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Schools as legal persons: Implications for religion in education

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Implementation of religion policy in schools has provoked contradictions and contestations in South Africa and across the globe. Reports on costly and protracted court cases and legislative battles between schools and parents as well as between schools and departments of education over religion in schools have been increasing at an alarming rate. In this article, I highlight some of the school management issues involved in the implementation of religion-in-education policy in some selected South African schools. Based on mediation theory, the study used individual interviews to gather data from 12 school principals, who were purposively selected regarding their experiences on the implementation of the religion-in-education policy in their schools. The study revealed that, despite the challenges raised by the implementation of the religion-in-education policy, the majority of the participating school principals displayed the qualities of a transformative mediator. I therefore recommend that school leadership programmes for school leaders offer mediation, and transformative mediation in particular, as a leadership and management course. Additionally, the teaching should focus on transformative mediation as a strategy that school principals can use to solve problems and handle disputes in schools. This is important because transformative mediation has potential benefits to the field of education.

Keywords: conflict resolution; mediation; policy implementation; religion in education; religious diversity; schools as legal persons

Introduction

Today more than ever before, the implementation of democratic policies poses serious challenges for school principals, specifically on their leadership role (Hallinger, 2010). Important amongst these challenges include the interpretation and translation of the national and provincial policies into school policies. Section 15(1) of the Constitution provides that “[e]very person has the right to the freedom of conscience, thought, religion, opinion, and belief.” Section 15(2) of the Constitution points out that religious observances may be conducted at State or State-aided institutions, provided that (a) those observances follow rules made by the appropriate public authorities; (b) they are conducted in an equitable manner; and (c) the attendance at them is free and voluntary (Republic of South Africa [RSA], 1996b). Section 16(2)(c) of the Constitution further extends respect and protection of the right to freedom of religion, reassuring everyone that they have “the right to freedom of expression,” although indicating that such a right may be ‘limited’ if it extends to advocacy of hatred based on race, ethnicity, gender or religion.

The South African Schools Act (RSA, 1996a) further reaffirmed the religious rights and freedoms guaranteed to all citizens. Section 7 of the Act clearly stipulates, “subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary.” Nonetheless, the same Act, also mandates the establishment of democratically elected school governing bodies, outlining their roles, functions and responsibilities.

In accordance with the Constitution, Section 22 (1) of the Schools Act (RSA, 1996a) and relevant rules made by the appropriate authorities, paragraph 58 of the national religion-in-education policy (Department of Education [DoE], 2003) states that:

- (a) *the governing bodies of public schools may make their facilities available for religious observances*
- (b) *in the context of free and voluntary association provided that*
- (c) *Such facilities are made available on an equitable basis.*

The same paragraph (58) further specifies that it is the responsibility of the governing body of the school (SGBs) to determine the nature and content of religious observances for members of staff and learners. For instance, religious observances may form part of a school assembly, but if such observances become the official part of the day, they must be on an equitable basis.

It is worth noting at the stage that schools as organs of the State are in no way excluded from the above obligations. Thus, public schools as legal persons become institutions to fulfil the mandate of equipping the learners with the knowledge of religion including values on morality and diversity. In other words, schools automatically become ‘legal persons.’ However, in view of the different interests of the relevant stakeholders, the interpretations and translations are likely to differ. Additionally, in the absence of proper leadership, the conflicts generated by these differences end up in the courts of law. The case of the religion policy for schools in South Africa is evidence of this reality. The question then remains: do schools through their governing bodies, of which the school principal is the member, interpret and understand their role as legal persons and

implementers of legislations and policies discussed above? The next section attempts to answer this question. It does so by first relating the methodology and methods that were followed in investigating this phenomenon.

Methodology

Research Design

This study used a qualitative research approach in which I explored the way in which principals mediate religion education in their respective schools. I engaged individual interviews to solicit information from the school principals regarding their experiences in implementing the religion policy in their schools (Saldaña, 2016). Considering that there is minimal research that has been conducted on the phenomenon described above, a phenomenological research design was chosen, because of its infrequent use in studying the experiences that influence the principals' thoughts, choices of strategies and actions taken as they implement democratic policies like that of religion (Grey, 2014).

Sampling

The study employed purposive sampling and purposively selected the research participants, who comprised the principals of the schools pursuing postgraduate studies at the University of Pretoria (McMillan & Schumacher, 2014). Purposive sampling enabled me to avoid generalising the findings. The participation by the principals in this study was in their private capacity, and not as spokespersons of specific schools. That is, they narrated their stories as they had experienced the implementation of religion policy, not as per the expectations of their DoE. During the fieldwork for this study, the following characterised the school principals: (a) they were involved in management and leadership training at postgraduate level; (b) they had worked in the department of education for at least 15 years; (c) were exposed to different religion-in-education policies; and (d) they were from various religious orientations, language and cultural groupings.

Participants

I invited the school principals, who at the time of study were postgraduate students at the University of Pretoria. They met the foregoing criteria and were willing to participate in the study. The participants comprised 12 principals, who became the sample for the study. This sample size may seem small. However, it is important to note that in terms of a qualitative research approach, the focus is generally not on sample size, but rather on sample adequacy; because as I indicated earlier, it was not my intention in this study to generalise. Hence, the adequacy of my sample was justified by reaching the sampling saturation (Fargher &

Dooley, 2010). The qualitative researchers regard that as an indication of quality (Guest, Bunce & Johnson, 2006).

The composition of the sample was school principals from Gauteng, Limpopo, Mpumalanga and KwaZulu-Natal. Despite having a sample concentration from one region (Northern region), of which could have become a limitation to the study, the participants' leadership backgrounds and experiences were different. It is also important to indicate that, even if this was not the focus of the study, it would be of interest to the reader to note that the study was gender, racial and religiously represented. Three religions were represented, namely, Islam, Hinduism and Christianity, and the participants comprised nine males and three females and two white, two coloured, two Indian, and six African principals.

Data Collection

I used narrative interviews to collect data from the principals and involved audio recording, transcribing, analysing and interpreting the data. Religious matters are often discussed and debated at an emotional level, and sometimes they are eminent to legal proceedings, as stated in the introduction. Therefore, this phenomenon is seldom investigated through scientific processes. In contrast, I employed narrative inquiry to explore the religious experiences of principals that were not clouded with emotions. In this way, I was able to go beyond probing what principals like or dislike about the religion-in-education policy (Farrell, 2012). I dedicated four to five months to data collection process.

Ethics Considerations

I obtained ethics approval from the Faculty of Education to conduct the study, where requests for voluntary participation of the school principals, who were postgraduate students in the study, were sent to them. In my position as the Research Assistant in the department of Education Management and Policy Studies, I had the database for postgraduate students pursuing Bachelor of Education (B.Ed.) honours, master's and doctoral degree in the same department. I therefore, sent invitations to all registered students across the department. In the invitation, I had indicated the purpose of the study and that only school principals, deputy principals who were willing and available to participate in this study must indicate by e-mailing me. This study considered deputy principals worthy to participate due to the similarity of their mandate to that of principals. This was a two-week call that was followed by a one-week follow-up. I then directed invitations to 10 school principals, who indicated their willingness and availability to participate. Realising that e-mail alone could not produce a reasonable

number of participants, I was obliged to contact acquaintances and two more agreed to participate in the study. I invited participants in person as well as via email. It must be clear that historical origin, province, the type of school in which they worked (secondary or primary) including gender, were not part of the selection criterion.

Data Analysis

I interviewed all the 12 school principals after which I transcribed the tape recorded interviews and analysed the transcriptions in terms of the categories initially identified, namely, the principals' understandings of their mediating role in the implementation of the religion-in-education policy (Babbie, 2014). Subsequently, the following themes emerged: policy development, teaching about religion, learner admissions and educator appointment, and religious observances.

Trustworthiness

The raw data that includes (tape-recorded interviews), interview guides, interview transcripts, personal field notes, as well as the list and profiles of participants, were audited throughout the study period to validate their accuracy and authenticity using peer debriefing. Additionally, I sent transcriptions to participants, asking them to correct errors that I could have unintentionally made during the research process. This ensured that I represented my research participants as well as their ideas accurately (Major & Savin-Baden, 2010). Finally, the written report of this study was subjected to the programme called 'Turnitin,' to ensure its originality as per the University of Pretoria requirements.

Findings

The school principals in this study employed diverse strategies as they implement the religion-in-education policy in schools, with several reasons. Some blamed the lack of training from the Department of Education, while others faulted inadequate training. A lack of the necessary skills could be the reason for this challenge, where one participant noted that, "*The policies just come and there are no people to unpack them*" (Participant 2). The narratives of the other participants indicate that they were trained, i.e. they were told what was required of them, and how to go about doing what they were expected to, but they chose to ignore it. According to him, the facilitators of the courses and workshops they attended told them "*everyone has the right to freedom of religion, but practically, when we come to the school, we would want learners to practice Christianity,*" he stressed (Participant 2). Another principal stated, "*One of the completely strange things to me was the request by parents that we had to release 35 Muslim*

children to leave for Mosque at 12:00 on Fridays" (Participant 1).

While releasing learners to mosque was a challenge with some principals, for others it was not, where all they needed was a confirmation letter. It was expressed by one of the principals that "*unless the parent comes and explains to us in a form of a letter from Mosque that the learner is actually a committed Muslim and he should be permitted to attend mosque, we would not include that particular religion in the school's policy*" (Participant 3). From this, the principal would appear on the one hand not to accommodate Islam, while on the other, he would appear to be protecting learners' religious rights and freedoms. According to the same principal, "*releasing learners early on Fridays to attend mosque became a problem in terms of teaching and learning, because there was no cover up time in terms of the activities that took place during their absence*" (Participant 3). In this way, this principal protects and promotes learners' right to education.

I mentioned earlier that tolerance is one other value that religion education is intended to promote. This was, to some extent, found to be the case with most school principals in this study. For instance, they would allocate a classroom for learners to observe their religions (Participant 6), allow learners from the Islam faith to go to mosque on Fridays. They would also admit learners and appoint educators with religious orientations other than Christianity (Participant 4). They also worked harmoniously with SGB members from other religions, thereby demonstrating their tolerance of diversity (Participant 5).

However, learner and staff attendance of school assemblies and occasions such as opening and closing of gatherings where only Christian devotions, for instance, were observed, were evident. One of the school principals admitted, "*We would emphasise the point of assembly attendance*" (Participant 8). This attendance was however dependent on parental approval and/or disapproval. "*Unless there are cases where a parent would tell us that his child must be excused from the assembly, all learners had to attend,*" the other principal emphasised (Participant 10). Contrary to this open policy, this study discovered that at some of these principals' schools, it became a problem for Muslim learners, for instance, to express their faith using religious apparel. In one of the principal's school for example, "*if learners would come wearing Muslim hats, we would call and tell them to stop wearing such hats with the aim of discouraging them from influencing others*" (Participant 7).

It became evident, however, that conflict occurred at the schools, where some of the principals had played a role in the formulation of

religious policies. One of them, for instance, guided the SGB that they had to indicate in (the) policy that religious observances ought to be free and attendance to them should be voluntary. The SGB said, *“No, no, no, wait, what are you actually saying? In terms of our school code of conduct, all learners must attend the assembly regardless of what they and their parents believe in”* (Participant 9).

When conflicts occurred, the school principals in this study demonstrated their willingness and ability to resolve them in diverse ways ensuring that they do not compromise the smooth running of the school. Some of the principals, for example, mentioned, *“I have never seen the SGB calling parents for religion policy discussion. The SGB does not mention anything in relation to religion to parents”* (Participant 10). *“The application form does not require religious status of the child”* (Participant 11). Other schools excuse educators from attending and/or conducting morning assembly. One of the principals pointed out that *“educators are told when they are appointed at the school that they are welcome to arrive at school five minutes later if they are uncomfortable with the way morning assemblies are dealt with”* (Participant 7). Similarly, the other principal indicated, *“If an educator is not comfortable with the conducting of the assembly, he/she must report. Although his/her name will remain on the duty roster, one SMT [School Management Team] member will stand in for him/her”* (Participant 12).

In another principal's school, if they see that the preferred mode of dealing with religious observances has hiccups or raises conflict, *“we bring the matter back in a forum. We re-assess, we amend and then we continue. That is why the policies are not constant but, evolving depending on what is happening to the school”* illustrated the principal (Participant 6). The other principal reiterated this approach, *“We once gave the Muslim committee member an opportunity to conduct religious observances at the assembly on the argument that there are also Muslim children in our school, but it was not appreciated by both learners and members of staff. You could just see from their response that they do not enjoy it as they do with Christianity. We then had to discontinue”* (Participant 10).

Based on the preceding discussions, I infer that most of the principals in this study understood and interpreted: (a) the aim behind the religion-in-education policy; (b) their role in mediating the implementation process and, more importantly; (c) that schools as legal persons are obliged to fulfil the rights and freedoms as stipulated in legislation and educational policies. However, more often than not, their previous experiences not the theoretical knowledge of policy acquired through training

informed their decisions and practices. The section that follows discusses the findings of study.

Discussion

It is important to mention that, apart from the stipulations outlined earlier, the Schools Act (RSA, 1996a) does not deal with religion in education, religion education, or religious instruction in proper detail. For instance, the Act does not specify how schools ought to respect, protect, promote and fulfil the rights contemplated in sections 15(1) and 31(1) of the Constitution. Nor does it define ‘religious observances,’ thus leaving the door open to schools (legal person) and their SGBs (their brains) to give meaningful content to the standards entrenched in national legislation, the Constitution, and international human rights instruments.

In discussing the above findings, I will map out at the conceptual level the different ways in which the principals in this research approached the implementation of the religion policies of their schools, paying particular attention to two strategies, namely sub-contracting, and mediation. *Sub-contracting* in the context of this study means a strategy used by the school principal to implement the intended policy changes in view of the wishes of either the Department of Education or any of the stakeholder groupings (i.e. parents, educators, or learner body). The principal, a sub-contractor, therefore merely form one more link in a chain that connects policy developers with the educators who implement it, and the learners who ‘consume’ it (Day, 2005).

Mediation and transformative mediation in particular, refers to a process that transforms conflict from a destructive and negative interaction to a constructive and positive one (Bush & Folger, 2005). In the context of education management, this means that the principal who is ‘an insider’ negotiates with various interest groups in attempt to reconcile the differences. This is crucial for finding a way to implement a manner of school reform that acknowledges the interests of various stakeholders (Fullan, 2007).

Either the findings presented above indicate that although most of the principals in this study claim not to have received adequate training from the department of education or institutions of higher learning, they performed their role in such a way that conflict is either eliminated, or minimised. In other words, they interpreted or understood schools as juristic/legal persons, who have certain obligation to fulfil religious rights and freedoms of learners and members of staff. Their interpretation and understanding manifested in policy development, learner admissions and educator appointment, teaching about religion, as well as religious observances, as discussed below.

Development of Religion Policy at School Level

One other function of the SGB, as stipulated by Section 20 of the Schools Act, is to develop and adopt school policies, including those pertaining to religion (RSA, 1996a). In describing the ways in which policies are developed and implemented in their schools, it is clear that while some principals *sub-contracted* into the national policy, others mediated the policy during schools' policy development processes. As sub-contractors, these school principals became the *suitable authorities* who drafted the policy on religion for the schools. They drafted the policy either with the chairperson of the SGB or with the SMT (Naidoo, 2005).

In doing so, they used the "majority" principle to decide on religions that must form part of religious observances policy of the school. In other words, priority goes to religious orientations of parents or learners in majority. For instance, the majority of the parents and learners are Muslims, where as a result, the school made a decision that in principle it will subscribe to Islam. In most cases, the principals justified their approach by stating that most parent governors are not educated, and that those who are educated do not have time or necessary skills to carry out their functions (Xaba, 2011).

In realising the challenge of the SGB members that lack the necessary skills to execute the mandate of the department of education (Mncube, 2009), other school principals in this study transformatively mediated the policy. This study discovered that some participants would do whatever they could to see that the actions of the school governing body and provincial education departments are lawful, fair and reasonable (Joubert & Prinsloo, 2009). One of the principals took initiative to find the right representation in the candidates coming through for SGB portfolios, regardless of religion, while others would adopt some of the clauses from the South African Constitution, the South African Schools Act and the national religion policy into their school policies to suit religious practices of such schools. In doing so, these principals challenged the status quo (Frane, 2002).

Learner Admission and Educator Appointment

The school principals in this study knew of the changes that took place in religion that were influenced by the changes that came with the Constitution post-1994. Among the changes cited by the research participants were that schools might not refuse learners' admission and/or educators' appointment on religious grounds (RSA, 1996a, 1996b). Based on these changes, religiously oriented schools appointed educators and admitted learners despite their faiths. The narratives indicated that those schools that have Christian character (schools that subscribe to Christian faith)

(Van der Walt, 2011) had rooms for appointees and learners from other religions to excuse them from morning assemblies. Learners from religions such as Islam are also released to attend mosque on Fridays at 12:00.

It is imperative to note that principals in this study did not cite religion as having influenced their decision as to who could play a role in the SGB. It is for this reason that this study revealed that the majority of the governing bodies of schools were religiously represented, with diverse religious representatives in leadership portfolios of the SGB (i.e. chairperson) (Naidoo, 2005). Based on these insights, I can argue that the schools led by the majority of principals in this study demonstrated a commendable level of religious accommodation. That is, they largely played the role of transformative mediators (Bush & Folger, 1994).

Teaching about Religion

The principals' narratives revealed that the educators in their schools gave inadequate attention to Religion Education than is required. One of the reasons for this was the educators' lack of knowledge about other religions, where their knowledge was often limited to Christianity. Ferguson and Roux (2003) remind us that the majority of public schools had officially based religion education programmes on Bible Education (mono-religious Christianity) until 1997. According to them, this leaves no doubt that the majority of educators and parent governors in public schools are products of schools that exposed them to either one religion only; or to no religion at all, with some schools having eliminated religious education from the curriculum of the school (Ferguson & Roux, 2003).

It follows that exposure to either one religion or none at all would have an influence on educators' perceptions and ethos, and that they would find it very difficult to change their attitudes and perceptions towards the people of other religions. This is true for any person, not only educators, who comes from a predominantly mono-religious and/or mono-cultural background (Roux, 2005). It is however pertinent to note that there are principals in this study who admitted that in every religion there is something good (Fatima, 2014; Sulaiman, 2016). Even so, challenges remain. For instance, Christian educators may struggle to teach about other religions, considering the fact that some of them received their training under the apartheid education system. Thus, although these principals may have a positive outlook on differences, they would not be able to help transform the teaching and learning of religion education in their schools, because they also lack any knowledge about religions other than their own (Roux, 2005).

Some school principals also admitted that each religion is worth learning about. Where

educators lacked skills and knowledge, these principals would either secure the support in terms of material/resources and/or opportunities for staff development (The Presidency, RSA, 2007). Moreover, one of the school principals noted having protected a girl learner, whom the SGB wanted to remove from school because she fell pregnant. In doing so, this principal played the role of the transformative mediator (Bush & Folger, 2005) and demonstrated the ability to confront complex, ambiguous and uncertain situations in which he found himself – not for his own sake – but for the sake of protecting a learner’s right to basic education (Fullan, 2007; RSA, 1996b).

Personal values, such as respect for others, fairness and equality, caring for the well-being, and the holistic development of learners and of staff, integrity and honesty are evident in this principal’s vision and practices (Harris, 2010). His transformative leadership values and vision are primarily moral (i.e. dedicated to the welfare of staff and learners, with the latter at the centre); and underpin not only his relationships with staff, learners, parents and governors, but also his day-to-day actions (Day, 2005).

Other principals ignored the behaviour of educators towards the teaching of religion education. They admitted that they had trouble in imagining the teaching about religions that were different from their own. This finding was affirmed in Ferguson and Roux (2003), namely that exposure to either one religion or none at all would influence one to find it very difficult to change his/her perception of and attitude towards other religions. Research suggests that such attitude might lead to a denunciation of some of religious beliefs and practices. By so doing, it destroys even the good that prevails in South Africa and the world (Frankema, 2012). The views and reactions by these school principals indicate the need for a careful and proper approach to the implementation of religion policy in schools. Otherwise, it would be difficult for school principals to lead in a way that accommodates diverse religions in schools as required by legislation.

Religious Observances

In the South African context, religious observances are viewed as activities and behaviours that recognise and express the views, beliefs, and commitments of a particular religion, and may include gatherings of adherents, prayer times, dress and diets (DoE, 2003). The two laws and the policy provide that religious observances may be conducted at State or State-aided institutions, provide that: (a) those observances follow rules made by the appropriate public authorities; (b) they are conducted in an equitable manner; and (c) the attendance at them is free and voluntary (DoE, 2003; RSA, 1996a, 1996b).

However, the narratives in this study revealed that religious observances performed in school assemblies in some of the schools continued in the Christian way, while other minority religions like Islam were marginalised (Van der Walt, 2011). These schools also provide classrooms for use by learners and staff from minority religions, and they occasionally release Muslims to go to mosque on Fridays. They also excuse educators from attending or conducting morning assemblies where religious orientations other than theirs are observed.

By acknowledging to the diversity that exists among learners and staff in terms of backgrounds including that of religion, culture, and educational context (Tam, 2010), these principals fulfil the role of the transformative leaders (Bush & Folger, 2005) and view their schools as legal persons. That is, they chart a direction that convinces stakeholder groupings that it is time to change (Moloi, 2005). In contrast, other schools do not allow both educators and learners who belong to religions considered as minority to observe their religions, even in terms of religious apparel (Alston, Van Staden & Pretorius, 2003). In this way, these schools violate learners’ right to freedom of expression as well as their religious rights (RSA, 1996b).

Conclusion

Despite the practical challenges that school principals in this study faced as they implemented the religion policy of the schools, they demonstrated confidence, openness and generosity in developing the identity of their “schools as legal persons.” In striving to maintain this status, they displayed a reasonable amount of integrity, and were able to use their previous experiences in religion to transform the quality and nature of religious interaction in their schools. In view of this, some principals represented themselves to be transformative mediators, which became possible because they understood and led change from the “insider perspective.” The danger of this stance, however, lies in the possibility that the interests of the principal might supersede those of the school and, if different stakeholders pursue markedly different interests, the main purpose and function of SGBs would be defeated.

I therefore recommend proper and adequate training for these school principals in order to support the government of South Africa in their attempt to expedite the enactment of policies that have been compounded by tensions. Additionally, this could lead to moral challenges in schools, such as the people’s comprehension and expression of morality, diversity, spirituality, and the nature of humans as a whole. I further recommend that universities offer a course on mediation, transformative mediation in particular, as a leadership strategy in solving the prevailing problems and dealing with

disputes in schools. This holds potential benefits for the field of education more broadly.

Note

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