education* (DoE 2003) states that:

In all aspects of the relationship between religion and education, the practice must flow directly from the constitutional values of citizenship, human rights, equality, freedom from discrimination and freedom of conscience, religion, thought, belief and opinion. Public institutions have a responsibility to teach about religion and religions in ways that reflect a profound appreciation of the spiritual, non-material aspects of life, but which are different from the religious education, religious instruction or religious nurture provided by the home, family and religious community.

School governing bodies have no obligation or authority regarding the teaching of these compulsory learning programmes.

However, in terms of this policy, school governing bodies are required to determine the nature and content of religious observances for educators and learners. This ensures coherence and alignment with this policy and applicable legislation. It may also determine that a policy of no religious observances be followed. Where religious observances are held, these may be determined at any time by the school, and may form part of school assembly.

1.7 A code of conduct for learners (Section 8 of the Schools Act)

The code of conduct is aimed at establishing a disciplined and purposeful school environment. The code of conduct for learners may be developed by the educators or members of the governing body of a school upon consultation with the learners, parents and educators. However, the final code of conduct must be adopted by the governing body. The *Guidelines for a code of conduct for learners* (DoE 1998a)

recommends that the purpose of a code of conduct should be to inform learners on how to conduct themselves and to provide for their safety. A code of conduct should contain a set of moral values, norms and principles for developing learners into responsible citizens. These guidelines address the format of a typical code of conduct and provide the following headings:

- Preamble setting out the school's ethos and philosophy (vision and mission).
- Legal authority (Constitution and Schools Act).
- Principles, values and rights of learners such as democracy, non-discrimination, equality, non-violence, freedom of expression, human dignity, safe environment and education.
- Rights and responsibilities of learners, including school and classroom rules, school work, security of property, attendance and the roles of the Representative Council of Learners (RCL).
- Responsibilities of parents regarding the learners' conduct.
- Fair, consistent, corrective and educative disciplinary process.
- Punishment, including dispute resolution, counselling, penalties and corrective measures.
- Due process to be followed at disciplinary hearings based on the right to administrative justice, including the right to appeal against decisions.
- Criminal offences.

Sections 8(1) and 20(d) of the Schools Act state that the governing body is responsible for adopting the code of conduct for learners. This compelling function of the governing body read together with Section 8(4), which places an obligation on learners to comply with the code of conduct, clearly provides the legal framework for dealing with learner discipline in schools.

2. Approach

The qualitative interpretivist-constructivist paradigm is appropriate for this study as it seeks to establish, explore and construct reality regarding the policy-making functions of school governing bodies with a view to assessing their effectiveness in promoting constitutional rights and values. Inductive theorising was done, implying that one does not have to do research with previous knowledge, but instead

make sense of what one finds out only after finding it out (Gillham 2000: 2). In the interpretive paradigm, phenomena are examined in terms of their culturally derived and historically situated interpretations (Crotty 2003: 67).

The objectives of this article are to report on the findings of an analysis of the school policies adopted by school governing bodies and to examine the extent to which these policies promote constitutional rights and values in their respective schools. School policy-making appears to oscillate between members of the governing body and the school principal, which reflects changing school culture and community involvement. It is clear that constitutional values play an important part in the overall jigsaw puzzle of an effective school in multifaceted and multicultural South Africa. This also reflects a process of evolutionary change to a more democratic way of governing schools.

2.1 Methodology

The qualitative research was conducted in 50 schools in Gauteng to trace the functionality of school governing bodies with regard to policy-making. The sample includes farm, rural, townships and urban schools purposively selected to represent different quintiles in terms of the National Norms and Standards for School Funding (NNSFF) (DoE 1998) in all the districts of the Gauteng province. The NNSFF subdivided all schools into five categories called quintiles based on a set of criteria, including the poverty level of the community the school serves, and the physical facilities of the school.

The *Review of school governance in South African public schools* (DoE 2004: 121) (hereafter *Review*) concurs with Sayed *et al* (2002: 92) who point out that “many former black schools depended for their policy guidance on departmental documents” and little evidence was found of sub-committees established for developing policy concerned with language and religion. The *Review* reports on acute literacy and socio-economic issues affecting participation in governance functions in both rural and farm schools. In the context of these realities, this research project sets out to examine how school governing bodies functioning in differing socio-economic environments promote constitutional rights and values in their school policies.

Copies of the schools' admission, language and religion policies as well as of the schools' codes of conduct for learners were collected. Although the members of governing bodies and the principals of 50 schools were interviewed, only 35 schools submitted copies of their admission, language and religion policies and their school's code of conduct. Reasons for not submitting these policies vary from the non-availability of these policies to a refusal to make copies available "because they are private documents". In the study evidence was collected during the interviews to substantiate the claims made by respondents regarding the content and implementation of school policies such as the code of conduct for learners, as well as the admission, language and religion policies.

At the first level of data analysis the data obtained from each school were examined to learn as much as possible about the contextual variables that might have a bearing on the aims of the research. At the second level of analysis the research sought to find general outcomes that occur across many cases, and to understand how the policies developed by governing bodies are qualified by the local conditions (Merriam 1998: 195). The cross-case analysis specifically examined how constitutional rights and values such as equality, freedom and dignity are promoted in the policies developed by the governing bodies. The purpose of the cross-case study was to aggregate these diverse case studies so that the findings would be cumulative. This method highlights both the uniqueness and the commonality of the policy-making functions of governing bodies in a diverse population.

Internal trustworthiness was addressed by using triangulation. The information obtained during the interviews with school principals, chairpersons and other members of the governing bodies was substantiated by the document analysis. The reliability of the findings lies in the large number of case studies conducted to ensure consistency in the data collected and the aggregation of the research findings. This qualitative study focuses on extrapolation rather than generalisation of the research findings.

3. Critical evaluation of policies developed by school governing bodies

Section 28(2) of the Constitution stipulates that “the best interest of the child is of paramount importance in every matter concerning the child”. Smit (2007: 61) proposes that governing bodies identify unifying features and values that do not overemphasise the rights of individual learners; conversely, the communal rights and values of groups of learners should not dominate. A governing body should analyse the facts relating to demography, the majority language and religion of choice, the cultural background of the school and the community it serves. Based on such facts the policies should be formulated bearing in mind that diversity should be accommodated as far as practicable.

3.1 Admission policies

An obvious finding from the admission policies of the sample schools is that these policies clearly state that there should be no discrimination on the basis of race, gender, social origin or religion. Values such as intolerance and unfairness are prohibited. The majority (80%) of admission policies refer to the Constitution and the Schools Act in general, but less than 10% of the policies specify the sections. In two cases the admission policy refers to the “education laws”. The majority of the township and rural schools’ policies focus only on the administrative procedures to be followed when learners apply for admission. These policies are a duplication of the stipulations in the *Admission policy for ordinary public schools* (DoE 1998c).

A second important finding is that urban schools specifically mention the feeder areas of their schools:

Pupils from outside the feeder zone will only be admitted if the parents can assure the school that proper transport arrangements will be made to get the pupils to school timeously and regularly.

The places available in a school also play a role in the admission of learners. An example of such an admission policy states:

If the number of requests exceeds the number of places available, the following criteria will apply:

1. Children whose home address is in the area served by the school.
2. Children whose parents are employed in the area served by the school.
3. Children who have brothers or sisters attending the school.

In one school, the policy stipulates the feeder, stating that:

No other school will bring their learners to E (the school) [...] outside the feeder clusters as mentioned above. Our school will only admit learners from the catchment area as per agreed guidelines.

It is not clear to what these agreed guidelines refer.

A number of schools address the admission of learners with special education needs. There is a contradiction in the way schools deal with learners with special education needs. Although the minority of admission policies indicates that there will be no discrimination against learners with special education needs, others clearly distinguish between learners with severe disabilities and those who can be accommodated. The following serves as an example:

The following learners shall not be admitted:

- those with severe mental disability (handicap);
- the visually impaired (Braille);
- the hearing impaired (sign language);
- the physically disabled (ramps).

The following learners shall be admitted:

- those with mild intellectual disability;
- those with attentiveness problems;
- slow learners;
- aggressive learners;
- those with mild social behaviour (stealing and lying).

In another example, the admission policy states that the school “abides by the policy of inclusion, but does not have the facilities to accommodate handicapped learners”.

An interesting admission policy stipulates that only the following learners shall be admitted: those whose parents or guardians undertake to accept the school’s disciplinary policy; those who comply with all applicable legislation that regulates education; those

who accept that the governing body may suspend a learner and refuse further admission in the case of serious misconduct, and those who accept that the school provides differentiated education that takes into account the individual learner's aptitude and ability.

3.2 Language policies

In contrast with admission policies, the majority (20 policies) of language policies examined refer specifically to the Schools Act and the Language in Education Policy (DoE 1997). It is clear that schools and their governing bodies are familiar with the requirements of the Language in Education Policy and promote the right of learners to receive education in the official language or languages of their choice, where practicable (Constitution, Section 29).

Primary schools for black learners clearly stipulate which home language/s will be used in Grades R to 3. Fifteen schools provide for teaching and learning in at least two languages. Five schools offer more than two indigenous languages. For example:

Other languages than Sepedi and isiZulu which are already offered by the school will be offered as and when the need arises and The school shall offer four home languages, i.e. isiZulu, isiXhosa, Sepedi and XiThonga as primary languages in the foundation phase.

One intermediate school offers five indigenous languages. In all these schools English is the language of teaching and learning from Grades 3 to 12.

Providing for instruction and learning in indigenous languages is in line with Minister Pandor's views. At a media conference on 22 February 2007 she stated: "I have always supported the use of mother tongue education in our schools, especially in the foundation phase. I have always supported the promotion of indigenous languages in our schools" (Pandor 2007). However, the practicability and benefit to other learners in the same class have not yet been established. Does it mean that all instruction and learning support materials are available in the different languages, or that the teacher uses one language and code-switch when addressing learners who speak and understand another language?

Thirty of these schools specify that the language of communication in the administration and management of the school and with the parents is English. However, in two cases the policies show that translation services will be provided to parents, where necessary. In two cases the school's language policy stipulates that the "official language" of the school is isiZulu although the medium of instruction is English. Only two language policies mention code-switching between English and Sesotho. The majority of schools discourage code-switching because it "excludes" learners who do not understand the other language/s.

Two different approaches were found in the parallel-medium schools. In one group communication takes place in both English and Afrikaans. A small minority of schools uses Afrikaans as their management and communication language, but provides education in both English and Afrikaans.

The Afrikaans-speaking schools in the sample clearly state that the language of teaching and learning is Afrikaans and that English is their second language. In most cases the Afrikaans schools stipulate in their language policies that parallel-medium education will be offered if the need for English classes arises and it is practicable.

3.3 Religion policies

The findings regarding the religion policies of these diverse schools can be categorised into three main groups: a clear commitment to respecting and accepting different religions in the schools; the content of the religious policies, and the confusion between religious observances and Religion Education as subject.

The religious policies refer to the constitutional right to freedom of religion, belief and opinion. The policies specifically refer to values such as non-discrimination, respect, no indoctrination and tolerance. It is clear that school governing bodies are well-informed about the provisions in the Constitution (Section 15) and the Schools Act (section 7). Attendance of religious observances is free and voluntary, and many schools make provision for learners who choose not to attend the general assembly.

A second finding is that 70% of the sample schools indicated that their schools have adopted Christianity for their observances. These Christian schools include the majority of black rural and township schools, the Afrikaans schools and the integrated urban schools. The religious observances form part of the morning assembly and include reading from the Bible, singing and prayers. Assemblies are held between two and three times a week. In most of these schools the school day commences and closes with prayer. This group of schools also refers to “accepting and practising values such as honesty, diligence, obedience and respect”. One example of a religious policy states: “These values, truths and virtues are reinforced throughout the day by integrating them in all learning areas”. One high school states that “the Christian belief is reflected in the assemblies — as the majority of learners are Christian”. In the same religious policy the school:

... endeavours to focus on the basic principles shared by different religions and denominations, for example honesty, altruism, spiritual enlightenment, kindness and social responsibility rather than highlighting the differences and creating tension between different viewpoints.

All the school policies that have adopted Christianity make provision for learners who do not wish to attend assembly. In 30% of the schools parents are requested to apply in writing for exempting their children from attending religious observances. Others accommodate learners who choose not to participate in the Christian assemblies in classes.

Religion policies that adopt a multi-religious approach constitute 15% of the sample schools. A typical example from such a policy is: “Worship at school assemblies should be representative of as many faith communities within the school as possible”. This should be achieved by presenting worship for different faith communities at different times”. However, the policy also states that “The school governing body should first gauge local feelings on religion before multi-religious worship is introduced” and “all religious beliefs will be catered for”. This wording demonstrates, as in many other policies, that the governing body has not developed its own policy, but relies

on departmental policies or other documents from workshops or via their district offices.

As far as their religion policies are concerned, 12% of the sample schools declare that they are secular. For example: "R [...] school shall be a secular school. No member of the school community shall propagate his/her own religious views with an aim of indoctrination". Another policy states: "No particular religious ethos will be dominant over others".

In only one of the sample schools the religion policy refers to the Constitution and the Schools Act, but does not indicate how the school intends to comply with the provisions in the legislation. This confirms that schools are familiar with the legal requirements but do not know how to apply the legal principles in the development of their own religion policies.

A third important finding is that schools confuse religious observances or religious worship with the teaching of Religion Education as part of the National Curriculum Statement. The function of the governing body to adopt a religious policy for conducting religious observances (Schools Act, Section 7) does not include any decision-making authority over the content of the curriculum. In their religion policies schools duplicate the statements from the National Policy on Religion and Education (DoE 2003) on the teaching of Religion Education as part of the Life Skills Programme.

In general, the religion policies also address dress codes, dietary obligations and the attendance of prayers during school times as well as the celebration of religious commemorations. These statements range from a tolerant to restrictive approach. For example:

The SMT should provide for believers who are required to attend prayer meetings or pray at specific intervals during school time.

Permission will not be granted for practices and rituals that interfere with school attendance and the culture of learning and teaching.

Learners and staff may be absent from school for religious holidays without being discriminated against.

Children should be allowed to wear a small cross on a chain if it is part of their religion.

In a secular school:

No learner or staff member shall be permitted to behave or wear clothing that adversely compromises the rules and regulations of the school.

The school tuck shop should comply with the dietary demands of the learners' religion.

Statements contained in the religion policies are clearly copied from documents made available to schools. The majority of religion policies collected from urban schools indicate that the governing bodies, in consultation with the parents and the community, have adopted their own policies. However, many schools in rural and township areas duplicated the departmental documents without changing the wording contained in the recommendations. For example, sentences include what "schools should do" and which aspects they "should provide for".

3.4 The code of conduct for learners

It is clear from the codes of conduct analysed in this study that schools mostly deal with learner behaviour in a punitive and reactive manner. The findings of this section fall into three main categories, namely compliance with the law, the format and content of the codes of conduct, and how schools deal with misconduct.

The codes of conduct in general neither mention nor refer to the Bill of Rights or to the Schools Act, in particular Section 8. In two cases the codes of conduct still refer to legislation prior to the Schools Act, and in other examples to the Educators Labour Relations Act (repealed in 1998), the "National Educators Policy Act" (wrong title and not applicable to school discipline), the South African Council for Educators Act (not applicable) and the Constitution in general. In the cases where disciplinary procedures are mentioned, they refer only to contacting the parents and informing them of a disciplinary hearing. Of great concern is the fact that the codes of conduct neither include the hearing procedures nor inform the learners of their right to appeal.

Only one half of the codes of conduct includes its purpose and often links it to the vision and mission of the school. The majority of the codes of conduct studied (70%) mainly provide lists of rules or types of misconduct that will be punished. The lists of school rules or learner rules are often presented under the following headings:

- School times and arrival at school/Punctuality
- Dress code or school uniform/Appearance
- In the classroom
- On the school grounds
- Homework
- During sporting activities/Extra-curricular activities
- Absenteeism
- Cleanliness
- General behaviour
- Out of bound areas/Staffroom.

The codes of conduct obtained from rural schools include rules for parents and teachers. However, school governing bodies have no authority to develop codes of conduct for educators. A school governing body cannot enforce a code of conduct on educators employed by the State. The South African Council for Educators developed the code of conduct for educators.

The following example is taken from the code of conduct of a rural school:

Parent's rules:

- Pay the agreed school fees upon registration
- It is compulsory for parents to attend meetings
- Monitor the school work for support
- It is compulsory for parents to honour all invitations to the school
- Parents to come at least once to clean the environment
- Responsible to sign and return slips, or any other document
- Repair any school furniture, school property, materials damaged by their children.

The following examples of rules for teachers taken from various codes of conduct were obtained from rural schools:

Joubert/Policy-making by public school governing bodies

Educators will communicate with the parents of the learner by means of the learner disciplinary note.

No learners should be sent to the shop during contact time.

Be punctual and obedient to school times.

Avoid discrimination of any kind.

As educator I undertake to be prepared and on time for classes.

In the codes of conduct that list punishable misconduct, the following offences are mentioned: rape, indecent assault, sexual harassment, serious intimidation of teachers, theft, robbery, possession of dangerous weapons, blatant dishonesty, abusive language, abduction or kidnapping, criminal behaviour, substance abuse and vandalism.

In general the codes of conduct do not distinguish between serious and less serious offences. The lists of school or learner rules often appear under headings such as “Learners are to”, “Learners are not allowed to” or “Learners are expected at all times to”. Offences such as disrespect for property, not wearing the correct uniform, not being neat and clean are listed together with offences such as “carrying and bringing along any dangerous weapon in the school premises”.

The code of conduct of only one high school addresses learner pregnancy. The school prefers that pregnant learners “should inform the school so as to make the necessary arrangements and provide support concerning school activities”.

Learner appearance and wearing the prescribed school uniform is one aspect that is addressed in the codes of conduct of all schools. Typical subheadings refer to uniforms, hairstyles, jewellery, make-up, nails and hygiene.

Few codes of conduct include punitive actions or sanctions. These actions range from verbal warnings to suspension. In one or two cases the code of conduct spells out the sanctions for specific offences. For example:

Absenteeism — clean the school stoep.

Negligence of school work — water the garden.

Carrying dangerous weapons — take out weeds.

Damaging school property — dig up a big hole for manure.

An obvious finding is that there is no mention of disciplinary hearings, no reference to disciplinary committees or any procedures that will be followed in cases of serious misconduct. In one code of conduct a procedure for dealing with minor disciplinary problems states that “the Education Specialist or Senior Teacher must interrogate the child and decide on the form of punishment, e.g. manual labour, detention, warning or counselling”. In this example the code of conduct stipulates that if the child fails to co-operate the educator must refer the child to the disciplinary committee. The disciplinary committee must “invite the parent, the learner and witnesses to a formal disciplinary meeting”.

4. Conclusion

In South Africa school governance primarily implies the distribution of authority and voice. Considering all the schools in the country as a whole, the Schools Act provides for a significant gain in community involvement. However, the question remains whether the functions and duties accorded to governing bodies by the Schools Act will be adequate to achieve the constitutional goal of affirming democratic values of human dignity, equality and freedom.

In terms of Section 5(5) of the Schools Act, the admission policy of a public school is determined by the governing body of that school. Although this provision at first appears to confer a substantial function on the governing body, the provision is restricted by many conditions with the result that a learner could be denied admission by a governing body only in exceptional cases. However, there is substantive evidence that school governing bodies are committed to the values of equality and human dignity, and actively promote non-racism and non-sexism in the development of their schools’ admission policies.

There appears to be ambivalence in the Schools Act: on the one hand, the state clearly recognises the need to decentralise — thus the system of school governance by governing bodies (Section 16 (1)) and the provision for so-called capacity-building of governing bodies in the Act (Section 19); this could be interpreted as reflecting a long-

term policy towards gradual devolution of power to the school community. On the other hand, there appears to be a desire to centralise decision-making relating to important and sensitive issues such as the admission and language policies of schools by means of official admission and language policies. The Constitution recognises and protects eleven official languages. In practice, however, there is little doubt that English is the preferred language although it is not the mother tongue of the majority of the population. The majority of Gauteng schools prefer English as the language of instruction in schools. In principle, the governing body may determine the language policy of the school but, because of the restricted nature of this function, it has limited discretion. The Constitution makes provision for the protection of a diversity of languages, cultural and religious rights, and recognises the diversity as well as the unity of the South African nation. However, the Schools Act, by placing the power to determine the admission and language policies of schools effectively in the hands of government officials, makes it possible for English to be used in promoting the ideal of national unity or a single South African nation to the disadvantage of other official languages.

In primary schools for black learners the governing bodies promote the use of the learners' home languages in the foundation phase. In many cases the language policies indicate that three to five home languages are used for teaching and learning in the foundation phase. It is, however, not clear whether these schools are able to provide the learners with instruction and learning support materials in all these indigenous languages. Providing education in one language and translating certain concepts into others or giving instructions in another language might not be in the best interest of learners in the foundation phase. Providing basic education in the official language or languages of the learners' choice can be fraught with difficulties.

The right to freedom of conscience, religion, thought, belief and opinion in Section 15(1) of the Constitution has important implications for education. The issue is how this right is exercised in the educational environment. Religion Education is only a small component of one of eight learning areas that are studied in the General and Further Education and Training bands (DoE 2003: 19). However, in

promoting religious freedom, school governing bodies overemphasise the teaching of Religion Education and attempt to follow a multi-religious approach, even if the communities they serve proclaim to prefer Christianity. In the minority of schools where the governing bodies have decided to adopt a secular approach and all forms of religious activities are prohibited, the right to religious freedom of both learners and educators could be jeopardised.

School governing bodies constantly receive documents from the DoE and without questioning the legality and correctness of the content enforce compliance from everyone under its authority. The *National policy on religion and education* (DoE 2003) received considerable media coverage and resulted in many misconceptions relating to the practical implementation of the outcomes for Religion Education stated in the National Curriculum Statement for the Life Orientation Learning Area (DoE 2002). Jansen (2001: 272) warns about the fact that unguarded statements and thoughtless decisions of senior bureaucrats in the DoE may lead to incorrect interpretation and implementation of policies in schools and classrooms. The religious policies of the sample schools show that governing bodies duplicate the guidelines and recommendations taken from official documents regarding the promotion of religious diversity and simultaneously proclaim their schools to observe Christianity by means of Scripture reading, hymn singing and prayers.

A lack of learner discipline is a serious problem in South African schools. Schools often react to these problems with reactive punitive strategies (Rossouw 2007: 79). The basic approach in the formulation of a code of conduct should be positive and preventative in order to facilitate constructive learning. As learners are compelled to comply with the code of conduct, they must be consulted when the code of conduct is drafted. All learners must be informed about its contents, which should list, in positive terms, the things learners may not do or should do, as well as communication channels, grievance procedures and processes in conducting a fair hearing.

A code of conduct is a form of subordinate legislation in the sense that it should reflect the democratic principles of the Constitution by supporting the values of human dignity, equality and freedom. For

this reason it is important that a code of conduct indicate the legal authority by referring to the applicable section in the Constitution and Schools Act (as amended).

Despite the fact that problems relating to learner discipline such as violence and serious assault, vandalism of school property, bullying, sexual abuse and disruption of education are reported in the media on a daily basis and that the fundamental right of learners to a basic education is infringed by this behaviour, the content of the codes of conduct does not demonstrate an understanding or ability of school governing bodies to address learner behaviour effectively.

The disciplinary procedures and consequences for serious misconduct should meet the demands of both substantial and procedural fairness, something which can be ensured by properly prepared and written documents such as a code of conduct. Seeing that disciplinary actions are by nature administrative actions, governing bodies, in particular their disciplinary committees, should be aware of the fact that disciplinary actions may also be judicially reviewed by a court or tribunal. The DoEs are therefore advised to provide the necessary support to all governing bodies in this regard. Section 19 of the Schools Act stipulates that the Head of the Provincial Department must ensure that principals and other officials of the DoE render all necessary assistance to governing bodies in the performance of their functions in terms of this Act. This support function must include providing applicable training programmes for newly elected members of the governing body and continuing training to promote the effective performance of their functions (Joubert 2007: 40).

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