School governance and management decentralisation and school autonomy in the South African education system

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DECLARATION OF ORIGINALITY

I, André du Plessis, declare that the work contained in this thesis is my own original work. It has never been submitted in any form for a degree or diploma before in any tertiary institution. Where the work of others has been used, sources have been identified and acknowledged by means of complete references.

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This is to confirm that I have completed the language editing of the thesis **School governance and management decentralisation and school autonomy in the South African education system** by **A Du Plessis** (26760797) submitted for the degree *Doctor Philosophy* in Education Management at the North-West University.

Yours faithfully

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ABSTRACT

This article-based study, undertaken from a complexity theory perspective, is a critical analysis of governance and management decentralisation and school autonomy in the South African education system. Because the objectives of study would not be met by conducting traditional and more conventional research designs, discourse analysis was deemed as the most suitable approach to determine how autonomous South African public schools are with regard to governance and management. The law (legislation and case law), policies and official reports were used as the primary sources of discourse. Each of the four sub-questions were addressed in a separate article focusing on aspects of school governance and management decentralisation and school autonomy at the macro and micro echelons of the South African education system. The first article critically assesses the level of decentralisation of the South African education system and argues that the South African education system has embarked on a road of decentralised—centralism. The second article is an in-depth analysis of statutory requirements for co-operative governance and relevant case law legislation. The analytical framework of this article evolves around local participation, schools as organs of state and the constitutional principle of co-operative governance. The third article examines the the parameters of the professional discretion of a South African public school principal. The last article argues that due to the accountability demands of a fundamentally bureaucratic education system, distributed leadership with its heterarchical features will most likely not be applied by South African public school principals. I addition, the article argues that there is ambiguity in the leadership / management function principals are expected to perform. The study challenges the level of decentralisation in South African education system and the motives of the South African education authorities.

Key words

Decentralisation; decentralised-centralism; co-operative government; school governance; school autonomy; professional discretion; distributed leadership.

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LIST OF ABBREVIATIONS

COSATU	-	Congress of South African Trade Unions
CTU-ATU	-	Combined Trade Union grouping of smaller Autonomous Teacher Unions
DBE	-	Department of Basic Education
ELRC	-	Education Labour Relations Council
FEDSAS	-	Federation of Governing Bodies of South African Schools
GBF	-	Governing Body Foundation
HOD	-	Head of a Provincial Education Department
IQMS`	-	Integrated Quality Management System
MEC	-	Member of Executive Committee of a province
NDP	-	National Development Plan
NEEDU	-	National Education Evaluation and Development Unit
SADTU	-	South African Democratic Teachers Union
SBA	-	School Bases Assessment
SGB	-	School Governing Body

CHAPTER 1
THE PROBLEM, THE METHOD AND THE MEANS

1.1 INTRODUCTION

A feature of the South African education system during the apartheid era was that it was hierarchical and authoritarian in nature which limited wider participation (Williams, 2011: 190). In contrast, the post-Apartheid era experienced a move from a centralised to a decentralised system of education management and governance (De Villiers & Pretorius, 2011: 574; Williams, 2011: 190; Grant, 2006: 511). Beckmann (2009: 129) defines *centralisation* as "the concentration or merging of functions in one body, in particular the administrative and control function", whilst decentralisation is defined by him as "the distribution, delegation and allocation of functions related to administration or management" and the "granting of such functions to subsections of the whole". This decentralisation is associated with school based management which implies an increase in the responsibilities of the school principal and his/her management team (Swanepoel, 2008: 40; Botha, 2004: 239). Schools were now required to become democratic organisations which are open and transparent, necessitating a fresh conceptualisation of leadership (De Villiers & Pretorius, 2011: 575; Grant, 2006: 511). However, various arguments are raised by a number of authors (Beckmann, 2009; Woolman & Fleisch, 2008; Heystek, 2007; van Wyk, 2007) regarding the motives and true level of decentralisation which occurred in the South African education system. According to Sayed (2002: 38) the post-1994 South Africa faced a number of contradictory demands, arguing that the state was firstly "expected to deliver a more just and humane society in a climate of rising expectations and hopeful promise" whilst at the same time creating conditions for economic growth and development. Secondly there was an expectation that the state would unify a divided society. Thirdly, it was expected that the state would be responsive to the will of the people by guaranteeing participation and by extending democracy in society.

1.2 CONCEPTUAL CLARIFICATION

Decentralisation is a worldwide trend that featured prominently during the latter part of the twentieth century and the start of the twenty first century and has become an accepted component of modernisation (Dyer & Rose, 2005: 105). It has become a prominent government strategy in the different sectors of society, as well as for education and large-scale education reforms (Karlsen, 2000: 525). The same applies to the South African education system and it is illustrated by McLennan (2003: 182) when she refers to the vision as articulated by the African National Congress shortly before the elections in 1994 in which democratic participation of all stakeholders would be maximised and focused towards equity, effectiveness, efficiency, accountability, and the sharing of responsibility.

Decentralisation in South African education is also regarded by some as part and parcel of a global neo-liberal agenda (Woolman & Fleisch, 2008: 47-48). Woolman and Fleisch (2008: 48*)* explain as follows:

> … the state allegedly granted certain democratic political rights to communities, parents and learners over their individual schools in return for the parents' acceptance – especially in elite public schools – of significant financial responsibilities for their children's education.

According to Carnoy (2005: 6), the notion of dismantling centralised systems of school governance and administration is based on the thought of greater efficiency associated with markets and local control. He does, however, stress that unless an even distribution of capacity exists to manage and deliver education at local level, it is highly probable that decentralisation would contribute to greater inequality in the schooling system.

Another view offered by Woolman and Fleisch (2008: 48) relies on a reading of all the provisions of education legislation, the conception of democracy as expressed in the text of the Constitution and case law. They argue that school governing bodies, despite concerns regarding the lack of capacity of school governance structures, possess the potential to play a significant role not only in the education system, but also in forming the "bedrock*"* of South African communities. This corresponds with the view expressed by van Wyk (2007: 132; 2004: 49) that decentralisation is vested in the principle that the state alone cannot control schools, but that schools should be governed and managed in collaboration with all stake holders. The idea is that

when schools and communities work in partnership, a true mutual responsibility will grow.

Decentralisation refers to a shift in location of those who govern (Dyer & Rose, 2005: 105) and to the devolution of some authority and institutional autonomy to the local school and community level (Botha, 2006: 341-353; Fullan & Watson, 2000: 453). Hanson (1998: 112) defines decentralisation as "the transfer of decision making authority, responsibility and tasks from higher to lower organisational levels or between organisations". The general view, according to Sayed (2002: 37), is that decentralisation "redistributes, shares and extends power and enhances participation by removing centralised control over educational decision making". It involves a redistribution of political authority and power, resources, administrative responsibilities and functions (Dyer & Rose,2005: 105) and is closely connected to other concepts such as deconcentration, deregulation, delegation, de-bureaucratisation and independency (Karlsen, 2000: 526). According to Bimber (1993: 7) the essence of decentralisation is decision-making authority. Decentralisation, according to Bimber (1993:7) implies the shifting of authority for the making of decisions downward from the topmost levels (the centre) toward the bottom, or local levels.

Sayed and Soudien (2005: 117) argue that in the South African situation, the commitment to extending democracy and participation as a central theme of educational policy is "inscribed in ambiguity". They explain that this ambiguity takes its character from the compromise made regarding shared power which was reached by the negotiations which led to the establishment of the Government of National Unity in 1994 and the emergence of "a bifurcated state with concurrent powers held between a centre and its dispersed, decentralised provinces". South Africa's semi-federalist and decentralised Constitution allows for different mechanisms and activities for co-ordination between the centre and the provincial, regional and local sites. In education, the national centre is responsible for the funding of sites, but is to a lesser extent involved in the management and control within the sites and this is where, according to Sayed and Soudien (2005: 117), the ambiguity in policy finds its first expression. A second area reinforcing this ambiguity is found in what Sayed and Soudien (2005: 117) describe as "the process of juridification" that has occurred in order to mediate the ideological ambitions of the state through the law.

A distinction can be made between 'functional' decentralisation and 'territorial' decentralisation (Dyer & Rose, 2005: 106). Functional decentralisation means distributing powers between various authorities that work in parallel. An example would be the splitting of a Department of Education into several bodies or entities that are responsible for different aspects of education. Territorial decentralisation refers to deconcentration (Karlsen, 2000: 526) and denotes the transfer of power from higher to lower tiers of government (Dyer & Rose, 2005: 106), in other words from national level to provincial level to district level to local school level. Territorial decentralisation can be categorised as deconcentration, delegation and devolution (Dyer & Rose, 2005: 106; Karlsen, 2000: 526; Hanson, 1998: 112). Privatisation is also considered by some as a form of decentralisation (Dyer & Rose, 2005: 106).

Deconcentration involves the shifting of tasks and work or management responsibilities, usually defined by the centre, from the centre to lower levels, whilst the centre holds on to overall control and authority (Dyer & Rose, 2005: 106; Hanson, 1998: 112). Delegation allows for a higher degree of decision-making authority at lower hierarchical levels, but the central authority still holds the power in that it decides which power to allocate to the lower hierarchical levels or local authorities (Dyer & Rose, 2005: 106; Hanson, 1998: 112). Karlsen (2000: 526) argues that on the one hand decentralisation does not necessarily mean a shift of power, because the role of local agents is only to execute the decisions made at central level. On the other hand, delegation may signal an extension of local autonomy simply because central control is difficult. However, it is important to keep in mind that decision-making authority can be withdrawn at the discretion of the delegating unit. Decentralisation as *devolution* refers to the formal transfer of authority to an autonomous sub-national level that can act independently which means that local decision-makers do not need to seek approval for implementing their decisions (Dyer & Rose, 2005: 106; Karlsen, 2000: 526; Hanson, 1998: 112).

Privatisation as an organisational form of decentralisation is underpinned by the view that governments separate themselves from the responsibilities and functions, "implying a planned transfer of powers to private hands, a reduction in state authority over schools and therefore redistribution of powers". A form of delegation similar to privatisation is what Gershberg and Winkler (2004: 326) call implicit or *de facto* delegation which results from the failure of the state to provide educational

opportunities in remote areas. As a result, local communities take the finance and provision of schooling upon themselves. Privatisation and implicit decentralisation resonates with neo-liberalism.

1.3 INTERNATIONAL EXPERIENCES

Hanson (1998: 115) identifies four centres of power that can have a meaningful impact on educational decentralisation programmes. The most important of these is whether or not the main political parties have a shared vision with regard to the decentralisation reforms and are willing to collaborate. Secondly, for decentralisation to succeed, it is imperative that all government institutions collaborate. Thirdly, it is imperative to have the buy-in and commitment of the teacher unions. Lastly, for decentralisation to succeed, one needs the co-operation of community members.

A two-dimensional framework for assessing the dynamics of decentralisation in a country is shown in Table 1.1. Constituting the first dimension. Ndegwa and Levy (2004: 287) distinguishes between three groups of, namely 'political elites' which comprises of the political leadership in government, 'bureaucrats' at all levels of authority within central government, and 'communities', which comprise of local elites and grassroots stakeholders.

In the second dimension as identified by Ndegwa and Levy (2004: 287) identifies three distinct phases of decentralisation, namely:

- *Engaging decentralisation:* This is the initial phase during which the fundamental decisions relating to state structure are on the national agenda. During this phase questions need to be answered regarding the extent and how resources will be shifted to communities.
- *Detailing decentralisation*: This is the phase during which specific fiscal and administrative mechanisms which are required to facilitate local empowerment are clarified and implemented.
- *Sustaining decentralisation:* This phase is ongoing and is characterised by '*learning-by-doing*'. During this phase the institutional arrangements of the intergovernmental systems are continually fine-tuned.

Table 1.1: The roles and Influence of stakeholders in the decentralisation process (Source: Ndegwa & Levy, 2004: 286).

Phase	Political elite stakeholders	Bureaucratic stakeholders	Community stakeholders
Engaging decentralisation	How strong is the elite political consensus of decentralisation?	To what extent is the decentralisation discourse underpinned by technical and comparative analysis?	How strong is bottom-up pressure for local empowerment?
Detailing decentralisation	How engaged is the political elite in ensuring that the details of decentralisation are consistent with the political intent?	How cooperative is the bureaucracy in developing and implementing new decentralised systems of governance?	How involved are civil society organisations in defining their entry points and their level of involvement in contemplated technical details?
Sustaining decentralisation	To what extent do elite political stakeholders seek to reassert central control over authority and resources?	To what extent do elite political stakeholders seek to reassert central control over authority and resources?	How capable are communities in enforcing downward accountability on local elites?

Drawing from international experiences with education decentralisation, Gershberg and Winkler (2004: 328-331) list a number of lessons that was learnt regarding decentralisation in education. These are discussed below:

Efficiency and effectiveness is more likely to improve under decentralisation when the regional local sites are held accountable for the results. Accountability is deemed to be stronger when school communities are partly or fully responsible for school financing (Gershberg and Winkler (2004: 328). This is confirmed by the findings of Sasoaka and Nishimura (2010: 86) that there is a divide in the accountability levels between public and private schools in East African countries where the private schools are responsive in terms of downward accountability, as opposed to the public schools who do not have a strong commitment to public demands.

Clear demarcation of authority and power, as well as transparent and understandable information of academic and financial matters is required for accountability. Determining who must be held accountable may be difficult when principals have limited managerial powers or when responsibilities are shared by more than one level of government (Gershberg & Winkler, 2004: 328).

Decentralising the power to make real decisions to schools and/or school governing bodies is a way of increasing the 'voice' of education's clients, which in turn, can increase parental participation in the school. Parental participation is not sustainable when school councils only have advisory powers (Gershberg & Winkler, 2004: 329). This is confirmed by Essuman and Akyeampong (2011: 521) who found that parental participation in rural areas in Ghana was welcomed in schools on the proviso that it was on the school's terms.

Decentralisation to subnational governments (provinces and regions or districts) does generally not lead to greater empowerment of parents or improve school performance. Further decentralisation to schools does, however, empower parents and lead to improved school performance (Gershberg & Winkler, 2004: 329). However, researching privatisation and decentralisation of schooling in Malawi, Rose (2005: 160) found that local communities viewed the additional responsibilities placed on them as an additional burden.

Successful decentralisation requires principals to acquire and develop new skills in leadership and management of finances, teachers and the community relations (Gershberg & Winkler, 2004: 329). In the Netherlands, for example, principals are referred to as 'school directors'. They are not only are responsible for the quality of their schools, but also for all staff related matters, including the appointment and dismissal of teachers and union negotiations (Mulford, 2003: 9). In England successful schools can obtain greater autonomy by reaching the "status of earned autonomy" which places additional demands on school principals (Daun, 2004: 332). Mulford (2003: 9) points out that "decentralisation has resulted in principals increasingly having to deal with budgetary considerations, greatly increased time demands, a greater need for time management, with less attention given to the provision of leadership about curriculum and instruction.

Generally decentralisation includes the transfer of financial resources to subnational governments and/or schools and the design of these transfers has powerful effects on efficiency and equity (Gershberg & Winkler, 2004: 329). For example, Hong Kong launched the School Management Initiative in 1991 which required some authorities related to financial and personnel management and teaching and learning policy to be transferred from "school-sponsoring bodies to incorporated management committees of individual schools" (Lo, 2010: 67). In addition, decentralisation also requires a restructuring of national and provincial governments so that they can provide the new functions they should provide (Gershberg & Winkler, 2004: 330).

Teachers are the most important factor in delivering instruction to children which means that if teacher management, which includes recruitment, evaluation, and transfer and salary supplements (if affordable), is not decentralised with other responsibilities, the potential benefits of decentralisation is severely reduced (Gershberg & Winkler, 2004: 330). In Ghana, for example, Essuman and Akyeampong (2011:524) found that because teacher recruitment and appointments are centrally controlled, many teachers feel that they are not accountable to the local community, but to the education authorities.

The lack of capacity of subnational governments, local communities and schools to manage education is the single largest fear expressed by national ministries of education. There are however, examples that indicate that even poorly educated parents and communities can manage community schools. Such examples can be found in El Salvador and Nicaragua (Gershberg & Winkler, 2004: 331).

Decentralisation is a process which is long and evolutionary. Although, as in the case of South Africa, radical constitutional and legislative changes can occur in a relative short space in time, real changes in governance, accountability and improvements in teaching and learning takes much longer (Gershberg & Winkler, 2004: 331).

The above international experiences indicate an idealised model of decentralisation in which the national ministry of education is pro-active in its endeavours to facilitate change and to ensure an increased focus on teaching and learning. In this idealised model principals take on enhanced roles in leading and managing schools (Gershberg & Winkler, 2004: 331).

Gershberg and Winkler (2004: 329) provide a classification of the kinds of decisions that may be decentralised to school level (see Table 1.2). Decision areas include the organisation of instruction, personnel management, planning and structures, and resources.

Table 1.2: Types of school level decisions that may be decentralised

Decision area	Specific decisions
Organisation of instruction	Select school attended by student Set instruction time Choose textbooks Define curriculum content Determine teaching methods
Personnel management	Hire and fire school directors/principals Recruit and hire teachers Set or augment teacher pay scale Assign teaching responsibilities Determine provision of in-service training
Planning and structures	Create or close a school Select programs offered in a school Define course content Set examinations to monitor school performance
Resources	Develop school improvement plan Allocate personnel budget Allocate non-personnel budget Allocate resources for in-service teacher training

More specific to Africa, it generally is appears as if many countries in Africa are on the path to decentralizing educational decisions from central government to regional and local administrative units and to local school communities (Gershberg & Winkler,

2004: 351). This is confirmed by the studies conducted by, among others, Essuman and Akyeampong (2011), Sasoaka and Nishimura (2010), Namukasa and Buye (2007) and Rose (2005).

1.4 BACKGROUND AND RATIONALE

School-based governance (political decentralisation) and/or school-based management or self-managing schools (administrative decentralisation) is associated with schools that operate in decentralised public education systems (Caldwell, 2008:235; Hanson, 1998: 122) and it is related to a move towards institutional autonomy (Botha, 2006: 341). According to O'Brien and Down (2002: 114) self-managing schools "are best seen as organisations whose orientations place them on a continuum of degrees of independence in the market". De Grauwe (2004: 2) asserts that a definition of school-based management is easy to formulate: "the transfer of decision-making power on management issues to the school level". Any argument that decentralisation will improve educational quality must be related to attempts made for greater school autonomy and better leadership (Dyer & Rose, 2005: 107).

Drawing on Caldwell, De Grauwe (2004: 2) makes a distinction between school-based management and school-based governance. School-based management refers to when responsibilities are transferred to professionals within the school, usually the principal and his school management team. School-based governance implies handing over authority to an elected school board in which parents and members of the school community are represented. This resonates with Section 16 of the South African Schools Act (RSA, 1996a) which stipulates that the governance of a public school is vested in its governing body and that the professional management of a public school must be undertaken by the principal under the authority of the provincial head of department. The above definitions, however, do not answer two fundamental questions, namely which decisions are transferred and who receives this authority at the school (De Grauwe, 2004: 2).

South Africa's semi-federalist and decentralised Constitution allows for different mechanisms and activities for co-ordination between the centre and the provincial, regional and local sites. In education, the national centre is responsible for the funding of sites, but is to a lesser extent involved in the management and control

within the sites (Sayed & Soudien, 2005: 117). In South Africa the “process of juridification” (Sayed & Soudien, 2005: 117) is manifested through multiple court cases regarding issues relating to language, religion, pregnancy and admission policies in schools, the appointment of educators and the provision of textbooks. This resonates with Weiler’s (1990: 445) argument that “decentralising the making and the implementation of educational policy affects in important ways the nature and interest of the state, particularly its ability to cope with the dual problems of policy conflict and the erosion of its own legitimacy”. Weiler (1990: 446) explains that the notion of decentralisation presents the state with a profound dilemma when attempting to reconcile the competing rationales of decentralisation and evaluation, both of which have to do with the exercise of power. This is because there is always the possibility that the power relinquished by decentralisation may be taken back by evaluation.

Paradoxically school-based management and policies of de-regulation are viewed by many as being associated with managerialism and the emergence of a process of “re-regulation” (Ball, 2003: 217) or “managerial restructuring” towards a form of “decentralised-centralism” (Karlsen, 2000) which has resulted in educational strategies that focus on the monitoring of learner and school achievement (Strandler, 2015: 890). By referring to Kogan (2002), Glatter (2012: 562) argues that the turn of the millennium saw the emergence of a ‘compliance society’ which is characterised by a “remotely accountable and technocratic centre” which takes the initiative and where relationships of dependency and compliance have developed rather than relationships of interaction, negotiation and mutual respect (Glatter, 2012: 562; Kogan, 2002: 333, 340).

Hargreaves (2000: 167) argues that post-modern developments such as new patterns of international economic organisation where corporate power is extensively globalised, and the electronic and digital revolution in communications, has resulted in what he describes as a “set of assaults on professionalism” in, for example, universities and teaching. This assault on professionalism is largely due to market principles being strongly embraced by governments. According to Hargreaves (2000:168) this is associated with legislated and regulatory changes whereby the scope of teachers’ decision-making is reduced, the introduction of centralised

curricula and a lowering of teachers' status through a "discourse of derision" that holds teachers responsible for the alleged problems in public education.

Fitzgerald, Youngs and Grootenboer (2003: 93) contend that the increasing level of bureaucratic control over teachers' professional work and the activities of governments in decentralised systems are inherently problematic. Quality is linked to accountability through a process called quality assurance which has its origin in the term quality control used in manufacturing industries (Codd, 2005: 201). Winch (1996, as quoted by Codd, 2005: 201) explains the distinction between quality assurance and quality control as follows:

> Quality control is concerned with the testing of products to see whether or not they meet the specification. Thus batches of widgets may be tested and sent for scrapping or reworking if they are found to be defective …Quality assurance (QA) is concerned with ensuring that the production processes are such that defective products are not made in the first place, so that the need for extensive quality control mechanisms at the end point of production is not pressing.

The state has thus not abandoned its controls, but has instituted a new form of control which is less visible. Ball (2003: 217) posits that in this new environment of performativity and regulatory control teachers must be inspired to consider themselves "as individuals who calculate about themselves, 'add value' to themselves, improve their productivity, strive for excellence and live an existence of calculation". Schools are thus expected to change their focus from educational processes to outputs and learning outcomes (Codd, 2005: 201). Ball (2003: 226) explains this by stating:

> Knowledge and knowledge relations, including the relationship between learners, are de-socialised. It is this externalisation and de-socialisation that the teachers … are struggling with and against.

Education has hence been reduced to a commodity, meaning that it is no longer seen as a public good, but as a private good. Local communities are represented "as clients or customers and the curriculum becomes constituted as a prerequisite for economic productivity" and the "central aim of education becomes the narrow instrumental one of preparing people for the job market" (Codd, 2005: 196). It is argued by Kimber and Ehrich (2011: 181) that such restructuring of an education system creates what they coin as a "democratic deficit". They explain that rather than strengthening accountability, the use of managerial practices weakens it. Secondly,

the over-reliance and inappropriate use of performance practices derived from the private sector has led to traditional roles and values associated with the public sector, being ignored. Thirdly, they argue that a "hollow state" has emerged "where public goods and services have been removed from the public sector, and citizens have been redefined as customers or clients".

Those advocating accountability along the lines of performance measures or targets (mainly quantitative data) aimed at the attainment of 'standards' argue for its effectiveness (Wilkens, 2011: 391). Wilkens (2011: 391) is of the opinion that this audit/target culture has however, "led to an ultimately damaging risk-averse, target-chasing ethos where traditional notions of context-specific practice emerging through professional dialogue are suppressed". He continues his argument by stating: "In this context, professional development is a 'top down' imposition rather than a genuine personal and collegial enterprise, and is likely to be viewed more as a disciplinary device than an empowering one". In addition, the culture of performativity has introduced what Wilkens (2011: 391) calls "interventionist regulatory mechanisms" that allow for underperforming professionals to be disciplined and which was viewed by some as "a deliberate antagonistic assault on the notion of the autonomous profession" and an undermining of the essence of classical professionalism. Hargreaves (2000: 169) contends that this introduction of "performance management through targets, standards, and paper trails of monitoring and accountability … may have comforted governments with 'procedural illusions of effectiveness', but they have also subjected teachers to the micro-management of ever-tightening regulations and controls that are the very antithesis of any kind of professionalism".

A contrasting view is presented in the main judgment of *Head of Department, Department of Education, Free State Province v Welkom High School and others and Head of Department, Department of Education, Free State Province v Harmony High School and others [2013] ZACC 25 (CC)* when Chief Justice Khampede, by referring to *Schoonbee & Others v MEC for Education, and Another 2002 (4) SA 877 (T) holds* that in terms of the South African Schools Act, 84 of 1996, the State, the parents, educators and learners join in a partnership in order to advance specified objectives around schooling and education. It appears as the intention was to migrate from a system where schools are entirely dependent on the favours of the State to a system where a greater responsibility and accountability is assumed, not

just by the learners and teachers, but also by parents. Against this context the importance of cooperative governance cannot be underestimated as it is one of the fundamental foundations to our democratic dispensation and cemented in the Schools Act as an organising principle for the provision of access to education. Through the voice of Chief Justice Khampede, the Constitutional Court recognised the vital role played by school governing bodies, which function as a "beacon of grassroots democracy" in ensuring a democratically run school and allowing for input from all interested parties. Therefore, the relationship between school governing bodies and the state should be guided by close cooperation, and characterised by "consultation, cooperation in mutual trust and good faith". This was recently reinforced by the Constitutional Court in *Federation of governing bodies for South African schools v Member of the Executive Council for Education, Gauteng and others [2015] CCT 209 (CC).* This view of the Constitutional Court is recognised by the National Development Plan. The National Development Plan: A vision for 2030 was launched in 2012 and is a detailed blueprint for how the country can eliminate poverty and reduce inequality by the year 2030. The priorities in basic education are human capacity, school management, district support, infrastructure and results-oriented mutual accountability between schools and communities (RSA, 2012: 296). According to the National Development Plan (2012: 303), teaching in schools can be improved through targeted support by district offices. In addition, the National Development Plan (RSA, 2012:303) envisages the following:

> …top performing schools in the public and private sectors must be recognised as national assets. They should be supported and not be saddled with unnecessary burdens. Their support should be enlisted to assist underperforming schools. To remain the beacons of our education system, they need to be supported as well as held accountable for performance based on an agreed set of outcomes.

However, contradictory to the approach as suggested by the National Development Plan, a draft version of a Basic Education Laws Amendment Bill started circulating to schools via teacher unions and governing body associations in 2015. This draft Amendment Bill contained a number of proposed amendments that if passed into law, would curtail the powers of school governing bodies, including those of top performing schools with highly functional governing bodies, thereby limiting their autonomy. This draft Basic Education Laws Amendment Bill was eventually published for comment in the Government Gazette (No. 41178) on 13 October 2017

(RSA, 2017a). This signalled that the government was changing direction with regard to especially the highly functional top performing schools as envisaged in the National Development Plan.

Based on the above, it is contested that there is ambiguity with regards to education decentralisation and the levels of school autonomy and that there is a need to clarify this ambiguity through critically analysing the levels of decentralisation and school autonomy in the South African education system. This is of particular importance when all the contextual nuances of South African schools are to be taken seriously.

1.5 RESEARCH QUESTIONS

In line with the above rationale, the following main research question is formulated:

How autonomous are South African public schools with regard to governance and management?

From this question is derived the following sub-questions:

a) How is the South African education system decentralised in terms of school governance and management?
b) How is the principle of co-operative governance, as stipulated in the South African Constitution, applied in the South African education system?
c) What are the parameters of the professional discretion of a South African public school principal?
d) What possibilities exist in South African policy documents for distributed leadership practices?

1.6 AIM AND OBJECTIVES OF THE STUDY

This study aimed at determining how autonomous South African public schools are with regard to governance and management through an analysis of literature and legislation and the regulatory developments since 1994. Therefore the first objective was to assess the level of decentralisation in the South African education system. Secondly, the study examined the constitutional principle of co-operative governance as contained in Chapter 3 of the Constitution and its relevance to the relationship

between school governing bodies and the national and provincial spheres of government. The third objective was to clarify the professional discretion of the public school principal in the context that he/she is both a governor and the representative of the provincial Head of Department whilst simultaneously being responsible for the professional management of a school. The fourth objective was to determine the possibilities for distributed leadership in South African education policy against the heterarchical-hierarchical tension present in the South African Schools Act (RSA, 1996a), the Personnel Administrative Measures (RSA, 2016a), the Policy on the South African Standard for Principals (RSA, 2016b) and the Integrated Quality Management System (IQMS) (ELRC, 2003).

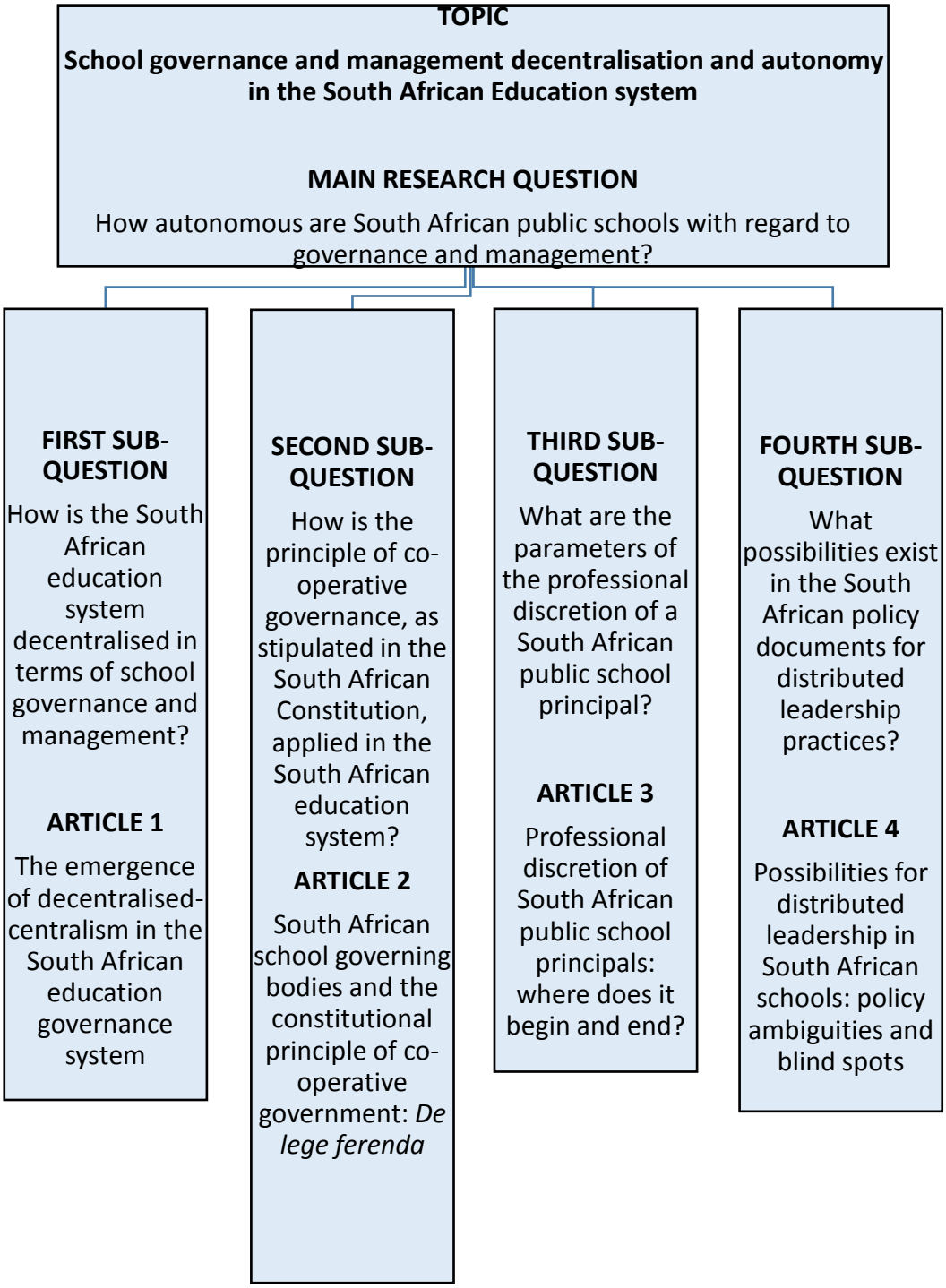
An additional objective of this study was not only to determine which decisions are decentralised and who at the school receives this autonomy, but also to determine how this decentralised autonomy relates to the accountability framework which is present in the South African education system, both at the system and institutional levels.

1.7 FORMAT OF THE STUDY

This is an 'article-based PhD', also referred to as a "Publication-Based Thesis" (Freeman, 2018: 275). Such a dissertation "provides a way for doctoral students to establish themselves as researchers while gaining the experience of developing reviewed manuscripts before graduation, thus enhancing career opportunities as tenure-track faculty" (Freeman, 2018: 273). Freeman explains (2018: 274): "Published peer reviewed articles allow an individual to be set apart and are perceived to be better prepared for a career as a faculty member …"

Freeman (2018: 277), however, also lists the disadvantages of this format for a dissertation. It could firstly be argued that a publication-based thesis may lack the necessary depth and therefore not prepare students sufficiently enough for performing research during their careers. Secondly, as it is 'a road less travelled' (Frost, 1916), supervisors or advisors of these students may not have the required experience to provide sufficient guidance.

Figure 1.1: Alignment of articles and research questions



Thirdly, there are institutional challenges in terms of matters such as copyright. In my situation, this was an issue that needed to be clarified as I am a faculty member at a different university.

I was fortunate to obtain a PhD thesis by publication written by Carolyn Grant (2010). Although it provided me with valuable insights, the challenges I experienced were in

many cases very different. Firstly, because she had three publications with two draft articles almost ready for journal submission before registering for her PhD, Grant's (2010: 333) thesis was designed retrospectively. In my case, I had the opportunity, as suggested by Grant (2010: 334), to follow a more forward thinking and logical approach "where articles can be conceptualised and written up in direct response to the questions and the requirements of the research design". The implication was that I was able to align the articles to the research questions as illustrated in Figure1.1.

Due to each of the journals having different prescriptions regarding technical matters such as referencing techniques (for example two of the journals required referencing to be done in the form of footnotes), headings and the general technical layout of the articles, I restructured the technical presentation of the articles to that of what is usually required in a conventional thesis. This was done do ensure consistency. The exception is the first reference to court cases in the articles where the full citation is in the form of a foot note. Inserting the full citation in the text would have changed the article from the original submitted version. In addition, a list of all the abbreviations used in the articles has been inserted after the Table of Contents of the thesis.

1.8 THEORETICAL ORIENTATION

Decentralisation and autonomy in school governance and management implies a system where there is inter-connectedness with multiple sub-systems which interact with each other. In turn, this implies that a relationship exists between the different elements or agents which constitute the system (Mason, 2008a: 37) and through this relationship, they influence one another and their wider environment (Cohen, Manion & Morrison, 2011: 28).

In the South African education system the elements or agents that constitute the system can be grouped into macro (national and provincial structures) and micro levels (local schools). Interactions among these elements happen both horizontally and vertically. For example, at the macro level, Section 9 of the National Education Policy Act, 27 of 1996 (RSA, 1996b) determines that a Council of Education Ministers must be established, consisting of the Minister and Deputy Minister of the Department of Basic Education, and the nine provincial political heads of education (Members of Executive Council for Education). Also to attend the meetings of the

Council, is the Director-General of the Department of Basic Education in order to report on the proceedings of the Council and to advise on any matter relating to the responsibilities of the Department of Basic Education. The chairpersons of the Portfolio Committee on Education in the National Assembly and the Select Committee on Education in the National Council of Provinces may also attend the meetings. At the micro level there are the interactions between the different actors in the management structures e.g. school management teams, and the governance structures of schools, e.g. the school governing bodies and their sub-committees. There are also statutory professional bodies such as the South African Council for Educators (SACE) which was established in terms of the South African Council for Educators Act, 31 of 2000 and the Education Labour Relations Council (ELRC) which was established in terms of sub-section 37 (2) of the Labour Relations Act, 66 of 1995. The Parties to Education Labour Relations Council are (ELRC, 2016:7) the State as Employer through the collective made up of the provincial departments of education and coordinated by the Department of Basic Education; and the teacher unions which include the South African Democratic Teachers Union (SADTU), the largest of the teacher unions, and a Combined Trade Union grouping of smaller Autonomous Teacher Unions generally referred to as the CTU-ATU. Non-statutory bodies include school governing body organizations such as the Federation of Governing Bodies of South African Schools (FEDSAS) and the Governing Body Foundation (GBF), as well as non-governmental organisations and civil movements such as Equal Education. In addition to the above, each of these elements/agents/actors which constitute the system, have to perform their own specific function within legislative, regulatory and policy frameworks which also connects them to the system. These legislative, regulatory and policy frameworks thus also constitute different elements of the system. Although each of these elements/agents/ actors have their own specific function and purpose within the education system, requiring different skills and competencies, they are interconnected and all are obliged to work towards the achievement of a common goal and hence form a complex system. This study was therefore primarily approached through the lens of complexity theory.

Within the wider paradigm of complexity theory, the relationship between decision-making autonomy and/or discretionary space and accountability was viewed through

a secondary and narrower lens based on Ronald Dworkin's conceptualisation of discretion (Dworkin, 1978: 31). Each of these is discussed in the following sub-sections with some examples of how it was applied in the articles.

1.8.1 Complexity theory

Complexity theory is becoming more prominent in educational research (Cohen, Manion & Morrison, 2011: 28). The origin of complexity theory can be traced to the fields of chemistry, physics, biology, (Mason, 2008a: 36) archaeology, psychology, law and sociology (Haggis, 2008: 165). Complexity theory also shares the focus that chaos theory places on, as articulated by Mason (2008a: 36), "the sensitivity of phenomena to initial conditions that may result in unexpected and apparent random subsequent properties and behaviours". As in the case of chaos theory, complexity theory is concerned with "wholes, with larger systems or environments and the relationships among their constituent elements or agents, as opposed to the often reductionist concerns of mainstream science with the essence of the 'ultimate particle'" (Mason, 2008b: 5). As stated by Larsen-Freeman and Cameron (2008: 201), 'complexity theory works at the system level, and explanation is in terms of the system's behaviour, not at the level of individual agents or elements". According to Walby (2003: 1) complexity theory not only "offers a new set of conceptual tools to help explain the diversity and changes in contemporary modernities undergoing globalisation", but it also "offers a new way of thinking about diverse inequalities and social change …"

Complexity theory requires the researcher to investigate a dynamically interacting system of multiple elements or components (actors) from the 'inside', rather than from the 'outside' or the 'view from above' (Haggis, 2008: 172). According to Haggis (2008: 172), "this conceptualisation of the researcher looking as if from 'within' larger dynamic systems of connected factors is quite common in sociological research, but less so in many forms of small-scale educational research". Key aspects of complexity theory are the interaction-aspect, the aspect of feedback, the aspect of connectedness, the aspect of emergence (Cohen, Manion & Morrison, 2011: 29), the aspect of context (Haggis, 2008: 167), the aspect of unpredictability (Haggis, 2008: 168) and the non-linear aspect (Cohen, Manion & Morrison, 2011: 28,30).

1.8.1.1 The interaction-aspect of complexity theory

This interaction-aspect of complexity theory was for example, applied to Chapter 3 (Article 2) where the principle of co-operative government and its influence on the interactions between school governing bodies and especially provincial departments of education was analysed. Complexity theory concerns itself, as Mason (2008b: 6) puts it, "with environments, organisations, or systems that are complex in the sense that very large numbers of constituent elements or agents are connected to and interacting with one another in different ways". Accordingly, Haggis (2008: 169) explains that this distinct arrangement of interactions is to a degree created by the interactions of other larger systems, for example systems of governance, culture, language, policy or funding. :

In their explanation of this interaction-aspect of complexity theory Cohen, Manion and Morrison (2011: 28) go a step further:

> The interaction of individuals feeds into the wider environment, which in turn, influences the individual units of the network; they co-evolve, shaping each other, and co-evolution requires connection, cooperation and competition: competition to force development and cooperation for mutual survival. The behaviour of a complex system as a whole, formed from its several elements, is greater than the sum of the parts.

Haggis (2008: 166) conveys this point by explaining that specific forms of rearrangements will occur from time to time if a sufficient number of such interactions happen over a sufficiently long period of time. Therefore complexity theory suggests that, as expressed by Mason (2008a: 38), "it is in the dynamic interactions and adaptive orientation of a system" that new occurrences and behaviours emerge, resulting in the development of new arrangements and old ones being changed. Therefore, complexity theory holds that "the system is characterised by a continual organisation and re-organisation of and by these constituents" (Mason, 2008a: 36). An example of such organisation and re-organisation of interactions in the South African education system is found in Chapter 2 (Article 1) where it is argued that, in what may be construed by many as an attempt by the government to limit the powers of school governing bodies, the draft Basic Education Laws Amendment Bill (RSA, 2017a) seeks to adjust the powers of SGBs with regard to recommending candidates for appointment to management positions in schools in favour of the provincial Head of Department. If passed into law, the relationship and the level of interaction

between school governing bodies and the provincial departments of education will change into one where as far as the appointment of staff school management positions are concerned, the role of school governing bodies will change from an active participant in the appointment process, to a recipient at their school of a person decided on by a provincial Head of Department.

1.8.1.2 The feedback-aspect of complexity theory

The notion of feedback is a key element of complexity theory in that feedback must occur between the interacting components of the system (Cohen, Manion & Morrison, 2011: 29). In this relationship between the interacting components which are interacting dynamically at local level (Haggis, 2008: 166), interactions are non-linear (Cohen, Manion & Morrison, 2011: 29; Haggis, 2008: 166) and there is a "multiplicity of simultaneously interacting variables" (Cohen, Manion & Morrison, 2011: 28) with complex feedback loops being enmeshed which "continually adjust and modify both the 'parts' of the system, and the system itself". Haggis (2008: 166) explains further:

> As the system is open, the interactions can also affect the boundaries of the system itself, and indeed have effects beyond it. Moreover, because the interactions are always local, such effects are distributed, rather than emanating from any central cause.

The feedback may be either negative or positive. Cohen, Manion and Morrison (2011:29) explain that negative feedback is regulatory, whereas positive feedback brings increasing returns, uses information to change, grow and develop and "it amplifies small changes". This feedback-aspect of complexity theory is found in Chapter 4 (Article 3) in the Constitutional Court judgement in the ruling of the combined cases *Head of Department, Department of Education, Free State Province v Welkom High School and others and Head of Department, Department of Education, Free State Province v Harmony High School and others* where the Court held that, as a matter of legality, supervisory authority must be exercised lawfully in accordance with the Schools Act (RSA, 1996a) concluding that, because the Head of Department had purported to override school policies without following the relevant procedures set out in the Schools Act (RSA, 1996a), he acted unlawfully. However, it was acknowledged that the pregnancy policies of the two schools at face-value infringed upon the constitutional rights of pregnant learners, including the right to

human dignity, to freedom from unfair discrimination and to receive a basic education. The two schools were ordered to review the policies in the light of the requirements of the Constitution (RSA, 1996c), the Schools Act (RSA, 1996a), and the considerations set out in the judgment. The schools were further ordered to meaningfully engage with the Head of Department in the process of reviewing their policies, according to the principles of cooperative governance enshrined in the Schools Act (RSA, 1996a). An approach which places the learners' best interests as the starting point must contextualise disputes within the parties' duties to engage and cooperate.

1.8.1.3 The connectedness-aspect of complexity theory

A key feature of complexity theory is connectedness. Connectedness exists everywhere (Cohen, Manion & Morrison, 2011: 29). The interactions between the components in the system are not only multiple, but they are "multiply connected" (Haggis, 2008: 167). As explained by Haggis (2008: 167), it is the diverse range of the interactions through time that generates effects because, in this situation, causality cannot be relegated to a single or a limited number of factors.

Haggis (2008: 167) explains further:

> … because of this connected, multi-factor causality, elements that are isolated and conceptually 'removed' from the system of connected interactions, in effect cease to have meaning in terms of understanding that system (though they might have meaning in relation to other such isolated elements abstracted from other systems). The system itself has to be studied, and studied in terms of its interactions (rather than defining 'key elements' in relation to smaller units within the system and comparing these to elements from other systems). However, studying systemic interactions involves understanding that some of the interactions pertaining to the system being investigated are at the same time also interactions of other, larger/different systems which the system that is the focus of attention is embedded in and connected to.

This connectedness-aspect of complexity theory suggests that phenomena must be looked at holistically (Manion & Morrison, 2011: 29-30). According to Manion and Morrison (2011:29-10), complexity theory suggests that educational research should move away from, for example, individuals, institutions, communities and systems so that the unit of analysis becomes a web or ecosystem. This is because individuals, families, students, classes, schools, communities and societies exist in symbiosis

This connectedness-aspect of complexity theory featured prominently when examining the possibilities for distributed leadership in South African policy documents in Article 4 (Chapter 5). Public school principals not only have to frame their interactions with the provincial departments of education and their school governing bodies through their connectedness to the accountability framework in which they must operate, but also, through their connectedness, with the provincial Head of Department, district offices, their management team, parents, the community and the specific context of their school. This connectedness influence their leadership and management interactions.

1.8.1.4 The emergence-aspect of complexity theory

One of the most important features of complexity theory is that it provides insight through the notion of emergence (Cohen, Manion & Morrison, 2011: 29; Haggis, 2008: 168; Mason, 2008a: 37). This notion of emergence is closely associated with the notion of self-organisation (Cohen, Manion & Morrison, 2011: 29). As Mason (2008a: 37) suggests: “The dynamics of complex systems are inherently dynamic and transformational”. According to Mason (2008a: 37), the notion of emergence implies that, “given a sufficient degree of complexity in a particular environment, new (and to some extent unexpected) properties and behaviour emerge in that environment”. Therefore, as stated by Cohen, Manion and Morrison (2011: 29), “systems possess the ability for self-organisation, which is not according to a prior grand design … self-organisation emerges, it is internally generated …” This means, according to Mason (2008a: 37) that “the whole becomes, in a very real sense, more than the sum of its parts”. This is because the surfacing or manifestation of new characteristics and behaviours are not limited and thus cannot be predicted. At the centre of this process is the creativity and knowledgeability of actors. This results in the establishment of new social systems “within and through the self-conscious, creative activities of human actors” (Fuchs, 2003: 16) Fuchs (2003:16) explains that in this context the term *self*-organization refers to “the role of the self-conscious, creative, reflective and knowledgeable human beings in the reproduction of social systems” (Fuchs, 2003: 16).

This notion of emergence manifests itself in the draft Basic Education Laws Amendment Bill (RSA, 2017a) as illustrated in Chapters 2 and 3 (Articles 1 and 2). Through such amendments to legislation, the South African education system is constantly evolving. This dynamic character of the system adds to the complexity of the system.

1.8.1.5 The context-aspect of complexity theory

The context-aspect of complexity theory is particularly relevant to the South-African education system with its multiple sub-contexts and features strongly throughout the study. Complexity theory recognises the relationship of a system with its external environment and the influence this environment may have on the system. In other words, complexity theory not only concerns itself with the multiple relationships within itself, but also recognises the multiple relationships that exist with the external environment. Complexity theory posits that, as the (open) system evolves through time, "it is in 'constant interaction' with environmental factors, i.e. forces that exist beyond its boundaries" (Haggis, 2008: 167). Haggis (2008: 167) explains:

> ... the language used here immediately suggests a 'thing' with a 'context'. From a dynamic systems point of view, the system, itself consisting of interactions, is at any point in time partly constituted by interactions that are part of the dynamic structure of other, different systems (both larger and smaller). These other systems will have their own interaction characteristics which, in the case of larger systems, means that smaller systems within them will be sharing in the same larger system interactions. However, the interactions of larger systems are themselves constantly combining and reforming uniquely within each open system, as they combine with interactions that are particular to that system.

This distinction between a system and its environment in combination with the, with conceptualising of systems being "self-organising and self-reproducing, provides the basis of a new way of thinking about systems." (Walby, 2003: 7). By making contextual factors parameters or dimensions of the system, the connectedness of the system to context is exposed (Larsen-Freeman & Cameron, 2008: 204).

1.8.1.6 The non-linear aspect of complexity theory

Complexity theory argues for multiple causality and multi-directional causes and effects, as opposed to methodologies based on linear views of causality (Cohen,

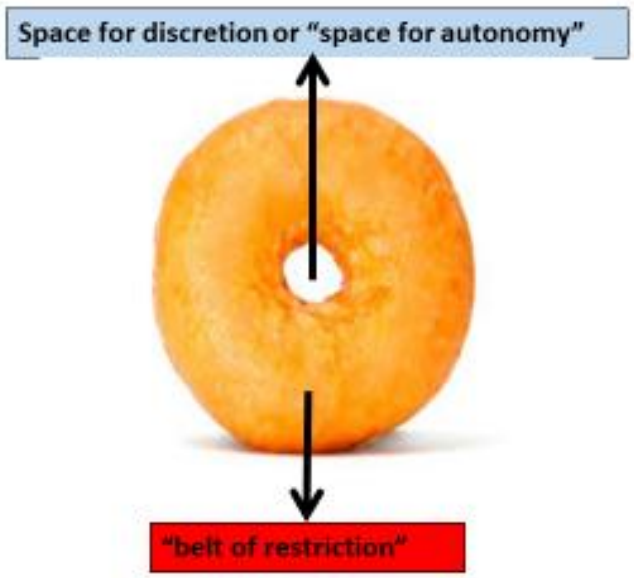
Manion & Morrison, 2011: 30). As explained by Cohen, Manion and Morrison (2011: 30), this is because “organisms (however defined: individuals, groups, communities) are networked and relate at a host of different levels and in a range of different ways”.

1.8.2 Dworkin’s (1978) conceptualisation of discretion

The relationship between decision-making autonomy and/or discretionary space and accountability is very well illustrated by Ronald Dworkin (1978: 31) who in his conceptualisation of discretion (decision-making power / autonomy), places it in one context only, namely when someone is in general charged with making decisions subject to standards set by a particular authority. Dworkin (1978: 31) explains:

> Discretion, like the hole in the doughnut, does not exist except as an area left open by a surrounding belt of restriction. It is therefore a relative concept. It always makes sense to ask, ‘Discretion under which standards?’ or ‘Discretion as to which authority?’ Generally the context will make the answer to this plain, but in some cases the official will have discretion from one standpoint, though not from another.

Figure1.2: Dworkin’s (1978) ‘doughnut principle’



The hole therefore represents the space for discretion or “space for autonomy”, whilst the circle of the doughnut comprises the “belt of restriction” (Wallender & Molander, 2014: 1) – see Figure 1.1. Creating space for professional discretion suggests ‘making room for’ professional discretion, which would indicate a less restrictive context than one would expect in a hierarchical bureaucracy. This would allow for more creativity and autonomy by principals as compared to the strict impersonal compliance to elaborate rules and regulations characterising bureaucratic hierarchies. The recently published Policy on the South African Standard for Principals (RSA, 2016b: 3) recognises that, due to the diversity of school contexts with the complex issues that it brings, principals require particular knowledge, action and context-specific practical applications within the key areas of principalship which requires more distraction from principals than to be bound by rules and regulations. These can only be determined by individual principals working within the school and its wider community.

The “ring of the doughnut” (belt of constriction) implies that when exercising professional discretion, good judgement is required and it is done within an accountability framework. One can therefore portray the action of exercising discretion as being careful, prudent, cautious, responsible and mature. Maile (2002: 329) uses the expression ‘*answerability’,* which implies being judged by someone.

Although Dworkin’s ‘doughnut-principle’ has relevance to the whole study, it is particularly in Article 3 (Chapter 4) that it provided a valuable lens to analyse the legislative, regulatory and policy framework in which public school principals are expected to perform their functions and the space they have to autonomously apply discretion.

1.9 METHODOLOGICAL PARADIGM

Because the underlying assumption of this study is that it explores multiple socially constructed realities (ontology), that it studies actors in their natural settings, and the purpose of the study is interpretive and constructivist in nature (epistemology), this study is inherently qualitative in nature (Yilmaz, 2013: 312; 315). This resonates with complexity theory as complexity theory also suggests that there are many views of

reality and that there is a need for many perspectives on a situation and those different voices and views need to be heard (Manion and Morrison, 2011: 30). The implication is that, in order to address holism, it is necessary to look at situations through the eyes of as many participants, actors or stakeholders as possible (Cohen, Manion & Morrison (2011: 30).

Larsen-Freeman and Cameron (2008: 206) suggest that from a complexity theory perspective, certain methodological principles follow, namely:

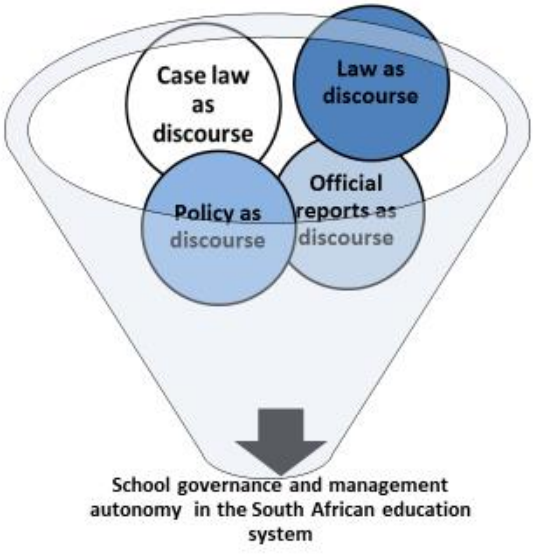
- Ecological validity: This means that context must be included as part of the system(s) under investigation.
- Honouring complexity: Reductionism must be avoided and any and all factors that may influence the system must be considered.
- Acknowledging the dynamic feature of the system: This relates to the dynamic processes and changing relationships among the variables, actors or stakeholders within the system by placing self-organisation, feedback and emergence as central.
- A complexity view of reciprocal causality needs to be taken, rather than petitioning simple and immediate cause and effect links.
- A rethinking of units of analysis is required in order to identify collective variables.
- Conflating levels and timescales needs to be avoided whilst linkages across levels and timescales needs to be sought.
- Variability must be considered as central. Both stability and variability must be investigated in order to understand the developing system.

Complexity theory lends itself to investigating systems in interdisciplinary settings (Manson & O'Sullivan, 2006: 677). Therefore, the research design for this study, needed to be both robust enough to answer the research questions from a complexity theory perspective, and also flexible enough to be applied to each of the four articles, each aimed at answering a secondary research question of this article-based dissertation (PhD by publication).

1.10 RESEARCH DESIGN

In line with the paradigm of complexity theory and in order to address holism, this study employed a pluralistic and blended research design. The main ingredient in this blend is discourse analysis which was used as a research design and a method of data collection, with elements borrowed from traditional historical-legal research and policy analysis in combination with each other.

Figure 1.3: The pluralistic and blended research design employed in this study



According to Russo (2006:5) the use of such a complementary research design can help to focus research questions more clearly and also offer explanations that might not have been considered had a single method been employed. Russo (2006:5) argues that as suggested by Gestalt psychology, the sum of a researcher's efforts can exceed the whole of its parts when multiple complementary techniques are applied. The research design is illustrated in figure 1.3.

In Articles 1 and 2 all four discourses (legislation, case law, official and official reports) featured strongly. In Article 3 I predominantly utilised relevant legislation and case law. In Article 4 legislation and policy documents were the primary sources of discourse.

1.10.1 Discourse analysis

Discourse analysis explores the meaning participants and actors make in social interactions and settings (Lee & Adler, 2006: 42). Fairclough (2005: 925) describes a discourse as a certain way of representing physical, social, psychological aspects of the world. For example, political discourses may be liberal, conservative, social-democratic, and so forth. Thus, the relationships between social groups in a society are manifested in different ways through these discourses (Faircough, 2005: 925).

Fairclough (2005:925) explains further:

> An order of discourse is not adequately specified simply in terms of the sets of discourses, genres and styles it comprises: the relations between them – how they are articulated together – are crucial. So the order of discourse of a particular organisation [or system – own insertion] will include discourses, genres, and styles whose distribution are complementary corresponding to different parts and facets of the organisation [or system – own insertion], but also discourses, genres and styles which are potentially conflicting alternatives, whose relations are defined in terms of dominance, resistance, marginalisation, innovation and so forth. If an order of discourse constitutes a system, it is a system which may be more or less stable and durable, or stable in some parts and unstable in others, more or less resistant to change or open to change.

Perhaps more relevant to this study, Hajer (2005: 300) defines discourse as an "ensemble of ideas, concepts, and categories through which meaning is given to social and physical phenomena, and which is produced and reproduced through an identifiable set of practices". Hajer (2005: 300), however, points out that discourse is not the same as discussion, but that it denotes "a set of concepts that structure the contributions of participants to a discussion".

The main attraction of discourse analysis as a research approach for this study lies in its emic nature where the concern is to catch the subjective meanings placed on situations (Cohen, Manion & Morrison, 2011: 587) and thus it allows for a culture to be studied or described in terms of their internal elements and their functioning. According to Cohen, Manion and Morrison (2011: 574), 'discourse' is used in research to reveal the meanings that are given to texts. In turn, these meanings create and shape knowledge and behaviour by among other, the exercise of power through texts and conversations.

The underlying philosophy of discourse analysis is that “knowledge and meaning is produced through interaction with multiple discourses” (Starks & Trinidad, 2007: 1372). Discourse analysis therefore explores how meaning, identities, activities and relationships are negotiated and constructed (Starks & Trinidad, 2007: 1374) and “reveals how power operates and is legitimated or challenged in and through discourses” (Cohen, Manion & Morrison. 2011: 574). In discourse analysis, “the analyst is also attuned to how context constrains and enables” (Vincent, 2017). By referring to Foucault (1998), Cohen, Manion and Morrison (2011: 574) explain as follows:

> … ‘discourses can be both an instrument and an effect of power’, it is the ‘tactical dimension’ of the operation of power in individuals, groups and organisations. Power is immanent in discourse; it is one of its defining features.

In addition, as explained by Cohen, Manion and Morrison (2011:574), discourse analysis “examines how meaning is constructed through texts at beyond the single sentence level, and indeed, the different meanings that can be constructed”. This accentuates the “action perspective of discourse analysis” (Cohen, Manion & Morrison. 2011: 450). Vincent (2017) lists the following starting assumptions of discourse analysis:

- Language is an irreducible part of social life: Language is connected to other elements of social life so that social analysis and research always has to take account of language (Vincent, 2017).
- Language is ‘productive’: Vincent (2017) explains that there is no simple correspondence between the ‘thing’ that language names and the ‘thing itself’. Rather, language has the power to produce that which it names.

  > *“Social texts do not just reflect or mirror objects, and categories pre-existing in the social and natural world. Rather they actively construct a version of those things. They serve to justify or blame and are therefore political.”*

- Discourse contains subjects: Vincent (2017) clarifies this as follows: “A discourse addresses us in a particular way, makes available a space for particular types of self to step in”.

- Discourse refers to other discourses: This implies that there is "intertextuality" and "interdiscursivity" (Vincent, 2017). Intertextuality refers to the fact that all texts are linked to other texts, both in the past and the present and this is how a text achieves meaning. Interdiscursivity indicates that discourses are linked to each other in various ways (Vincent, 2017).
- Discourse has a context which includes: The immediate, language or text internal context; the intertextual and interdiscursive relationship between utterances, texts, genres and discourses; the extra-linguistic socio/sociological variables and institutional frames of a specific context of situation; the broader socio-political and historical contexts, in which the discursive practices are embedded and are related to (Vincent, 2017).
- Discourses serve to produce or contest existing institutional and/or power arrangements: Vincent (2017) explains that discourses are implicated in the structure of institutions. The employment of a discourse is often a practice which reproduces the material basis of the institution. Material practices, for example the practice of teaching, are invested with meaning and therefore have the status of text.
- Discourse is realised in texts: The object of discourse analysis is therefore texts (Vincent, 2017).

Hence, in order to explore how meaning, identities, activities and relationships are negotiated and constructed with regards to the phenomenon of decentralisation and local autonomy, multiple discourses, each with its own distinctive origin, appearance and configuration were analysed. These multiple discourses included relevant laws, regulations, court judgments (case law), the draft Basic Education Laws Amendment Bill (2017a), relevant policy documents and official reports and development plans.

Discourse analysis requires the analysis of naturally occurring communicatory events and interactions within a context (Lee & Adler, 2006: 46). Coding was not used. Instead of fragmenting text through coding, the text was kept together and I examined "how meaning is constructed through texts at beyond the single sentence level" (Cohen, Manion & Morrison, 2011: 574). Here the focus was on "differentials of power and their reproduction" (Cohen, Manion & Morrison, 2011: 575).

1.10.2 Statutes (acts) as discourse

The law presupposes a society and a need for some structure of authority or government that will make rules for the whole society (Kleyn & Viljoen, 2010: 1) in order to regulate the behaviour of its subjects (Burger, 2009: 6). Hence, the rulers who lay down the legal rules. Justification for these rules and authority can be found in the idea of a social contract into which people have entered (Kleyn & Viljoen, 2010: 1). This social contract is an agreement between the ruler(s) and the people. According to Kleyn and Viljoen (2010: 1), "each person gives up his or her unlimited freedom in order to make peaceful co-existence possible". Hence, it is self-imposed and binding (Rosenfield, 1995: 1170). People therefore submit themselves to the authority of the state. It being an agreement, the notion of a social contract is binding to both the people and the state. The laws (rules) are interpreted and/or applied by institutions or organs of state and if necessary, enforced by employers of the state, for example the police. This means that some form of sanction will follow upon non-compliance with a law (Kleyn & Viljoen, 2010: 2).

However, as indicated by Kleyn and Viljoen (2010: 3), "law should be more than just a series of decrees and rules enforced by a brutal display of state power". Any legal system is grounded in a value system which is important to society and acts as a unifying force. Examples of what may be contained in such a value system are (Kleyn & Viljoen, 2010: 3):

- economic values (free market or socialist)
- political values (democracy or one-party dictatorship)
- social values (equality or class difference); and
- moral values (conservative or permissive).

For example, two laws that are intended to work together to provide people with tools for political participation (information records and reasons for action) in South Africa are the Promotion of Access to Information Act, 2 of 2000 (PAIA) (RSA, 2000b) and the Promotion of Administrative Justice Act, 3 of 2000 (PAJA) (RSA, 2000c). According to Darch and Underwood (2005: 79), the progenitor of these laws was the adoption on 1 October 1997 of the Batho Pele (people first) White Paper. These principles concerned accountability and quality control in the delivery of public service (Darch & Underwood, 2005: 79).

Notwithstanding the above, it is argued by Rosenfield (1995: 1170) that “even if all legal actors could influence democratic law making, the resultant laws are unlikely to be in equal interests of all those affected”. Despite being democratically enacted, laws may be oppressive and their enforcement may disadvantage disfavoured legislative minorities. Drawing on Habermas, Rosenfield (1995: 1173) explains that ‘the appeal of a particular paradigm of law … depends on its ability to reconcile legal and factual equality while bridging the gap that splits system and lifeworld in a way that secures and constrains systems and that concurrently supplements the output of the lifeworld”.

Closer to home, a current example of law as discourse can be found in the process of promulgating the draft Basic Education Laws Amendment Bill (2017a) as law. Mqeke (2008: 201) explains that a bill reaches Parliament through two distinct routes, through recommendation of the South African Law Commission or through the Ministerial route - the so-called task team approach. The Law Commission works through project committees who are persons deemed experts in the relevant sphere of law under consideration and are often university professors and other academics recognised as experts in the field (Mqeke, 2008: 201). However, the majority of statutes originate through the Ministerial route (Mqeke, 2008: 201) as is the case with the draft Basic Education Laws Amendment Bill (RSA, 2017a).

The law making process, from initiation to the eventual acceptance of a law, is built on discourses at different levels and a number of elements can be identified. Firstly, legislation (statutes or acts) initiated by the government. By introducing a bill, the government not only signals its intention to create a new statute or to amend existing legislation, but also signals stance on particular issues – its ideological ambitions (Doherty, 2007: 195). In other words, the government interprets the context as it sees it and proposes a response – the context aspect of complexity theory. Secondly, the law-making process allows for public comment and the Constitution of the Republic of South Africa envisages that there should be on-going interaction between citizens and their elected representatives in Parliament who are the legislators (February, 2006: 135). In the South African education landscape this not only allows role players and stakeholders such as teacher unions, governing body associations and other non-governmental organisations to give input, but also individual schools and

individual members of the public. In addition, the internal procedural workings of parliament have also built into it a number of occasions in which input can be made (February, 2006: 135). In this regard Corder (2012:93) argues that Parliament has a constitutional duty to facilitate public involvement in the legislative process. These two elements relate to the interaction, feedback and connectivity elements of the paradigm of complexity theory.

Thirdly, once a bill has become a law, it becomes part of the social contract between the rulers and the people, altering the legal environment. This relates to the emergence aspect and the context aspect of complexity theory. A new law has emerged, and because the new law has altered the legal landscape, the context has changed. This new context influences the framework in which policy makers and policy implementers must operate. It not only represents the ideological ambitions of the government (the rulers), but speaks to the institutional context, components and the identity of the institutional context (Doherty, 2007: 195). In addition, one has to keep in mind that the legislative branch of government makes the law (statues) and that this law only provides broad directives. It is the executive branch which needs to add flesh to the law by providing details in the form of regulations (Russo, 2006: 9), thereby adding to the discourse.

Fourthly, the connectedness-aspect of complexity theory comes to the fore in the inter-connectedness of statutes themselves. For example, the South African Schools Act, 84 of 1996 must be read and understood in terms of, among other things: the Constitution of the Republic of South Africa (RSA, 1996c); the National Education Policy Act 27 of 1996 (RSA, 1996b); the Employment of Educators Act 76 of 1998 (RSA, 1998a); the South African Council for Educators Act 31 of 2000 (RSA, 2000); the Labour Relations Act 66 of 1995, the Children's Act 38 of 2005; the Child Justice Act 75 of 2008; the Public Finance Management Act 1 of 1999; the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; the Promotion of Access to Information Act 2 of 2000; the Promotion of Administrative Justice Act 3 of 2000; the Skills Development Act 97 of 1998; the Occupational Health and Safety Act 85 of 1993. This interconnectedness with other statutes also forms part of the context(s) of the law and contributes to the non-linearity, one of the aspects of complexity theory.

1.10.3 Case law as discourse, civil law procedure and the doctrine of judicial precedents

Discourses are manifested in case law because, especially in civil proceedings, when an aggrieved party resorts to litigation in order to resolve a dispute with another party, arguments are presented and the court is then required to make a ruling by considering the facts, the law and previous court judgments. Often these rulings require specific actions. Thus, from a complexity theory perspective, we have the interaction aspect, in that by resorting to litigation, disputing parties interact with each other and the law. This interaction implies that they are inter-connected in some form or manner. The feedback and emergence aspects of complexity theory are found in the judgment by the court, the subsequent prescribed actions and judicial precedents. The aspect of context is present in that a court judgment is based on a specific dispute which has taken place within a specific setting which disputing parties interpret in their own way. Although the courts are primarily concerned with the interpretation and application of law - the feedback aspect of complexity theory - courts also create law (Joubert & Prinsloo, 2008: 1) – the emergence aspect of complexity theory. A basic understanding of the role and function of private law, civil law procedure and the doctrine of judicial precedents is necessary in order to clarify case law as discourse.

One firstly has to distinguish between positive law and law in the subjective sense. This distinction is explained by Kleyn and Viljoen (2010: 108) as follows: positive law – law in the objective sense – is the whole body of legal rules that applies as a system in South Africa and regulates the relationships on a horizontal level between persons by means of the rules of private law. Because all persons have their own particular interests, the potential for conflict and disputes is good and it is the purpose and task of private law to harmonise the relationship between persons in such a way that society will be orderly and peaceful (Kleyn & Viloen, 210: 107). The law in the subjective sense refers to the way in which private law regulates the relationship between persons (the interaction- and interconnected-aspects of complexity theory) by means of the concept of subjective rights (Kleyn & Viljoen, 2010: 108). Kleyn and Viljoen (2010: 108) explain further:

> "The distinction between positive law and the law in a subjective sense depends on the specific angle from which the law is viewed. Law seen as a collection or body of rules is positive law. It means the law as a normative system. But law viewed as the different rights and duties which apply between persons is law in the subjective sense."

Thus, private law concerns the relationship between persons and persons are therefore the subjects of private law who are allowed through private law to have subjective rights and duties with respect to each other and with respect to certain objects (Kleyn & Viljoen, 2010: 108). Robinson, Horsten, Human and Coetzee (2008: 6) defines a legal subject as a carrier of legal competencies, subjective rights and rights and in the South African law, all persons are legal subjects. The term 'person' does not only imply a human being and the term 'legal subject' must be defined widely enough to include both human beings and juristic persons (Kleyn & Viljoen, 2010: 108). There are thus two kinds of legal subjects, namely human beings, referred to as natural persons, and juristic persons who are groups of persons or associations of people such as a company, a university, a church or a school (Joubert & Prinsloo, 2008: 7; Robinson, Horsten, Human and Coetzee, 2008: 7). Positive law recognises that associations as such, or in itself, are a legal subject which means that a juristic person is an artificial or abstract person (Kleyn & Viljoen, 2010: 108-109). A juristic person participates through its organs (agents) (Viljoen, 2010: 109; Joubert & Prinsloo, 2008: 7). For example, a school governing body would participate in legal proceedings on behalf of the school (Joubert & Prinsloo, 2008: 7).

As mentioned earlier, private law recognises the relationships between legal subjects through the concept of subjective rights which presupposes two kinds of relationships. The first is the relationship between the legal subject and the legal object, and the second is the relationship between a legal subject and other legal subjects (Kleyn & Viljoen, 2010: 111). Characteristics of legal objects are that they have monetary value and relate to things, performances, intellectual property, aspects of personality and personal immaterial property (Kleyn & Viljoen, 2010: 108). These are linked to subjective rights such as real rights with respect to things (property law), personal rights and intellectual property rights, personality rights, such as the right to dignity or the right to privacy (Kleyn & Viljoen, 2010: 112).

The interaction of the relationships between legal subjects and legal objects and between legal subjects and legal subjects is illustrated in Figure 1.4. The relationship between a legal subject and a legal object implies a relationship between a legal subject and other legal subjects or a third party and this relationship confers a duty on the other legal subjects to respect the subject-object relationship (Kleyn & Viljoen, 2010: 113). A subjective right therefore always implies a corresponding duty and in this way private law harmonises relationships between legal subjects (Kleyn & Viljoen, 2010: 113). Should a dispute arise between a legal subject and another legal subject, the process of resolving the dispute in the courts is prescribed by the law of civil procedure which deals with the process that must be followed when one (juristic) person wishes to enforce his rights against another (juristic) person (Joubert & Prinsloo, 2008:8).

Figure 1.4: The relationships between legal subject, legal object, subjective rights and the duty to respect (Source: Kleyn & Viljoen, 2010:114).

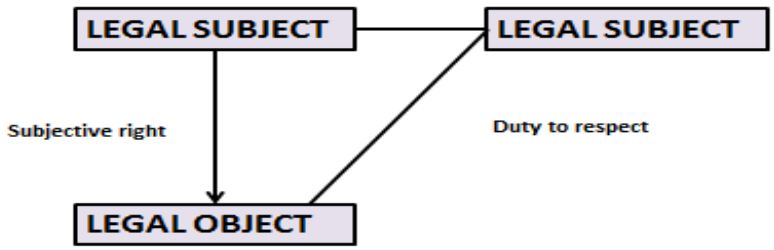
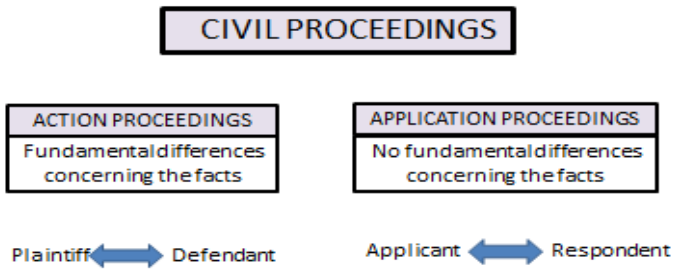


Figure 1.5: Civil proceedings according to the law of civil procedure (Source: Kleyn & Viljoen, 2010:118).



The law of civil procedure allows for two forms of civil procedures when approaching a court action proceedings and application proceedings (Kleyn & Viljoen, 2010: 117-118). These are illustrated in Figure 1.5. Although different in procedure, both these proceedings allow for the plaintiff/applicant and defendant/respondent to present arguments, albeit in different forms. As mentioned at the beginning of this section, it is these interactions that are significant to discourse analysis as the ruling of the court also may become a judicial precedent (case law).

Joubert and Prinsloo (2008:21) provide the following examples of how courts create law and why case law is important:

- The courts determine how governing bodies must perform their functions and what the limitations of their powers are.
- Courts have the power to review the administrative actions of the Department of Basic Education.
- Courts interpret statutory and common law principles that are often vague, broad and general.

Case law or judicial precedent is previous rulings handed down by various courts in specific cases (Joubert & Prinsloo, 2008: 21). This means that lower courts are bound by the decisions of higher courts and that a court is also bound by its previous decisions, unless they are wrong (Kleyn & Viloen, 2010: 59). However, the higher

courts are not bound to the decisions of lower courts. There is therefore a hierarchy of courts which dictates the manner in which the doctrine of judicial precedent is applied (Kleyn & Viljoen, 2010: 60). Du Bois (2007: 90) explains the hierarchy of courts as it relates to judicial precedent as follows:

- The Constitutional Court is the highest court with regard to constitutional matters. It is bound by its own decisions and all other courts are also bound by its decisions.
- The Supreme Court of Appeal is bound by its own decisions and bound by the decisions of the Constitutional Court.
- The High Court divisions are bound by the decisions of the Constitutional Court and the Supreme Court of Appeal. it is however, important to note that one geographical division of the High Court are not bound by the decision of another. However, earlier High Court decisions do carry significant persuasive weight.

The Supreme Court of Appeal is the highest court. The judgments of this court are not only binding to all subordinate courts in South Africa, but the Supreme Court of Appeal is also bound by its own decisions.

As an example, in the matter of *Kimberley Junior School and Another vs The Head of the Northern Cape Education Department and Others* (Case number:1356/2007) heard in the Northern Cape Division of the High Court, the school was the first applicant and the governing body of the school the second applicant. They approached the court in order for the court to review and set aside the decision of the Head of Department of the Northern Cape Department of Education not to appoint their preferred candidate as principal and to appoint another candidate, who, in the opinion of the school governing body, was not suitable to fill the position. It was argued on behalf of the applicants that the Head of Department failed to consider properly whether the appointed candidate was suitable for the position, that the Head of Department misconstrued his powers under the Employment of Educators Act (RSA, 1998a), and that the Head of Department had failed to take into account relevant considerations in making the appointment. In addition, the applicants argued that the conduct of the Head of Department did not constitute fair, reasonable and

rational administrative action. However, the Court dismissed this application to review the decision of the Head of Department.

The school subsequently approached the Supreme Court of Appeal and in *Kimberley Junior School v The Head of the Northern Cape Education Department* (278/08) [2009] ZASCA 58 (28 May 2009) the order of the High Court was set aside and the decision taken by the first respondent (the Head of Department of the Northern Cape Department of Education) to appoint the person he did, was reviewed and set aside. The Constitutional Court was not approached in this matter because the case did not relate to a constitutional issue.

These court proceedings now became judicial precedent, providing valuable insight, not only as to how the law should be interpreted in similar situations, but also how the law should be applied. From a discourse analysis perspective, arguments presented by the actors (applicants and respondents) and the interpretation of these arguments by the courts, provide valuable insight into the meaning the actors make in these interactions and settings. From a paradigm of complexity theory perspective, the following aspects can be identified. There is interaction between the candidates for the principal position, the school governing body, the Head of Department, the law and policy relating to the appointment of principals to public schools and the applicable courts. This interaction illustrates the interconnectedness of these actors in the system. The court judgments not only correspond to the feedback aspect of complexity theory, but also speak to the emergence aspect of complexity theory in that the law has been expanded through judicial precedent, directing future actions such as policy design and implementation. Judicial precedent also contains a contextual aspect in that it is only applicable to similar situations. There is thus interconnectivity between actors, the law and past and future actions.

1.10.4 Policy as discourse

Policy as discourse, according to Bacchi (2000: 48), promotes deeper reflection on the path and shape of a policy discussion of a particular problem. Bacchi (2000: 48) explains that traditional approaches to policy connect to what governments do, but that what governments refuse to do can be equally as important as their actions.

According to Hajer (2005: 303) a discourse is not necessarily connected to a particular person, "but is related to practices in the context in which actors employ story lines and (re)produce and transform particular discourses" and one is able to link discourse to power and dominance. Thus, one is able not only to identify the source of a discourse, but also assess the influence of a particular discourse. Hajer (2005: 303) clarifies as follows:

> Two terms facilitate this: discourse structuration occurs when a discourse starts to dominate the way a given social unit (a policy domain, a firm, a society – all depending on the research question) conceptualises the world. If a discourse solidifies in particular institutional arrangements … then we speak about discourse institutionalisation. We thus have a simple two-step procedure for measuring the influence of a discourse. If many people use it to conceptualise the world we may speak of discourse structuration. If it solidifies into institutions and organisational practices we may call this discourse institutionalisation. If both criteria are fulfilled, we argue that a particular discourse is dominant.
>
> … actors who have been socialised to work within the frame of such an institutionalised discourse will (often unwittingly) use their positions to persuade or force others to interpret an approach reality according to their routinized institutionalised insights and convictions. Hence, one of the highest forms of discourse-institutionalisation occurs if things appear as 'traditional', 'natural' or 'normal' ways of reasoning, or are even seen as 'natural social facts'.

Discourse institutionalisation is established through policies (Hajer, 2005: 303). Policy, according to First (2006: 133), can simply be defined as "a vision of where to go and guidelines for getting there", whereas Doherty (2007: 198) defines policy as "a statement of government intentions". Doherty (2007: 198) explains that the policymaking process "can be modelled in a number of ways, privileging, for example, process, reason or expert knowledge", whichever is dominant in the discourse. First (2006: 138) explains that with regards to education, the goals of governments have over time fluctuated from efficiency to equity to quality. Which of these goals received priority was and is determined by societal forces. Pertinent to the South African situation, First (2006: 138) provides the example of how choice and the right of parents to choose which school their child will attend has confronted decision makers with questions of values and the surfacing of new legal relationships.

Doherty (2007: 198) argues that policy is "blended to the exercise of political power". This policy, according to Doherty (2007: 1989), "assures contestation, conflict,

differing interests and competing views, reflecting asymmetries in power, representation and voice, in a political milieu fractured by divisions of class, race and gender". Doherty (2007: 199) expands on this point in the following manner:

> In the shaping of conduct, power is exercised through the active construction of representations of the economic and social systems and through the issuing of complementary sets of instructions, requirements and guidance on how subjects should behave and respond. The educational state is both incorporated into such representations and is simultaneously persuaded to understand its identity in relation to such narratives.

However, participation in the educational policy-developmental processes is essential to the democratic notions of local school governance and management and local autonomy. As explained by First (2006: 138), the core of democratic legitimacy lies in the ability of local communities (citizens) to establish and uphold control over educational institutions. However, in terms of education policy, local communities are seldom involved in the drafting policy. The only exception is in the case of school governing bodies who are elected by the school community. Apart from determining policies at local level, school governing bodies and educators, both individually and collectively, can impact on the provincial and national policy-development processes by exerting influence on provincial and national education authorities (First, 2006: 138).

1.10.5 Official reports or evaluations as discourse

Official reports are more often than not based on internal evaluations and are generally commissioned by policy makers and policy implementers who determine the agenda, scope, purposes and uses to which the results are put (Cohen, Manion & Morrison, 2011: 48). Therefore, the authorities who commissioned the report or evaluation exert power in that the project and politics of the situation is controlled.

Official reports and evaluations are generally policy-related, guiding policy decisions, aimed at improving quality in areas of concern identified by policy makers, facilitating the implementation of policy decisions and evaluating the effects of the implementation of policy (Cohen, Manion & Morrison, 2011: 52). Official reports and evaluations have the potential to influence not only a discourse, but, as explained by Hajer (2005: 303), also to contribute to discourse structuration and discourse institutionalisation.

Therefore, when using official reports and evaluations, cognisance must be taken of the degree to which it corresponds to the political agendas of governments and policy makers anxious for their own political survival (Cohen, Manion & Morrison, 2011: 53). In other words, as stated by Cohen, Manion and Morrison, 2011: 53), such research (reports and evaluations) “is used if it is politically acceptable”.

1.11 STRUCTURE OF THE THESIS

In this chapter the background of and rationale for the study and the research questions are presented. The paradigm of complexity theory is discussed and the blended research design (discourse analysis, historical-legal research and policy study) which was used in the study is explained. Each of the four articles is presented in Chapters 2, 3, 4 and 5 respectively. This is followed by the conclusions and recommendations in Chapter 6. Chapter 7 offers reflections on the findings, the paradigm from which the study was conducted, the research design of the study, as well as some thoughts on the experience of conducting a study by publication. The abstracts of each of the four articles are presented below.

1.11.1 Chapter 2: The Emergence of Decentralised-centralism in the South African Education Governance System

After the advent of post-apartheid democracy, the government was confronted with the dilemma of how to address the inequities of the apartheid education dispensation by increasing access and participation, whilst simultaneously making allowance for neo-liberalist self-managing schools and promoting efficiency. In addition, the political transformation was accompanied by a strong emphasis on the need for shared responsibility for the governance of schools by local school governing bodies (SGBs) in partnership with the state. However, it is argued that ‘decentralised centralism’ has permeated the South African education system at the expense of the notion of community participation. The first part of the article reviews the concept of decentralisation followed by a discussion on the relationship between decentralisation and accountability. The second part of the article examines the enactment of political legitimacy and efficiency as rationales for decentralisation in the South African education system. In the third section the schism between policy idealism and the practical reality and the connection between a legitimacy crisis and

political realism is discussed as drivers of movement towards decentralised-centralism in the South African education system.

Keywords**:**

decentralisation; decentralised centralism; South African education system; school governance, legitimacy; political realism.

1.11.2 Chapter 3: South African school governing bodies and the constitutional principle of co-operative government: *De lege ferenda.*

The partnership model as envisaged by the South African Schools Act (RSA, 1996a) promotes the acceptance of responsibility for the organisation, governance and funding of schools by school communities, in partnership with the state. This requires the acquiescence of the principle of co-operative government as contained in Chapter 3 of the South African Constitution (RSA, 1996c). This article explores aspects relating to the decentralisation of the South African education system, the decision-making autonomy of school governing bodies and addresses issues relating to co-operative government in the South African education system with a view to future law being proposed (*de lege ferenda*). This is done against the backdrop of relevant case law and the draft Basic Education Laws Amendment Bill (2017a).

Key words:

constitutional law; education; school governance; co-operative government; the rule of law; just administrative action; decentralisation.

1.11.3 Chapter 4: Professional discretion of South African public school principals: where does it begin and end?

South African school principals have to perform their task in a legislative and regulatory environment full of risk, influenced not only by the centralisation and decentralisation debate, but also by neo-liberal and neo-conservative agendas, while coping with the burden of managerialism. In addition, the principal is not only the representative of the provincial Head of Department and responsible for the professional management of a school, but is also a governor. The dilemma often faced by principals is that they do not know the limits to their professional discretion. By referring to the duties and roles of principals and school governing bodies, the

principle of in loco parentis, the Bill of Rights as contained in the Constitution of the Republic of South Africa (RSA, 1996c), the code of professional ethics and by analysing relevant court cases, this paper attempts to give insight into how principals can navigate this potentially hazardous aspect of school management.

Key words:

professional discretion; centralisation; decentralisation; *in loco parentis*; decision-making by principals.

1.11.4 Chapter 5: Possibilities for distributed leadership in South African schools: policy ambiguities and blind spots

Against the background of the recently published Policy on the South African Standard for Principals, the aim of this article is to determine whether distributed leadership is catered for in the South African regulatory and policy framework. It is argued that due to the accountability demands of a fundamentally bureaucratic education system, distributed leadership with its heterarchical features will most likely not be applied by South African public school principals. In addition, the article argues that there is ambiguity in the leadership / management function principals are expected to perform. This is manifested in the existence of conceptual (con-) fusion pertaining to school management and leadership, a managerial mind-set of education authorities and a divergence of top-down and bottom-up expectations of a principals' role. Furthermore, the post-apartheid capacity deficit and the contextual diversity of schools will require development of new attitudes, skills and knowledge by principals and staff members for distributed leadership to be a viable approach.

Key words:

distributed leadership; shared leadership; bureaucracy; hierarchy; heterarchy; managerialism.

CHAPTER 2

ARTICLE 1:

THE EMERGENCE OF DECENTRALISED-CENTRALISM IN THE SOUTH AFRICAN EDUCATION SYSTEM

2.1 INTRODUCTION AND BACKGROUND

Decentralisation is a worldwide trend that has featured prominently since the latter part of the twentieth century and has become an accepted component of modernisation (Dyer & Rose, 2005: 105). It has become a prominent strategy by governments in the different sectors of society, also for education and large-scale education reforms (Karlsen, 2000: 525). In order to achieve rapid economic and social transformation, most countries in Sub-Saharan Africa resorted to centralisation during the period immediately after independence (Conyers, 2007: 19). This initial period of centralisation was, however, followed by a movement towards greater decentralisation 'as a means of enhancing democracy and citizen participation and (by governments and external actors) as a way of reducing the role, and in particular the expenditure, of the central government' (Conyers, 2007: 19).

In South Africa the worldwide trend of decentralisation has coincided with political and social reforms which have intensified the notion that the education system should be democratised and should allow for greater participation, contrary to the general trend in most Sub-Saharan countries immediately after independence. This notion of educational democracy is illustrated by Mc Lennan (2003: 182) when she refers to the vision as articulated by the African National Congress shortly before the elections in 1994:

> **Governance at all levels** of the integrated national system of education and training will maximise democratic participation of stakeholders, **including the broader community,** and will be oriented towards equity, effectiveness, efficiency, accountability, and the sharing of responsibility.

According to Sayed (1997: 722) the main ideas which have emanated from the struggle for educational democracy are firstly that decision-making in schools and school governance structures should include all sectors, role-players and

stakeholders. Secondly, that accountability, legitimacy and democracy are to be ensured by greater representation at local levels.

This is acknowledged in the preamble of the South African Schools Act, 84 of 2006, (hereafter referred to as the Schools Act) where it is stated that the South African schooling system should "uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State". It is also recognised in the directive principles of the National Education Policy Act, 27 of 1996, according to which independent and critical thought shall be encouraged (section 4(i)) and broad public participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system ensured (section 4(m). This notion of 'shared responsibility' is manifested in the Schools Act in that it provides for the provisioning of 'public schools' rather than 'state schools'.

Nevertheless, the indications are that the early post-apartheid rhetoric of democracy and participation is being replaced by a rhetoric dominated by compliance assurance in order to promote efficiency in policy implementation and education delivery through the implementation of greater control measures over schools. De Clercq (2013: 13) argues that the initial commitment to stakeholder democracy and participatory decision-making did not last long and that the education authorities moved to increase their control through greater regulation and accountability. This is managed 'through a top-down state imposition or at best strained negotiations between education departments and other role players' (2013: 14). Beckmann (2009:139) argues that it has become apparent that the state 'may increasingly be trying to assert itself by limiting the real authority of school governing bodies (SGBs). Analysing amendments to the Schools Act (RSA, 2007), Beckmann and Prinsloo (2009:183) conclude that although it seems that, on the surface, the state is encouraging local participation in school governance, these amendments to education legislation point to a move to limit the involvement and powers of stakeholders, especially in the appointment of teachers. Although many of the forty-six clauses in the recently published draft Basic Education Laws Amendment Bill (RSA, 2017a) are of a technical nature, it contains proposed amendments to sections of the Schools Act and the Employment of Educators Act, 76 of 1998 that will result in a further reduction of the powers of SGBs.

According to Lavonen (2017: 4) ‘the main motivation for decentralisation in education is that local decision-making takes local characteristics into consideration’. This resonates with the preamble of the National Education Policy Act where it is envisaged that the national education system must be transformed into one which serves the needs and interests and upholds the fundamental rights of all the people in South Africa. In a similar vein, the preamble of the Schools Act envisages the protection and advancement of South Africa’s diverse cultures and languages. Against this backdrop and considering that the term ‘decentralisation’ is rarely used in South African policy documents and that decentralisation is rather framed within conceptualisations of governance, democracy and equity (Lewis & Motala, 2004: 119), the questions which arise are why and how decentralised-centralism has surfaced as being the dominant government approach in an era when local participation and democratic values are perceived to be core values of the new post-apartheid South Africa.

2.2 DECENTRALISED-CENTRALISM CONCEPTUALISED

Decentralisation indicates a shift in location of those who govern (Dyer & Rose, 2005: 105) and the devolution of some authority and institutional autonomy to the local school and community level (Fullan & Watson, 2000: 453). Hanson (1998: 112) defines decentralisation ‘as the transfer of decision making authority, responsibility and tasks from higher to lower organisational levels or between organisations’. Makara (2018: 23) explains that ‘meaningful decentralisation involves organised dispersal of power in society in the political, social and the economic sense’. The implication is that the various actors in society must be afforded the authority and freedom to participate meaningfully in governance (Makara, 2018: 23).

However, decentralised-centralism denotes decentralised efforts that are not much more than the transfer of executive functions, without any power being transferred from the centre to the periphery (Arenas, 2005: 583). In this form of decentralisation the centre not only determines what executive functions are to be transferred, but are accompanied by ‘devices that attach consequence to measured educational achievement’ (Wöbmann, Lüdemann, Schütz & West, 2007: 24). Makara (2018: 24)

argues that this ‘will not constitute a democratic method of managing society’. In addition, the mere transfer of executive functions ‘may not transform state-society relations which should be the core of a decentralised programm (Makara, 2018: 24). This action amounts to no more than the delegation of functions and does not include the actual transfer of power. A genuine devolution of power to communities and schools would give considerable latitude in the hiring of staff, adopting curricular programmes and making financial decisions. The general view, as held by Sayed (2002: 37), is that decentralisation ‘redistributes, shares and extends power and enhances participation by removing centralised control over educational decision making’. It involves a redistribution of political authority and power, resources, administrative responsibilities and functions (Dyer & Rose, 2005: 105). In other words and as articulated by Bimber (1993: 7), ‘decision making authority is the crux of decentralisation’.

Makara (2018: 23) argues that although centralisation ‘could have some advantages in young nations, over-centralisation kills initiatives and innovations’. As a result, many developing countries have embarked on decentralisation reforms which ‘are perceived as a critical measure in reducing the ’commandist’ role of the central bureaucracy, with all its inefficiency and failure to deliver services at the grassroots’ (Makara, 2018: 23).

In the South African context, where democracy was placed at the centre of the transformation of society, it seems to have been the logical approach to decentralise decision-making and responsibility without actually accounting for the potential problems it may bring and without considering whether the lower levels would be able to take the necessary responsibility and perform their functions as expected. This appears to be contrary to what Makara constitutes as the ‘normal’ or more appropriate approach in Africa, which is a move from an initial centralised to a mostly decentralised approach.

2.3 EDUCATION DECENTRALISATION AS MANIFESTED IN THE SOUTH AFRICAN CONTEXT(S)

According to Lauglo (1995: 9) there are three main values which are called upon in justifying decentralisation, namely political legitimacy, the quality of services rendered and the efficient use of resources. The form of decentralisation which is applied will be determined by which of these values are deemed to be the value of primary importance.

From a political legitimacy perspective, Tikly (1997: 165) argues that what emerged in post-apartheid South Africa was an extension of 'the old 'two-nation strategy' that prevailed during the apartheid era, whilst 'simultaneously attempting to limit its most divisive social effects through the implementation of ameliorative social reforms'. Karlsson (2002:328) articulates this point as follows: 'The compromise solution in the South African Schools Act is post-modern in its attempt simultaneously to acknowledge and address the diverse school histories of under-development and self-management'. As explained by Woolman and Fleisch (2008: 48): '... the state allegedly granted certain democratic political rights to communities, parents and learners over their individual schools in return for the parents' acceptance – especially in elite public schools – of significant financial responsibilities for their children's education'. However, as elucidated by Carr-Hill, Rolleston, Pherali and Schendel (2015: 120), local communities are only likely to benefit from autonomy over school decisions 'if there is already an active desire for autonomy within the community'.

It is important to note that if decentralisation is underpinned by a political rationale, shifts in authority occur 'out' of the administrative structure of the school as power is devolved to a lower political body – the school governing body – rather than to a lower administrative unit – the school management team (Bimber, 1993: 8). This distinction between governance and the professional management of schools is made in Sections 16 and 16A of the Schools Act. Sub-section 16(1) determines that the governance of a public school is vested in its SGB and that a SGB stands in a position of trust towards the school (sub-section 16(2)), whilst the professional

management of a public school must be undertaken by the principal under the authority of the head of the provincial Department of Education (HOD). The Education Laws Amendment Act 31 of 2007 also added Sections 16A to the Schools Act, determining that the principal of a public school represents the HOD on the SGB. In addition, Section 16A determines that a public school principal may not assist the school SGB in a manner which is in conflict with the instructions of the HOD. The insertion of these amendments to the Schools Act has thus provided the Department of Basic Education, through the principals, a vehicle to be represented on SGBs of public schools and as such, a means to influence SGB decisions.

This is an example of how, under the pretence of decentralisation, the authorities are actually centralising the governance system. This may play out in different ways at different schools since schools with highly capable SGBs may challenge the authorities, whilst the school principal is expected not to support the SGB. In schools at which the capacity for school governance by parent members of the SGB is limited, the principal will remain a central figure in the working processes of the SGB, even though a parent must be the chairperson. In this regard Mncube (2009: 95-97) found that lack of education level, lack of education on parent involvement, a fear of so-called 'academic victimisation' and non-attendance of meetings are factors that contribute to a lack of participation by black African parents in SGB related activities. It may therefore be argued that these changes in the legislation have different implications on governance practices at different schools. Centralisation and decentralisation measures are hence not an equal measure and implementation will vary at different schools in the country.

Types of decentralisation which involve changes to an organisation's hierarchy can be described as 'administrative' decentralisation. In this form of decentralisation authority is shifted downward 'within the structure of the school system' (Mncube, 2009: 95-97). Linked to 'administrative' decentralisation is the motivation to render quality services and to use available resources efficiently, which in turn relates to goal realisation and to the educational processes applied in the realisation of the goals (Lauglo, 1995: 9). It is believed that decentralising closer to the point where they will be carried out will empower those with experience and expertise to offer their professional knowledge resulting in improved schooling quality (Dyer & Rose, 2005: 107) and increased economic development through institutional modernisation

(Hanson, 1998: 113). This reflects the notion “that local people can solve local educational problems” (Hanson, 1998: 115) and that a better culture of learning will be promoted by allowing for more room for local variance and relevance (Karlsen, 2000: 528). Approaching decentralisation from the rationale of improving educational quality is prone to be linked to appeals for greater school autonomy and better leadership, which in turn, are associated with authority, responsibility and accountability (Dyer & Rose, 2005: 107). Reporting on an analysis of general trends in scholarly research pertaining to education policy in South Africa, Deacon, Osman and Buchler (2010: 102) indicate that researchers are questioning whether SGBs actually have, are provided with or are prepared to share their resources, capacity and leadership, and whether decentralisation ‘is merely a legitimising device, a ’compensatory legitimation strategy which is more symbolic than real’ and where ‘symbolic functions’ are stressed ‘above practical considerations’ (Jansen, 2002: 208)

Rationales based on efficiency will be concerned with the extent to which scarce resources are optimally used in relation to the realisation of goals. Efficiency is viewed as a wider concept than quality in so far as it implies the quality of the system’s operation and not just to the quality of the services rendered (Jansen, 2002: 208). According to Carnoy (2005: 16), the notion of dismantling centralised systems of school governance and administration is based on the thought of greater efficiency associated with markets and local control. He does, however, stress that unless an even distribution of capacity exists to manage and deliver education at local level, it would be highly probable that decentralisation would contribute to greater inequality in schooling systems. This is supported by Carr-Hill *et al* (2015: 118) who concluded that communities with high illiteracy levels and with few educated parents do not seem to benefit from devolution of decisions to the local community level. This corresponds with Karlsson’s (2002: 331) opinion that the contextual conditions of poverty and the ‘widespread apartheid-era capacity deficit’ which is prevalent in most communities may be reinforcing existing inequalities. A similar view is held by Van Den Berg, Burger, Burger *et al*. (2011: 20) who explain that the South African education system is essentially two ‘sub-systems’, each having very different historical backgrounds and each performing at different levels of effectiveness. The majority of South African children find themselves in the

historically disadvantaged sub-system, remaining disadvantaged due to the unfavourable factors associated with poverty. For schools in this subsystem, decentralisation based on the rationale that it would improve the quality of service rendered, has not been successful. Significantly, this aspect features in the memorandum of motivation that accompanied the draft Basic Education Laws Amendment Bill (RSA, 2017a) in where it is stated that 'many public schools, especially in deep rural areas, do not have functional governing bodies and persons with the necessary skills to conduct interview processes' in order to make appointments to management positions in schools.

However, the opposite can be argued for schools in the second sub–system which consists mainly of previously advantaged schools which achieve closer to the standards achieved by schools in developed countries. Therefore, while the idea 'that local people can solve local educational problems' because they can harness experience and expertise from their own ranks, may hold true for schools in the advantaged sub-system, it may not be the case in the disadvantaged sub-system, contributing to massive disparities in performance between schools within the South African system (Taylor, 2008: 20). Hence, decentralisation may be beneficial to the one, but not the other. Having a single model approach to education in South Africa may therefore not be the solution (Van den Berg *et al*, 2011: 20) and a more contextually nuanced model that is more sensitive to institutional differences may be the way to go.

The state's view regarding the effective utilisation of financial resources is representative of how decentralisation is used in order to stretch its financial resources to address past inequalities. This is explained in the 2006 amended National Norms and Standards for School Funding as follows (RSA, 2006a):

> School fees provide two benefits for the schooling system. Firstly, they provide a mechanism for raising revenue from parents who can afford to make this contribution, which in turn provides fiscal space for the state to implement preferential funding for poor schools. Secondly, school fees, even if they are set at a low and nominal level, encourage parent participation in school governance, and promote the accountability of schools to the communities they serve.

As seen above, accountability is prominent in the rationale where there is a redistribution of financial responsibility (Hanson, 1998: 114) and economic arguments for decentralisation prevail (Dyer & Rose, 2005: 106). In South Africa the state must fund public schools from public revenue on an equitable basis (Section 34 of the Schools Act). In terms of Section 36 (1) SGBs are also required to take all reasonable steps to supplement the resources supplied by the State. In terms of the National Norms and Standards for School Funding, the poorest 60% of public schools are declared non-fee paying schools (RSA, 2006a}. These schools receive all their funding from the state, which equates to approximately six times that received by fee-paying schools (RSA, 2006a).

Section 21 of the Schools Act makes provision for SGBs of public schools to apply to the HOD to be allocated additional functions. These additional functions are related to the maintenance of school buildings and property, the extra-mural programme of the school, the purchase of textbooks and learning materials and the payment of services to the school. However, all these additional functions have direct financial implications for the school (Clase, Kok & Van der Merwe, 207: 248) and are closely linked to the devolved autonomy to levy school fees. As such, these additional functions are not applicable to non-fee paying schools. In effect, user fees in fee-paying schools play an essential role in both supplementing insufficient resources provided by the State and allowing the State to focus state funds on the poor (Nordstrum, 2012: 83). This is a further example of disguised centralism because, despite obtaining the bulk their funding from sources outside of the state, fee-paying schools are subjected to the same accountability measures as non-fee paying schools. This is illustrated by the draft Basic Education Laws Amendment Bill (RSA, 2017a) which seeks to place an additional responsibility on SGBs to provide the HOD with quarterly reports on all income and expenditure in accordance with directives issued by the Head of Department. The draft Amendment Bill further proposes that the Member of the Executive Council for Education in a province must approve all lease agreements SGBs wish to enter into.

2.4 RE-REGULATION OF THE PERIPHERY

As discussed earlier, Section 16 of the Schools Act makes a clear distinction between 'professional management', and 'school governance'. However, it is especially in relation to the powers of school governing bodies where, contradictory to the declared policies of decentralisation, evidence suggests that the state has embarked on a course of greater centralisation (Beckmann & Prinsloo, 2009).

An example of the decentralisation of decision-making power can be found in section 20 of the Schools Act which allocates a whole host of functions to all SGBs. Of particular importance is that SGBs 'must promote the best interests [own emphasis added] of the school and strive to ensure its development through the provision of quality education [own emphasis added] for all learners at the school'. In addition, section 20 empowers SGBs of public schools to appoint additional teaching and support staff out of their own funds. SGBs must also make recommendations to the HOD regarding the appointment of all teaching and support staff. As pointed out earlier, Section 21 of the Schools Act also makes provision for public SGBs to apply to the HOD to be allocated additional functions with additional financial burdens which can be construed as a mechanism to allow for greater decentralisation.

Further indications of the decentralisation of decision-making powers are that SGBs have legislative powers in that they are, in accordance with section 8 of the Schools Act, obliged to adopt a code of conduct for the learners of the school and nothing in the Schools Act exempts a learner from the obligation to comply with the code of conduct (section 8 (4)). In addition, the Guidelines for the Consideration of SGBs in Adopting a Code of Conduct for Learners (RSA, 1998b) and relevant provincial legislation expect SGBs to enforce the code of conduct and if warranted, to conduct disciplinary hearings which could lead to sanctions such as the suspension and expulsion of learners. In addition, the Schools Act prescribes that SGBs must draft a constitution and adopt the admission, language, finance and religion policies of their school.

Beckmann and Prinsloo's (2009) contention that the state is following a more centralised approach is strengthened by the inclusion of section 58C of the Schools

Act. To a large extent unnoticed, section 58C was inserted into the Schools Act by means of section 11 of the Education Laws Amendment Act of 2007. It forms the basis of the compliance rhetoric which has gained prominence in the South African education environment.

According to section 58C MECs, in accordance with an implementation protocol as indicated in section 35 of the Intergovernmental Relations Framework Act, 13 of 2005, must ensure compliance with:

- Norms and standards relating to basic infrastructure and capacity in public schools, norms and standards for language policy in public schools, norms and standards regarding the funds used for the employment of teaching and non-teaching staff at public schools, norms and standards for school funding, and norms and standards for the granting of subsidies to registered independent schools;
- Minimum outcomes and standards set regarding curriculum and assessment;
- Performance standards for educators which may be prescribed by the Minister in terms of the Employment of Educators Act.

The constraining elements and the potential for centralisation contained in the above can be juxtaposed against a twofold motivation for government to apply a form of selective decentralisation in order to utilise financial resources more effectively whilst simultaneously implementing a more centralist approach due to political realities. This corresponds to Lauglo's (1995: 9) rationale of political legitimacy for the implementation of decentralisation measures, which places the emphasis on 'who has the right to make what decisions'. In the South African situation, the right of SGBs to determine the language policy of schools has become a sensitive and contentious issue which forms part of the debate about access to equal and quality education.

In addition, Members of Executive Councils (MECs) of Provinces must ensure that admission and language policies determined by SGBs of public schools (sub-sections 5 (5) and 6 (2) of the Schools Act) comply with the norms and standards. MECs must report annually to the National Minister of the Department of Basic Education the extent to which the norms and standards have been complied with or,

if they have not been complied with, must indicate the measures that will be taken to comply. Any dispute between the Minister and a MEC in respect of non-compliance with the norms and standards as mentioned above must be dealt with in accordance with the principles of co-operative governance as referred to in section 41 (1) of the Constitution and the provisions in the Intergovernmental Relations Framework Act, 13 of 2005.

HODs (sub-section 58C (5) of the Schools Act) must comply with all norms and standards and identify resources with which to comply with such norms and standards, identify the risk areas for compliance, develop a compliance plan for the province, develop protocols for schools on how to comply with norms and standards, and report to the Member of the MEC for Education on the state of compliance in the province. The education authorities are thus implementing a centralised approach that has led to the emergence of a highly regulated system and a compliant teacher corps which is tightly monitored and under constant surveillance.

It is important that Section 58C of the Schools Act be read in conjunction with section 61 of the Schools Act and sub-section 3(4) of the National Education Policy Act which grants the Minister additional powers to promulgate additional regulations. This has resulted in a number of regulations being published that curtail autonomy levels pertaining to the professional management of schools and the policy-making functions of SGBs. This is illustrated by the following examples.

2.4.1 Appointment of teachers

In what may be construed by many as an attempt by the government to limit the powers of school governing bodies the draft Basic Education Laws Amendment Bill (RSA, 2007a) seeks to adjust the powers of SGBs with regard to recommending candidates for appointment to management positions in schools in favour of the HOD. It is argued by the memorandum of motivation that accompanied the draft Amendment Bill, that in terms of the appointment of teachers in management positions, dysfunctional SGBs in rural areas do not have functional governing bodies and persons with the necessary skills and necessary knowledge to conduct interview processes and to know what is required of a principal, a deputy principal or a head of department. Furthermore, the current system restricts the HOD in

terms of whom he or she may appoint. This amendment, it is argued, is also necessitated by transformation needs (RSA, 2007a).

2.4.2 Curriculum and assessment

Historically, teachers in rural and 'township' schools (mainly black schools) were regarded as mere technicians who were not expected to have expert knowledge of their subject areas and their curriculum was decided for them. These schools were strictly bureaucratic, hierarchical and authoritarian (Msibi & Mchunu, 2013: 22). The implementation of outcomes based education (OBE) in 1997 represented a paradigm shift from content-based teaching and learning and signalled a departure from 'fundamental pedagogics' to progressive pedagogy and learner-centred teaching and learning strategies (Cross, Mungadi & Rouhani, 2002: 178-179) with teachers being granted much freedom to interpret and apply the curriculum. However, lack of capacity, especially in the mainly black and historically disadvantaged schools, led to the education system still providing education of a rather poor quality (Botha, 2002: 361). In contrast, the introduction of the Curriculum and Assessment Statements (CAPS) in 2011 is being associated with a more centralistic approach with De Clercq (2013: 17) for example arguing that it 'risks frustrating competent teachers wanting to protect their autonomy, while making less competent teachers more dependent on the state's curriculum and assessment practices and therefore less able to develop into autonomous, reflective professionals'. Msibi and Mchunu (2013: 25) support this view by arguing that the CAPS-curriculum is characterised by neoliberal forms of teacher accountability and control in what they call a 'teacher-proof approach towards curriculum implementation' in which teacher autonomy is being restricted. The emphasis being placed on the assurance of compliance by Section 58C of the Schools Act strengthens De Clercq's (2013: 17) contention as teachers are now forced by law to be compliant to curriculum policies. Hence, teachers will inevitably become less inclined to be innovative and creative in their teaching practice as they may be accused as being non-compliant.

Three factors that could impede teacher autonomy in education that can be linked to internal accountability (or a lack thereof) are mentioned by the 2013 Report of the National Education Evaluation and Development Unit (NEEDU, 2013: 48-50). Firstly,

there is now a tendency to monitor learner's work without engaging with the substance of the learner's submissions. The authors of the NEEDU-report appeal for monitoring activities to focus on outcomes of learning rather than spending valuable time on gathering evidence. The second challenge relates to the question of how to promote 'substantive engagement with the curriculum' on the part of teachers at all levels of the system. This is viewed as a capacity problem in that many teachers and their instructional leaders are not adept in the subjects they teach. Thirdly, there is an over emphasis on external, bureaucratic accountability at the expense of internal professional accountability where teaching is viewed as moral endeavour and 'where a person's commitment to a community of professionals makes him/her perceive a duty to adhere to the standards of the profession' (Møller, 2009: 41). Hence the prominent use in South African legislation and policy documentation of terminology such as 'assuring quality and ensuring accountability', 'quality assurance systems', 'evaluation and performance management', 'account regularly in accessible and accurate ways'. This is what Mifsud (2016: 452) describes as the 'the paradox of 'decentralised centralism' where the State relentlessly strives for the retention of control as mediated through the exercise of disciplinary power and the shadow of hierarchy'.

2.4.3 Admission policy of public schools

As mentioned earlier, the draft Amendment Bill (RSA, 2007a) seeks to limit the powers of SGBs in respect of the admission policies of schools by amending section 5 of the Schools Act to provide for the provincial HOD to have the final authority to admit a learner to a public school. If passed by Parliament, this will become a good example of the centralisation of decision-making power and how education authorities are granted statutory powers to intervene at local governance level under the guise of freedoms promised by decentralisation and local autonomy.

2.4.4 Language policy of public schools

SGBs of public schools may determine the language policy of a public school (sub-section 6 of the Schools Act). However, the Minister may determine norms and standards for language policy in public schools. This was done through Government Notice 1701 of 1997 – Norms and Standards for Language Policy in Public Schools. Norms and Standards for Language Policy stipulate that SGBs must stipulate how

the school will promote multilingualism in their schools. In addition, the Norms and Standards for Language Policy stipulates that a school must provide for learners to be taught in a different language to the school's language of teaching and learning if a reasonable demand exists. This has resulted in a number of court cases. These regulations can be regarded as instruments of centralisation in an attempt to counterbalance decentralised decision-making powers of SGBs since the SGBs do not have full autonomy and a wide discretion in their decision-making power in adopting language policies for schools.

This dichotomy of centralisation and decentralisation of decision-making powers plays out in that the language policies of SGBs of especially Afrikaans-medium schools are increasingly being viewed as an instrument of exclusion which promotes racism (Lesufi, 2018). This is significant because the draft Amendment Bill seeks to restrict the powers of SGBs with regard to their powers to draft language policies for their schools even further. In an approach to centralise the decision-making powers of SGBs, the Bill proposes that SGBs must submit drafts of and any amendments to their language policies to the HOD for approval.

2.4.5 Procurement and contractual ability of SGBs

Two amendments proposed in the draft Amendment Bill (RSA, 2007a) may have an impact on the ability of SGBs to promote the best interests of their school and to provide quality education to their learners thus seeking to further curtail the decision-making authority of SGBs. The first proposes that the provincial HOD be empowered to centrally procure identified learning support material for public schools. The second of these amendments seek aims to provide that SGBs must seek the approval of the MEC for Education in the province to enter into lease agreements of any purpose. Although these proposals may limit the decision-making powers of capable SGBs, these measures are obviously intended to prevent potential misappropriation of funds by dysfunctional SGBs.

2.5 REASONS FOR CENTRALISATION MEASURES

The preceding discussions indicate that the balance of power has gradually swung in favour of the central and provincial governments and that the power of SGBs is increasingly subjected to external control. The envisioned 'partnership-model' as articulated in the Schools Act has thus changed to a model in which the co-operative

relationship between SGBs and education authorities has been altered to one in which the government is re-asserting its dominance through the imposition of prescriptive regulatory measures. In the South African situation, the origins of this change in the balance of power can firstly be found in the effect of vested interests on teaching and learning, the disparity between the implementation of policy and the policies themselves, and secondly in a weakening of government legitimacy and the appearance of political realism.

2.5.1 The effects of vested interests on the South African education system

Many stakeholders are involved in an education system and they bring with them multiple and often contradictory interests (The World Bank, 2018: 190). These stakeholders include 'politicians, bureaucrats, the judiciary, private players', teacher unions, governing bodies, parents, religious groupings, cultural groupings and organisations, non-governmental organisations and business and industry. The World Development Report (The World Bank, 2018: 190) explains that as participants linked to the education system, these stakeholders 'have a vested interest in how the system works, including its structure and funding' and 'in many cases policies are not chosen for their effectiveness in improving learning', but 'are guided instead by the vested interests of powerful actors'. This point is illustrated as follows (The World Bank, 2018: 190):

> A textbook supplier may want to provide a quality product, but it also cares about profits. A politician may want to make teachers accountable, for student learning, but also realises the electoral risks of teacher opposition. A bureaucrat may support meritocratic admissions, but also 'accepts a token of appreciation' for ensuring the admission of an acquaintance's child to a desirable school. A parent may want to complain about a teacher, but worries that her child could suffer retaliation.

In the South African situation, the Government has been, and are still confronted with, a diverse array of clashes of vested interests. In dealing with these vested interests, the preferred strategy of the Government seems to be to amend applicable legislation. This approach is firstly chosen to avoid offending politically influential stakeholders or, secondly, in response to lost legal battles. This is discussed and illustrated in the following sub-sections.

2.5.1.1 The impact of the South African Democratic Teachers' Union

According to the World Development Report (The World Bank, 2018: 193), implementation of policies can be compromised if such policies threatens powerful interests. The largest teacher union in South Africa, the South African Democratic Teachers Union (SADTU), by virtue of its affiliation to the Congress of South African Trade Unions (COSATU), a strategic political partner in the ANC-led ruling tripartite alliance (African National Congress, COSATU and the South African Communist Party) waged a bitter battle to prevent testing and evaluation and to protect its members from being evaluated in terms of the National Policy on Whole School Evaluation (WSE) which was introduced by the Department of Education in 2000 (Letseka, Bantwini & King-McKenzie, 2012: 1199). WSE was intended to be supportive and developmental rather than punitive and judgmental. Hence, it was not meant to be used as a coercive measure, 'but would ensure that policies are compliant with it' (Letseka, Bantwini & King-McKenzie, 2012: 1199). As articulated by Letseka, Bantwini and King-McKenzie 2012: 1199): 'It would facilitate support and improvement of school performance using approaches of partnerships, collaboration, mentoring and guidance'. However, despite these intentions, the East Rand Gauteng branch of SADTU, for example, refused that WSE be implemented in their schools (Letseka, Bantwini & King-McKenzie, 2012: 1199). Borrowing from Fleisch (2010: 117), Letseka et al (2012: 1199) describes the intensity and effects of resistance demonstrated by SADTU as follows: '… hundreds of teachers had missed more than two weeks of work, thousands of school children, including learners in the final years of secondary school, had missed their mid-year examinations, and a number of principals and teachers had been assaulted and intimidated'. Such a collision between the Government and SADTU - an affiliate of COSATU - would be a cause of tension in ANC-led ruling tripartite alliance and the attempt of the education ministry to introduce Whole School Evaluation as an instrument of school improvement, was doomed to fail. It seems as if the influential position SADTU occupied in the tripartite alliance, coupled with the danger of losing political support, forced the government to, rather than acting against the ill-discipline of SADTU members, choose a road of less resistance. A solution to this dilemma of how, in their efforts to stimulate school improvement, the government could avoid confrontation with SADTU, could be found in the Education Laws Amendment Act 31 of 2007 whereby Sections 16A and 58B were inserted into the Schools Act. These

additions to the Schools Act now made it a statutory requirement for principals of schools who are deemed to be underperforming in terms of Section 58B, to prepare a school improvement plan setting out how academic performance will be improved (Section 16A). In addition, Section 58B stipulates that the HOD must consider implementing the incapacity code and procedures for poor performance in addressing under performance.

The benefits of the above measures for government are two-fold. Firstly, it provides the HOD with more power to act against underperforming schools. Secondly, it devolves the responsibility to act against belligerent union members to the school principals. In this way the interests of government could be protected without offending SADTU and individual principals could be blamed for underperformance, instead of a strategic partner. This corresponds with the view of the World Development Report (The World Bank, 2018: 193) that often accountability for results are delegated without the authority or resources to achieve them. In the South African situation, the government avoided confrontation with the union as their political partner and decentralised the responsibility to the principal, well knowing that labour legislation limits the power of principals to act against teachers. In addition, underperforming teachers enjoy protection by and support from unions if principals act against them.

2.5.1.2 Mismanagement and corruption in the provision of text books

In 2012 mismanagement and corruption in the provision of textbooks came to the fore in the Limpopo province (Chisholm, 2013: 8). Chisholm (2013: 8) describes this debacle as follows: 'Into the open were brought a report by a dismissed administrator full of details about fraud, corruption, mismanagement and maladministration in the province, an early whistle-blower left in the doldrums, and a shadowy textbook distributor with close links to the ruling party whose cancelled contract it was fighting through the courts'.

Against the above background it is significant that Clause 11 of the draft Basic Education Laws Amendment Bill (RSA, 2017a) proposes to amend Section 21 of the Schools Act to empower the HOD to centrally procure identified learning support material for public schools, after consultation with the SGB and on the basis of

efficient, effective and economic utilisation of public funds or uniform norms and standards. The significance of this proposed amendment firstly lies Sub-Sections 21 (1) (c) and 21 (2) of the Schools Act which states that SGBs may apply to the HOD to purchase textbooks, educational materials and equipment for the school and that the HOD may only refuse such an application if the governing body concerned does not have the capacity to perform such function effectively. Secondly, the decision-making power of well-functioning SGBs to decide which learning materials are best suited for their individual school's needs is positioned against the power of the HOD to centrally procure learning materials. Thirdly, this proposed amendment is meaningful against the background of mismanagement and corruption with regard to the procurement of textbooks as illustrated at the start of this section.

2.5.1.3 Political and ideological objectives

The interests of schools at local level may clash with the national norms and objectives (The World Bank, 2018: 193). This is demonstrated by court battles pertaining to the language[1] and admission[2] policies between provincial education departments and SGBs. For example, the member of the Executive Committee (MEC) for Education in the Gauteng Province stated the following (Lesufi, 2018):

> This philosophy of racial division, and cultural and language individualism remain entrenched in our education system. That is why Hoërskool Overvaal's [Overvaal High School – own insertion] legal victory in keeping out 55 grade 8 English learners from the Afrikaans school in Vereeniging was a major setback for transformation and the struggle for a non-racial society.

Significantly Clause 3 of the of the draft Basic Education Laws Amendment Bill proposes to amend Section 5 of the Schools Act in order to provide the final authority to admit a learner to a public school to the HOD. In addition, Clause 4 of the Bill seeks to amend Section 6 of the Schools Act to provide for the governing body to submit the language policy of a public school, and any amendment thereof, to the Head of Department for approval.

[1] *Governing Body Hoërskool Overvaal and Another v Head of Department of Education and Others* 86367/2017 (Unreported).

[2] *Member of Executive Council for Education in Gauteng Province and Others* v *Governing Body of the Rivonia Primary School and Others* [2013] ZACC 34 (CC)

2.5.2 Policy idealism versus practical reality

The ideal of balancing the need to remedy the inequities of the apartheid-dispensation whilst simultaneously conceding to democratisation of the South African society and education combined with neo-liberalist free-market approaches has perpetuated the polarity in the education system. Although the source of this polarity is now not as much based on racial lines, it is now maintained by disparities in education quality and what Van den Bergh *et al.* (2011) describe as a 'poverty trap' resulting in further divisions based on class. Deacon, Osman and Buchler (2010: 99 -100) explain that it has become clear that the problems facing the South African education system 'were much larger than had been envisaged, the means far smaller and the capacity far less'. The non-alignment of post-apartheid education policies with the realities of poverty and lack of capacity and resources demonstrates a level of naivety in that the adoption of progressive policies alone is not enough to generate substantive change in quality education. This is particularly applicable to schools in the far rural areas where there is a lack of qualified and able SGBs, sufficient and adequately trained teachers, a lack of infrastructure, such as poor roads, a lack of transport, under resourced and badly maintained school buildings, combined with the preference of well-qualified teachers to live and work in urban areas, has made it difficult to attract well-qualified teachers to the far rural areas (NEEDU, 2013: 2). This has led to it often being suggested that 'education policy is merely symbolic, little more than grandiose and glamorous 'window dressing'' (Deacon, Osman & Buchler, 2010: 101).

The gap between the policy intentions and its implementation can to a large extent be contributed to a lack of professionalism in the public service. The policy intervention and assumption was that the decentralisation of decision-making power to the SGBs would improve the quality of the system since the local level 'knows best' with regard to local needs. The severity of this problem is articulated in the 2012 report of the National Education Evaluation and Development Unit (2013: 79) as follows:

> There are two practices that pre-empt appointment and promotion of personnel on the basis of competence and expertise. The first is seniority, the second patronage. Seniority is a common practice found in all bureaucracies. It defines level of competence in terms of years of service.

> While this may be valid in some situations, we know it is not a reliable method for ascertaining educator competence in South Africa.
>
> There is a general acceptance that significant parts of the South African state and civil service are affected by patronage as a mechanism for the appointment and promotion of staff. In general, lines of patronage run along established networks and a host of informal associations: families, churches, political parties, trade unions, old school tie, sport, criminal associations, the list is endless. Bribery and other forms of corruption often serve to grease the networks.

The Ministerial Task Team appointed by the Minister of Basic Education (DBE, 2016a: 133) to investigate allegations into the selling of educators' posts by members of teacher unions and departmental officials in provincial education departments came to a similar conclusion as illustrated by the following quotes:

> The deployment of officials to the Department from Unions weakens the Department because those so deployed are not there because they have professional intentions or even abilities, but are placed there as reward.
>
> Finally, 'the elephant in the room' … teacher unions have captured significant areas of the education system. This ranges from the most senior levels to new teachers in public schools. Six of the nine provinces are under control by the unions. The effect of this is to contribute to the Department's inability to control (centralisation – my interpretation) and develop an effective education system.

The effect of district level incompetence on school effectiveness is explained in the National Development Plan 2030 (RSA, 2012: 310) as follows: 'Many of the weaknesses in schools are a reflection of weaknesses at district level'. The naivety of policy idealism is recognised by the NDP by acknowledging that the quality of school education is the major shortcoming of the education system. This is *inter alia* attributed to human capacity weaknesses in teaching, management and school support, as well as to a lack of cooperation among major stakeholders, particularly the unions and the government (RSA, 2012:302). Hence, the recommendation of additional support to SGBs and that a strong sense of community ownership should be developed (RSA, 2012: 311). In addition, the NDP recommends that schools should be provided with the capacity to implement policy and that top performing schools must not only be recognised and supported, but that they must also not be 'saddled with unnecessary burdens' and that 'their support should be enlisted to assist underperforming schools' (RSA, 2012: 302-303). This is in contrast to what is proposed in the draft Amendment Bill which, although it recognises that many school

governing bodies do not have the capacity to perform its functions, 'seeks to amend section 20 of the South African Schools Act by limiting the powers of a school governing body with regard to recommending candidates for appointment' (RSA, 2017a). Thus, instead of addressing a fundamental weakness within the education system, the government is opting for an 'easy-way-out' by striving to preserve hegemony.

2.5.3 Legitimacy crisis and political realism

As indicated earlier, the performance of the South African education system has been dismal and its success is being questioned (Maarman & Lamont-Mbawuli, 2017: 266). In addition, the inequalities in South African society are perpetuated by persistent failures of the education system (Van Den Berg et al., 2011: 11). Coupled with practices of corruption, patronage and cadre deployment, the inability of the education authorities to consistently deliver on their mandate has thrust the Department of Basic Education (and the education system) into a legitimacy crisis.

As it is difficult to exert influence over others merely because of the possession and use of power, having legitimacy is important to authorities and institutions if they wish to achieve success (Tyler, 2006: 375). Legitimacy is associated with the level of trust placed in authorities and is seen to be related to an easier and better functioning state, such as the willingness to pay taxes and follow state directives (DeRouen & Goldfinch, 2012: 504). On the other hand, as explained by DeRouen and Goldfinch (2012: 504), 'the legitimacy of the state is also related to its ability to perform its functions adequately, i.e. legitimacy both influences and is influenced by state performance and effectiveness'. The importance of legitimacy is explained by Gilley (2006:499) as follows: 'States that lack legitimacy devote more resources to maintaining their rule and less to effective governance, which reduces support and makes them vulnerable to overthrow or collapse'. Because the initial expectation that a post-apartheid education would not only ensure access to education, but would also provide equal and quality education has not been met, the government is being forced to counter-act any decline in legitimacy due to loss of credibility. This has resulted in the upsurge of political realism in the domain of education governance.

Political realism assumes that power is (or ought to be) the primary end of political action and asserts that politicians do, or should, strive to maximize their power

(Mosely, no date). As demonstrated by Jansen (2002: 200), this is played out in the South African education environment through 'the preoccupation of the state with settling policy struggles in the political domain rather than the realm of practice'. In other words, as expressed by Tikly (1997: 165), 'education policies take the form of political programmes of government and attempt to use technologies of government to implement these programmes in a way that is consistent with the underlying rationality of government'. 'Technologies of government' refers to the 'techniques, procedures and strategies that are used to put political rationalities and programmes into effect' (Tikly, 1997: 165). 'Technologies of government' incorporates both accountability and 're-regulation' (Ball, 2003: 217) (centralisation) or 'managerial restructuring' towards a form of 'decentralised-centralism' (Karlsen, 2000), giving a 'pretence of freedom while acting in a coercive way'. (Mifsud, 2016: 450). The aim is to achieve a re-consolidation of central power (Robinson, 2015: 471) which has resulted in educational strategies that focus on the monitoring of learner and school achievement (Strandler, 2015: 890) and has resulted in the emergence of a 'compliance society' which is characterised by a 'remotely accountable and technocratic centre' who takes the initiative and where relationships of dependency and compliance have developed rather than relationships of interaction, negotiation and mutual respect (Glatter, 2012: 562; Kogan, 2002: 340). Seen against this setting, the recommendation by the Ministerial Task Team (DBE, 2016a) who investigated allegations into the selling of teaching posts, that key aspects of the education system should be centralised takes on a new significance.

As a result, everything points towards the powers of SGBs being reduced to merely being implementers of policy with very little real decision-making authority. Should the draft Amendment Bill be passed, only two remnants of decision-making power originally decentralised to SGBs will remain. The one lies in the function still afforded to SGBs to recommend candidates for appointment as Post Level 1 teachers and non-teaching staff (school secretaries and general workers). The other is the power afforded to the 40% of schools that may levy school fees. This realignment towards a more centralised approach can be attributed to the government (and the education system) losing credibility.

2.6 CONCLUSION

Weighing the South African education governance system on the centralisation-decentralisation scale, it is evident that the South African education system is progressing from a mostly decentralised system in the direction of 'decentralised centralism'. It is becoming highly regulated in that local school communities through their SGBs are expected to take responsibility for decentralised functions with limited decision-making autonomy. Berkhout's (2002: 73) assertion that 'decentralisation seldom constitutes a clear shift of power from the centre to the periphery, but was an amalgamation of decentralisation rhetoric and concealed centralisation measures' is being confirmed in that genuine autonomy at local school level is nothing but an illusion (illusional autonomy). This is demonstrated by the intensification of 'top-down one-size-fits-no-one' approaches.

Lack of capacity in the underperforming schools (mainly black, rural and non-fee paying) is blamed for the chronic underperformance of the education system and is used to motivate the escalation of centralism. However, although these measures may result in improved effectiveness in the majority of the previously disadvantaged schools, those schools with highly functioning SGBs and who are consistently performing well, are being forced to submit to a restrictive policy environment, impeding their resourcefulness and advancement. Additionally, apart from having strong-arm and coercive value, it does not provide much in motivating underperforming schools to be more effective. A more centralised approach not only ignores the complexity of the multiple contexts in which South African schools are expected to function, but also ignores the multiple historical, socio-economic, cultural and language backgrounds of South African children. The high premium being placed on the implementation of regulatory instruments designed for monitoring and assurance of (policy) compliance points to an erosion of the partnership-model as originally envisaged by the South African Schools Act. This can be ascribed to the government (and the education system) experiencing a legitimacy crisis due to the lack of credibility perpetuated by chronic underperformance, lack of support to schools, the capacity deficit of teachers and departmental officials, corruption and

the practice of cadre deployment. Hence there is a need for government authorities, through political realism, to reclaim power.

CHAPTER 3

ARTICLE 2:

SOUTH AFRICAN SCHOOL GOVERNING BODIES AND THE CONSTITUTIONAL PRINCIPLE OF CO-OPERATIVE GOVERNMENT: DE LEGE FERENDE

3.1 INTRODUCTION

In South Africa tensions often arise due to attempts made by the Department of Basic Education and provincial Departments of Education to unilaterally control the powers of (SGBs), hence interfering with the implementation of democratic principles and the philosophy of a partnership between the State and parents. According to Serfontein (2010: 100) parents consequently "feel that government does not place much value on their partnership". This 'feeling' of parents has been illustrated by the Constitutional Court of South Africa being required to rule on a number of disputes between SGBs and educational authorities. In *FEDSAS v MEC for Education, Gauteng*[3] the Constitutional Court made the following statement:

> The Schools Act carves out an important role for parents and other stakeholders in the governance of public schools. School governing bodies are made up in a democratic and participatory manner and ordinarily would advance the legitimate interests of learners at a school. The Constitution and the Schools Act also entrust vital tasks related to the education of our children to the MEC [provincial Member of Executive Council for Education – own insertion] and HOD [Head of Provincial Department of Education- own insertion]. In the past, this Court has correctly cautioned against undue dominance of school governing bodies by the provincial Executive. We have called for cooperative governance between statutory creatures – school governing bodies and the MEC and HOD – entrusted with effective and universal access to basic education.

Based on the above it will be argued that the conflict between the education authorities and SGBs is linked to decentralisation and the levels of school autonomy and that there is a need to clarify this ambiguity through critically analysing the levels of decentralisation and school autonomy in the South African education system in

[3] *Federation of governing bodies for South African schools v Member of the Executive Council for Education, Gauteng and others [2015] CCT 209 (CC).*

general as well as the constitutional principle of co-operative government as it relates to the relationship between departments of education and SGBs in particular.

Subsequent to the above-mentioned case, a dispute resolution mechanism and the procedures to be followed if and when a dispute is declared between SGBs and education authorities, is being proposed in Clause 27 of the recently published draft Basic Education Laws Amendment Bill (RSA, 2017a). With this proposed legislation in mind (*de lege ferenda*), it is appropriate to enquire into how the constitutional principle of co-operative government is being expressed and given content in the governance of education in South Africa. This is of particular importance when all the contextual nuances of South African schools need to be taken seriously.

3.2 BACKGROUND TO DECENTRALISATION IN EDUCATION IN SOUTH AFRICA

Decentralisation is a worldwide phenomenon which has become popular towards the end of the twentieth century. It has been viewed as an integral part of modernisation (Dyer & Rose, 2005: 105) and featured strongly in education all sectors of government, including education (Karlsen, 2000: 525). In South Africa this tendency to decentralise overlapped with the post-Apartheid political and social reforms which re-enforced the notion that democratic principles and greater stakeholder participation in the education system should be promoted.

Sayed (1997: 722) argues that the main ideas for educational democracy are that all sectors, role-players and stakeholders should be included in the decision-making processes and governance structures at local school level and that accountability, legitimacy and democracy must be ensured through greater representation at local levels. This view is affirmed in the preamble of the South African Schools Act 84 of 2006 (hereafter referred to as the Schools Act). where it is stated that the South African schooling system should “promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State”. In addition, one of the directive principles of the National Education Policy Act 27 of 1996, is that “broad public participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system” must be ensured (section 4(m)).

Aligned with the focus on decentralisation, the exercise of government authority is subject to the supreme Constitution (Malherbe, 2006: 238). This includes the national, provincial and local levels of government (spheres of government) and government institutions (government departments and institutions at the different levels of government). Despite the constitutional principle that obliges organs of state involved in an intergovernmental dispute to exhaust other remedies before they turn to the courts for its resolution, the past decade saw the Constitutional Court being required to preside over significant cases dealing with the distribution of powers between educational authorities and SGBs. This resonates with Weiler's (1990: 435) argument that "decentralising the making and the implementation of educational policy affects in important ways the nature and interest of the state, particularly its ability to cope with the dual problems of policy conflict and the erosion of its own legitimacy". In this regard Beckmann and Prinsloo (2009:183) contend that although it seems on the surface that the state is encouraging local participation in school governance, amendments to education legislation point to a move to limit the involvement and powers of SGBs.

3.3 DECENTRALISATION AND LOCAL DECISION-MAKING AUTHORITY

Decentralisation refers to a shift in location of those who govern (Dyer & Rose, 2005: 105) and to devolution of some authority to the local school and community level (Fullan & Watson, 2000: 453). Hanson (1998: 112) defines decentralisation as "the transfer of decision-making authority, responsibility and tasks from higher to lower organisational levels or between organisations". In education, decentralisation has been touted as a means to empower schools by granting them more autonomy (Robinson, 2015: 471). The general view, according to Sayed (2002: 37), is that decentralisation "redistributes, shares and extends power and enhances participation by removing centralised control over educational decision making". Makara (2018: 23) observes that in decentralisation, "the issue is not only restructuring the state, but most important, its people's 'voice'".

Decentralisation involves a redistribution of political authority and power, resources, administrative responsibilities and functions (Dyer & Rose, 2005: 105) and is closely connected to other concepts, for example deconcentration, deregulation, delegation,

de-bureaucratisation and independency (Karlsen, 2000: 526). Bimber (1993: 7) explains the essence of decentralisation as follows:

> Decision-making authority is the crux of decentralisation. To decentralise is to shift authority for the making of decisions downward from the topmost levels, or centre, of a hierarchy toward the bottom, or local levels. Most ideas associated with decentralising, such as streamlining hierarchy, creating initiative, and increasing control by workers, can be reduced to the problem of determining who has the authority to make which decisions.

Decentralisation is thus associated with power of some kind. According to Karlsen (2000: 526) it can be understood "as location of authority and power over formal rights of educational decision-making". Section 16 (1) of the Schools Act stipulates that the governance of public schools is vested in its SGB. However, SGBs may only perform such functions and obligations and exercise such rights as prescribed by legislation. Maile (2002: 26) explains that school governance refers to an act of determining policy and rules by which a school is to be organised and controlled. This also involves ensuring that such policies and rules are carried out effectively in terms of the law. Thus, at local level, SGBs do have decision-making powers and discretionary space, albeit limited by the law. This decision-making and discretionary space is beautifully illustrated by Ronald Dworkin (1978: 31) who provides the following conceptualisation of discretion (decision-making power / autonomy):

> The concept of discretion is at home in only one sort of context; when someone is in general charged with making decisions subject to standards set by a particular authority. Discretion, like the hole in the doughnut, does not exist except as an area left open by a surrounding belt of restriction. It is therefore a relative concept. It always makes sense to ask, 'Discretion under which standards?' or 'Discretion as to which authority?'. Generally the context will make the answer to this plain, but in some cases the official will have discretion from one standpoint, though not from another.

In similar vein, Karlsen (2000: 526) argues that decentralisation movements from central to local levels and centralisation movements in the opposite direction usually lead to tension, "not only between central and local bodies, but also among various institutions and groups at the central and local levels". In this regard Robinson (2015: 471) asserts that decentralisation is "closely tied to performance frameworks at the local level and as such requires an increase in control and monitoring by managers in the central administrative organisations". However, this does not mean that accountability can only be demanded by those having authority closer to the centre (national and provincial levels), but that those at the periphery (local levels)

must have the freedom to “engage in actions that are beneficial to them or to question the state” (Makara, 2018: 24), thus holding the state accountable as well. Because local level participation in school governance is influenced by different contexts and has a different meaning for different people, it will be worthwhile at this juncture to reflect on the powers and functions of SGBs.

3.4 POWERS AND FUNCTIONS OF SCHOOL GOVERNING BODIES

The notion of decentralisation stems from the belief that schools cannot be overseen by the state alone, but that it “should share its power with other stakeholders, particularly those closer to the school, on a partnership basis” Van Wyk, 2004: 49). As observed by Makara (2018: 23): “… the utility and primacy of decentralisation lies in its policy content, design and outcomes. These should be intended to increase people’s voice and choice in governance and service delivery”.

The power-sharing and the people’s voice and choice has been expressed in section 28 of the Schools Act which determines that SGBs are elected for a fixed term of office (3 years) during a formal election process which is organised on a national level. SGBs are subject to *political and public accountability* which, according to Møller (2009: 40), relates to being responsible to the mandate and function of a particular organisation in society, as well as being responsible towards the local community of which one is part. By virtue of the Schools Act, SGBs have “been assigned considerable power and responsibility and, among other things, can capture the school's character and identity in the wording of the school's policy, as well as determine the way in which the school should achieve its purpose …” (Van Wyk, 2004: 52). SGBs therefore have the authority to take “community-based decisions” (Serfontein & De Waal, 2013: 51).

The foundation of the power(s) bestowed on SGBs is located, as it will be argued in the next section, in the fact that they are organs of state and hence exercise a public power in terms of Chapter 3 of the Constitution. In addition, section 15 of the Schools Act determines that “every public school is a juristic person, with legal capacity to perform its functions in terms of this Act”. A SGB is the agency through which a public school must exercise its legal capacity (section 16(1)). Via their

SGBs, public schools may thus own property and enter into contracts and agreements and be held liable, or hold other parties liable, for such agreements and contracts. As such, SGBs may also initiate litigation on behalf of the school and be litigated against (Serfontein, 2010:9). Powers devolved to SGBs include the drafting of the language (section 5) and admission policies (section 6) of public schools. This has become one of the points of contention between SGBs and the departments of education.

SGBs also possess legislative powers. Section 8 of the Schools Act (1996) obliges SGBs to adopt a code of conduct for the learners of the school and it is noteworthy that nothing in the Schools Act exempts a learner from the obligation to comply with the code of conduct (section 8 (4)). Besides, the Guidelines for the Consideration of SGBs in Adopting a Code of Conduct for Learners (RSA, 1998b) indicate how SGBs are to impose and administer the code of conduct and how to conduct disciplinary hearings which could lead to sanctions such as suspension and expulsion of learners.

The power of SGBs is further illustrated by the Schools Act (1996, section 36(1)) compelling SGBs of public schools to “take all reasonable measures within its means to supplement the resources supplied by the State”. In accordance to section 39 (1) of the Schools Act, SGBs may have the power and authority to levy school fees and through a process of law, hold parents liable to pay these fees (section 40), as well as to enforce the payment of such fees (section 41). SGBs are also expected to put procedures in place to enable parents to apply to be exempted from the payment of school fees. This must be done in accordance to the Regulations for the Exemption of Parents from the Payment of School Fees (RSA, 2006b). However, in terms of the National Norms and Standards for School Funding, the poorest 60% of public schools are declared non-fee paying schools (RSA, 2017b). These schools receive all their funding from the state and therefore they are not involved in the process to get the school fees from the parents.

Section 20 of the Schools Act allocates a whole host of functions to all SGBs. This includes the obligation to promote the best interests of the school and strive to ensure the school’s development through the provision of quality education for all its learners. Linked to this obligation is that Section 20 also provides for SGBs of public

schools to appoint additional teaching and support staff, albeit from own funds. SGBs of schools that were declared non-fee paying schools will not be able to afford this luxury. SGBs must also must also make recommendations about the appointment of all teaching and support staff to the provincial Head of Department (HOD). This function, to recommend the appointment of teaching and support staff and specifically the appointment of additional teaching and support staff by fee-paying schools from school funds, provides SGBs, particularly of fee-paying schools, with added decision-making power. It will later be argued that these powers are one of the contention points between some SGBs and the provincial departments of education. It will also be argued that the SGBs, in performing the function of recommending the appointment of staff, are acting in the best interests of the child which is a constitutional prerogative. Furthermore, it will be argued that according to the departmental officials, this potentially powerful decision-making prerogative is in conflict with the principles of equity, equality and transformation. This is often a point of contention between provincial Departments of Education and SGBs which needs to be resolved by the courts. It therefore makes the constitutional principle of 'in the best interest of the child' a contested area from two different perspectives.

An avenue for differentiated decentralised autonomy is provided by Section 21 of the Schools Act where provision is made for SGBs to apply to the provincial HOD to be allocated additional functions such as the maintenance of school buildings and property, the extra-mural programme of the school, the purchase of textbooks and learning materials and the payment of services to the school, if they have the capacity to perform these functions effectively. Taking responsibility for these additional functions does, however, have significant financial implications for the school (Clase, Kok & Vander Merwe, 2007: 248) and are generally not applicable to non-fee paying schools.

Public schools are bound to the basic values and principles governing public administration as contained in Chapter 10 of the Constitution (section 195). These principles include the point that people's needs must be responded to, and that the public must be encouraged to participate in policy-making. The efficient, economic and effective use of resources must be promoted. This relates to the functions of all SGBs as stipulated in section 20 of the Schools Act. In addition, SGBs are responsible to administer, control and maintain the property and buildings of schools

and may allow the reasonable use of the school facilities by the community (section 20). These principles for governing public administration and the contestation between departments of education and the SGBs as organs of state require the application of cooperative governance.

3.5 CHAPTER 3 OF THE CONSTITUTION AND THE PRINCIPLE OF CO-OPERATIVE GOVERNMENT

Co-operative government is concerned the relationship between the different spheres of government (national, provincial and local) and organs of state (government institutions). Co-operative government is conceptualised by Malan (2005: 230) as follows:

> Co-operative government is a fundamental philosophy of government (constitutional norm) that governs all aspects and activities of government and includes the deconcentration of power to other spheres of government and encompasses the structures of government as well as the organisation and exercising of political power. It is specifically concerned with the institutional, political and financial arrangements for interaction among the different spheres of government. Co-operative government is thus about partnership government as well as the values associated with it – which may include national unity, peace, proper co-operation and coordination.

Chapter 3 of the Constitution (section 41(1)) spells out the principles of co-operative government which include the following:

> All spheres of government and all organs of state within each sphere must:
>
> - co-operate with one another in mutual trust and good faith by -
> - fostering good relations;
> - assisting and supporting one another;
>   - informing one another of, and consulting one another on, matters of common interest;
> - co-ordinating their actions and legislation with one another;
> - adhering to agreed procedures; and
> - avoiding legal procedures against each other".

In addition, section 41 (2) stipulates that Parliament must adopt legislation for the establishment of structures and institutions to promote and facilitate intergovernmental relations and to provide for appropriate mechanisms and procedures to facilitate settlement of inter-governmental disputes. This resulted in the

Intergovernmental Relations Framework Act 13 of 2005 and is applicable to the three spheres of government, namely the national government, provincial governments and local municipalities. SGBs were, however, omitted from this act. This seeming oversight to provide for SGBs in the Intergovernmental Relations Framework Act (RSA, 2005b) and/or the Schools Act raised the question of whether SGBs are organs of state and therefore subject to the principle of co-operative governance. Coinciding with the passing of the Intergovernmental Relations Framework Act (RSA, 2005b) by parliament, the ruling in *Western Cape Minister of Education v The Governing Body of Mikro Primary School*[4] *the* Supreme Court of Appeal found the provisions of section 41 of the Constitution inapplicable to disputes involving SGBs on the grounds that a SGB was not subject to executive control as far as the determination of the language and admission policy of the school was concerned. This further contributed to the confusion. However, in the cases discussed below, the Constitutional Court provided clarification and indicated that schools, through their SGBs, are indeed organs of state and therefore subject to the principles of co-operative government.

Section 239 of the Constitution, defines an 'organ of state' as follows:

> Any department of state or administration in the national, provincial or local sphere of government; *or* (own emphasis);
> any other functionary or institution –
>
> (i) exercising a power or performing a function in terms of the Constitution or provincial constitution; *or* (own emphasis)
> (ii) exercising a public power or performing a public function in terms of any legislation.

In *Head of Department, Department of Education, Free State Province v Welkom High School and others and Head of Department, Department of Education, Free State Province v Harmony High School and others*[5]*,* clarity was provided regarding SGBs as organs of state:

[4] *Western Cape Minister of Education v The Governing Body of Mikro Primary School* 2005 (3) SA 436 (SCA).

[5] *Head of Department, Department of Education, Free State Province v Welkom High School and others and Head of Department, Department of Education, Free State Province v Harmony High School and others [2013] ZACC 25 (CC)*

> The school governing bodies and HOD [Head of Department of the provincial Department of Education – own insertion] are organs of state. In terms of section 41(1)(h) [of the Constitution] they have an unequivocal obligation to co-operate with each other in mutual trust and good faith by assisting and supporting one another, informing one another of, and consulting one another on, matters of common interest, co-ordinating their actions, and avoiding legal proceedings against one another.

Thus, although omitted from the Schools Act there is no doubt that schools as institutions and SGBs as functionaries, *do* exercise power in terms of the Constitution and provincial constitutions and that they exercise a public power and therefore are organs of state and are therefore also bound by chapter 3 of the Constitution.

In terms of Section 41 (3) of the Constitution organs of state involved in intergovernmental disputes must make every reasonable effort to settle the dispute through mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court. Furthermore, section 41 (4), determines that a court may refer a dispute back to the organs of state involved in a dispute if the court is not satisfied with the requirements as stipulated in section 41 (3). Co-operative governance thus implies a two-way relationship between organs of state and to succeed, both parties in the relationship have a responsibility towards cooperating with one another in mutual trust and good faith. They must foster friendly relations and assist, support and inform one another. They must consult on mutual interests, co-ordinate their actions and legislation, and adhere to agreed procedures (Malherbe, 2006: 244). According to Malherbe (2006: 244): "They must respect one another's constitutional status and powers, and may not encroach on one another's geographical, institutional or functional integrity. They may not assume powers not conferred on them by the Constitution". In the main judgment in *Welkom and Harmony High School,* the Constitutional Court provided the following explanation of the importance of co-operative governance:

> Co-operative governance is a foundational tenet of our constitutional order.... It is incumbent upon HODs and governing bodies to act as partners in the pursuit of the objectives of the Schools Act. In *Schoonbee and Others v MEC for Education, Mpumalanga and Another*[6], the co-

[6] *Schoonbee & Others v MEC for Education, and Another 2002 (4) SA 877 (T)*

operative mandate contained within the Schools Act was described as follows:

> 'Having read the Act again it seems to me that the new education regime introduced by the Schools Act, which came into operation on 1 January 1996, contemplates an education system in which all the stakeholders, and there are four major stakeholders – the State, the parents, educators and learners – enter into a partnership in order to advance specified objectives around schooling and education. It was intended, it appears, to be a migration from a system where schools are entirely dependent on the largesse of the State to a system where a greater responsibility and accountability is assumed, not just by the learners and teachers, but also by parents.'
>
> The importance of co-operative governance cannot be underestimated. It is a fundamentally important norm of our democratic dispensation, one that underlies the constitutional framework generally and that has been concretised in the Schools Act as an organising principle for the provision of access to education. Neither can we ignore the vital role played by school governing bodies, which function as a 'beacon of grassroots democracy' in ensuring a democratically run school and allowing for input from all interested parties.
>
> Given the nature of the partnership that the Schools Act has created, the relationship between public school governing bodies and the state should be informed by close cooperation, a cooperation which recognises the partners' distinct but inter-related functions. The relationship should therefore be characterised by consultation, cooperation in mutual trust and good faith.

In *MEC for Education in Gauteng Province and others v Governing Body of Rivonia Primary School and others*[7], the Constitutional Court identified a number principles for co-operative governance to succeed.

> A government official / functionary cannot simply override a policy of a school governing body adopted in terms of the Schools Act, even if the official / functionary is of the opinion that such a policy violates the Schools Act or the Constitution. This does, however, not mean that a school governing body's policy is immune to intervention or that the policy must rigidly be applied in an inflexible manner in all circumstances.

A(n) official / functionary who is properly empowered who deems it necessary to intervene in the policy-making function of a SGB, must act with reasonableness and

[7] *Member of Executive Council for Education in Gauteng Province and Others v Governing Body of the Rivonia Primary School and Others [2013] ZACC 34 (CC)*

procedural fairness. In *Premier, Mpumalanga and Another*[8]*,* two constitutional imperatives are explained which are indispensable to the transition of the post-apartheid society:

> The first is the need to eradicate patterns of racial discrimination and to address the consequences of past discrimination which persist in our society, and the second is the obligation of procedural fairness imposed upon the government. Both principles are based on fairness, the first on fairness of goals, or substantive fairness, and the second on fairness in action, or procedural fairness. A characteristic of our transition has been the common understanding that both need to be honoured.

Therefore, in order to give effect to the partnership model as envisaged by the principle of co-operative governance, the relevant official / functionary and the SGB are duty bound to engage with each other in good faith on any dispute and this engagement must be directed to the shared goal of advancing the best interest of learners. Cooperation is therefore the required general norm. In the judgments mentioned above, the court took note of the failure of the parties to engage effectively and to consult with one another, which emphasises the point that consultation, co-ordination and mutual support should be the key features of the relationship between SGBs and the provincial education authorities.

3.6 CO-OPERATIVE GOVERNMENT, THE RULE OF LAW AND JUST ADMINISTRATIVE ACTION

Fundamental to co-operative governance is the rule of law. In its most basic form the 'rule of law' refers to the principle that no person is above the law. Chief Justice Mogoeng Mogoeng (2013) explains the 'rule of law' as follows:

> The exercise of public power must … comply with the constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the constitution. It entails that both the Legislature and the Executive "are constrained by the principle that they may exercise no power and perform no function beyond that conferred on them by the law".

[8] *Premier, Mpumalanga and Another v Executive Committee, Association of Governing Bodies of state-aided Schools, Eastern Transvaal 1999 (2) SA 91 (CC)*

> In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power.

Rautenbach (2012: 9) distinguishes between formal and substantive legality. The former refers to "the principle that legislatures and executives may exercise no power and perform no function beyond those conferred upon them by law". Substantive legality means "that even when government authority is indeed exercised in terms of an existing legal rule, the contents of the action must also comply with certain requirements". In *Rivonia* the Constitutional Court explained as follows:

> Should it be deemed necessary for government officials / functionaries to intervene in a school governing body's policy-making role or to deviate or depart from a policy adopted by a school governing body, such intervention must be done in terms of the powers afforded to him / her by the Schools Act or other legislation. Attempts to intervene without such powers will be deemed to be *ultra vires.* This is a critical aspect of the rule of law as explained by Khampede J in *Welkom*: "The rule of law does not permit an organ of state to reach what may turn out to be a correct outcome by any means. On the contrary, the rule of law obliges an organ of state to use the correct legal process.

In terms of the relationship between SGBs and the education authorities, the Constitution (Section 33) provides that "everyone has the right to administrative action that is lawful, reasonable and procedurally fair". Secondly, it allows that anyone whose rights have adversely been affected has the right to be given written reasons. Thirdly, national legislation must be enacted to give effect to these rights. As a result, the Promotion of Administrative Justice Act, 3 of 2000 was mandated to give effect to the rights as expressed in Section 33 (Hoexter, 2006: 303). Section 33 is the constitutional foundation of the South African administrative law and includes the main features of administrative law relating to administrative action (Malherbe, 2001: 66).

Section 33 is applicable to all administrative actions and an administrative action can be defined as "any action in which rules of law are applied to an individual instance, excluding however, adjudication by the courts which is governed by its own rules" (Malherbe, 2001: 66). Furthermore, administrative actions include general rules delegated to an administrative body by a legislature and can cover a wide variety of

actions, activities and functions. All official actions performed by education departments, SGBs and schools are therefore classified as administrative action.

Section 33 is applicable to all bodies that perform administrative actions which include executive and administrative organs of state, legislatures performing administrative actions, and private persons and organisations that are in an unequal relationship or relationships based on the exercise of authority (Malherbe, 2001: 66). Therefore, all education departments, schools and SGBs are bound by Section 33.

Malherbe (2001: 66) explains the implication of the above two paragraphs as follows:

> In essence, Section 33 means in the first place that executive and administrative bodies may perform only actions that have been authorised by law. Secondly, these administrative actions must be reasonable in terms of the provisions of the Constitution. Thirdly an administrative action must be procedurally fair, which primarily means that the rules of natural justice must be followed whenever, in the performance of an administrative action, somebody's rights or legitimate expectations are affected. These rules are the following:
>
> - The person affected by the action, or proposed action, must be afforded the opportunity to state his or her case. This may include fair prior notice.
> - All facts and considerations that may detrimentally affect the person, and about which he or she does not, within reason, have information, must be furnished.
> - The body performing the action may not be prejudiced or biased.
> - Written reasons for the action may be provided, unless the reasons are made public.

More specifically, the Promotion of Administrative Justice Act must provide for the review of administrative actions by a court or other tribunal, compel the state to give effect to the rights in Section 33 of the Constitution and promote effective administration (Malherbe, 2001: 68). In so far as the rule of law relates to the relationship between SGBs and provincial departments of education, the courts have made a number of rulings which highlight the obligation to adhere to the rule of law as illustrated in the examples below.

In *Schoonbee,* the court held that there was no proportionality between the acts and conduct of the SGB and the action taken by the MEC to dissolve the SGB. Also, the SGB was given no opportunity to respond to the allegations of misappropriation of

school funds or to institute corrective action, a principle which must be applied according to the Promotion of Administrative Justice Act.

In *Maritzburg College v C.R. Dlamini N.O.*[9] the Court found it disturbing that a public official "had to be galvanised into action to do his duty only when served with a court application". Even more disturbing was the first respondent's statement that he saw no reason to expeditiously make a decision on expulsion as he had to consider a number of issues and that to expect a decision within two months was "utterly unreasonable". It was ruled that this attitude ignored the obligation of SGBs to maintain discipline and good standards at schools. More importantly, it disregarded the rights of learners who stood in the shadow of expulsion as they have a right to know expeditiously whether they are going to be expelled so that they can enrol at another school.

An example of interference by departmental officials in the governance and professional management of a school is found in *Governing Body of Mikro Primary School and Another v Western Cape Minister of Education and Others*[10]*.* An urgent application to the High Court by Mikro Primary School and its SGB seeking an order setting aside the directive of the HOD of the Western Cape Department of Education and interdicting him and his officials from interfering with the school's governance and professional management was successful. The court determined that it is a function of the SGB to determine the language policy of the school and held that the actions of the departmental officials who threatened the principal into starting an English-medium class at the school, constituted interference in the governance and professional management of the school.

In *Destinata School and another v The Head of Department: Gauteng Department of Education and others*[11]*,* the court held that the confiscation of the financial documents and records of the school was unreasonable as there was no request

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[9] *Maritzburg College v C.R. Dlamini N.O. 2004 SA 2089 (KZN)*

[10] *Governing Body of Mikro Primary School and Another v Western Cape Minister of Education and Others (332/05) [2005] ZAWCHC 14; 2005 (3) SA 504 (C) [2005] 2 All SA 37 (C)*

[11] *Destinata School and another v The Head of Department: Gauteng Department of Education and others 23675/2003 [Unreported].*

made to the SGB to respond to the complaints that were received. The officials therefore had no authority or approval to confiscate the financial record of the school. Subsection 37 (1) of the Schools Act must be seen in the context of the framework relating to the control of school funds which is the direct responsibility of the SGB. The court further ruled that by relying on the stipulations of Circular 13/2000, the respondents acted *ultra vires* as section subsection 37 (1) of the Schools Act does not make provision for the respondents to allocate powers which would allow them to confiscate documents, to themselves.

Smit and Oosthuizen's (2011: 63) contention that "meaningful participation by parents in school governance is constrained if bureaucratic misapplications of democratic principles occur as a result of the restrictive paradigms that curtail the rights of SGBs to recommend the appointment of teachers" is aptly illustrated in *The Point High School and Others v The Head of Department of the Western Cape Department of Education*[12]. The decision of the HOD of the Western Cape Department of Education to appoint the persons he did appoint was reviewed and set aside by the court and the HOD was directed to appoint the persons viewed by the SGB as the most suitable candidates. The court expressed concern about the best interests of children in terms of Section 28(2) of the Constitution. Furthermore, the court found that the reasons given by the Western Cape Department of Education not to appoint the first choice candidates was not acceptable.

Notwithstanding these rulings, the principle of co-operative government (and the rule of law) continues to be challenged. In the latest episode in the saga, the SGB of Hoërskool Overvaal (Overvaal High School) sought urgent relief from the Gauteng High Court to review and set aside an instruction by the District Director of the Sedibeng East District of the Gauteng Department of Education to admit fifty-five English grade 8 learners for the 2018 school year starting on 17 January 2018 (*Governing Body Hoërskool Overvaal and Another v Head of Department of*

[12] *The Point High School and Others v The Head of Department of the Western Cape Department of Education (2007) SCA 14188/06*

Education and Others[13]). The SGB argued that the school was full to capacity, that neighbouring English medium schools had sufficient capacity to accommodate these learners, that the instruction to accept these learners was procedurally flawed and unlawful, and that it also offended the language and admission policies of the school. The Gauteng High Court ruled in favour of the applicant and the instruction issued by the District Director to the principal to enrol additional English speaking learners for the 2018 academic year was set aside.

The Court considered sections 5 and 6 of the Schools Act which empowers SGBs of public schools to determine the admission and language policies respectively. Furthermore, the officials / functionaries of the Department of Education need to exercise their powers and duties in terms of the admission regulations and other laws, subject to the legality principle, and that the exercise of these powers and duties amount to administrative action and therefore subject to review in terms of the Promotion of Administrative Justice Act, 3 of 2000 (RSA, 2000c). The Gauteng Schools Act also determines that the language policy of a public school must be determined by the SGB of a public school and that the SGB of a public school must, within ninety days of assuming office, submit a copy of the language policy to the MEC for Education for approval. If the MEC at any time does not comply with legislation or with the principles as set out in the Constitution, he / she may after consultation with the SGB, direct the SGB to amend the policy accordingly.

The Court declared the school full and held that the District Director did not have the authority to unilaterally change the school's language policy. It further held that the District Director (and perhaps also the HOD and member of the Executive Committee for Education) acted in conflict with the constitutional principles of legality. The court further concluded that the actions taken by the District Director caused a number of grounds for review in terms of Section 6 of the Promotion of Administrative Justice Act (RSA, 2000c). These include: the failure by the Gauteng Department of Education to have regard for the capacity of the school to accommodate additional learners; the District Director was not authorised to take such an action in terms of the empowering provision in the Schools Act; irrelevant considerations were taken

[13] *Governing Body Hoërskool Overvaal and Another v Head of Department of Education and Others 86367/2017 (Unreported)*

into account whilst relevant considerations were not; and the actions taken were not rationally connected to the purpose for which they were taken.

Pertinent to the principle of co-operative government, the rule of law and just administrative action are the reasons as expressed by the court why the first and second respondents (HOD and the District Director) were ordered to pay the costs of the applicants:

> The way in which the respondents chose to litigate, for example by not answering letters and *bona fide* suggestions made to them, to unreasonably apply undue pressure on fellow organs of state which relationship between the organs of state has per the constitutional imperative demands cooperation and reasonableness …

The above examples are indicative of what Smit and Ooshuizen (2011: 63) describe as “a pattern of misapplication of the rule of law and principles of democracy such as enabling participation and tolerance of diversity of languages”. The obvious question which now arises is whether the disregard of the principles of co-operative government, the rule of law (legality) and just administrative action was due to ignorance of the law or whether it was deliberate. In addition, section 125(3) of the Constitution stipulates that the national government must assist provinces to develop the administrative capacity required for the effective exercise of the powers and exercise of their functions. Either way, the manner in which these constitutional principles are continuously ignored, is not only placing them under threat, but is also eroding the legitimacy of the motives of the education authorities. Being organs of state, provincial governments have public powers and perform public functions and section 125(3) of the Constitution stipulates that the national government must assist provinces to develop the administrative capacity required for the effective exercise of the powers and functions. As such, ignorance of the law with regard to their powers and functions is no excuse. Being organs of state, they have the added responsibility to be fully informed of the legal provisions applicable in their sphere. In *S v De Blom* (1977)[14] the Appeal Court held:

> At this stage of our legal development it must be accepted that the cliché that "every person is presumed to know the law" has no ground for its existence and that the view that "ignorance of the law is no excuse" is not

[14] *S v De Blom 1977(3) SA 513 (A)*

> legally applicable in the light of the present day concept of *mens rea* in our law. But the approach that it can be expected of a person who, in a modern State, wherein many facets of the acts and omissions of the legal subject are controlled by legal provisions, involves himself in a particular sphere, that he should keep himself informed of the legal provisions which are applicable to that particular sphere, can be approved.

Thus, it can be argued that the solution to the incapacity which is experienced in the education system does not lie in the centralisation of power. Rather, it lies in the government's fulfilment of the constitutional duty to develop capacity (Rautenbach, 2012: 224).

The proposed inclusion of a section containing a dispute resolution mechanism and accompanying procedures into the Schools Act by the draft Basic Education Laws Amendment Bill is indicative that the Department of Basic Education has taken cognisance of the failure to adhere to the values associated with co-operative governance. It is thus appropriate to consider the options currently available to SGBs to resolve disputes with the education authorities.

3.7 DISPUTE RESOLUTION MECHANISMS AVAILABLE TO SCHOOL GOVERNING BODIES

Chapter 4 of the Intergovernmental Relations Framework Act (RSA, 2005b) which is applicable to national government, all provincial governments and all local governments, provides clear guidelines regarding the settlement of intergovernmental disputes. It includes detailed prescriptions regarding the duty to avoid intergovernmental disputes (section 40), declaring disputes as formal intergovernmental disputes (section 41), the consequences of declaring formal intergovernmental disputes (section 42), the role of a facilitator to resolve disputes (section 43), requests for assistance by the Minister or MEC (section 44) and judicial proceedings (section 45). Of particular significance is section 45 (1) in which it is stipulated that "no government or organ of state may institute judicial proceedings in order to settle an intergovernmental dispute unless the dispute has been declared a formal intergovernmental dispute in terms of section 41 and all efforts to settle the dispute in terms of this Chapter [4] were unsuccessful". Such provisions as contained in Chapter 4 of the Intergovernmental Relations Framework Act (RSA, 2005b) are largely absent from the Schools Act. However, this does not exonerate

the provincial Departments of Education from ensuring lawful, reasonable and procedurally fair administrative action as prescribed in section 33 of the Constitution.

Sections 22 and 25 of the Schools Act regulate situations where an HOD's supervisory authority manifests in the form of a direct intervention in a public school's dispute and this was recognised by the Constitutional Court in the Welkom case. Section 22 empowers an HOD, on reasonable grounds and in a procedurally fair manner, to withdraw any function exercised by a SGB. The main judgment of *Welkom,* provides the following guidelines on how section 22 of the Schools Act should be applied:

> In the event of an urgent need to withdraw a school governing body's function, compliance with the procedural fairness requirements may be delayed until after the withdrawal has occurred, provided that the governing body is given sufficient opportunity at a later stage to make the appropriate representations to the relevant HOD. An HOD's powers of withdrawal under section 22 are broad, and extend to 'any function' conferred on a school governing body. Once an HOD withdraws a particular function, that function vests in his or her office and he or she is "duty-bound to exercise it in furtherance of a specified goal permitted by the Schools Act". It goes without saying that these broad powers must be exercised in strict compliance with the requirements of the Schools Act.
>
> Section 25, on the other hand, empowers an HOD to intervene where a SGB has become dysfunctional – where the governing body has "ceased to perform functions allocated to it in terms of [the Schools Act] or has failed to perform one or more of such functions". Thus section 22 regulates the situation where a SGB has purported to exercise its functions, but has done so in a manner warranting intervention, whereas section 25 obtains where a SGB has failed to perform its functions, in whole or in part.

Sections 22 and 25 of the Schools Act, however, only regulate matters which are initiated by the provincial HOD, whilst appellate powers are provided to the MEC. There are no provisions made for SGBs to initiate or declare a dispute with the provincial government or other organs of state, other than to follow the principles of just administrative action by seeking audiences with and/or making written submissions to the relevant functionaries / officials of the provincial education departments. If such actions are unsuccessful, they have no option but to resort to litigation.

Although it may be argued that SGBs may affiliate with registered SGB associations, these organisations only represent their affiliated schools and act in the best interests of their constituents. In addition, they are also often forced to approach the courts as there are no other alternatives to resolve disputes. This indicates an unbalanced and unequal partnership between education authorities and SGBs. There have been more informal attempts to facilitate the establishment of Provincial Consultative Forums (PCFs) in order to facilitate formal negotiations, discussion and interaction between provincial authorities and *bona fide* organisations representing SGBs of public schools at a provincial level. Such forums would aim to promote communication and consultation with governing body organisations regarding provincial educational issues affecting the interests of public schools, in general, and the governance of public schools, in particular, in pursuance of the notion of partnership in education between the state and stakeholders in public schools. These Provincial Consultative Forums are essentially a duplication of the National Consultative Forum (NCF) and do not have any statutory powers and as such, agreements reached in the forum do not have the force of law (Deacon, 2016).

Therefore, the lack of statutory guidelines for SGBs to resolve disputes with the provincial government or other organs of state needs to be addressed. The recognition given by the Constitutional Court to the importance of the principle of co-operative governance, the rule of law and just administrative action, combined with the insistence that more effort be made in the resolution of disputes, points to a need for mechanisms that will enable SGBs to resolve disputes with the provincial sphere and other organs of state.

3.8 THE DRAFT BASIC EDUCATION LAWS AMENDMENT BILL

Because draft Basic Education Laws Amendment Bill proposes that the powers of SGBs to determine the admission and language policies of schools and the powers of SGBs with regard to recommending candidates for appointment to management positions in schools are adjusted in favour of the provincial HOD, the Bill may be construed by many as an attempt by the government to limit the powers of SGBs. Conversely, it is argued by the memorandum of motivation accompanying the Bill, that in terms of the appointment of teachers in management positions and by referring to the Point High School case, the current system restricts the provincial

HOD in terms of whom he or she may appoint. This amendment, it is argued, is also necessitated by transformation needs. Dysfunctional SGBs in rural areas are given as another reason and the memorandum explains as follows (RSA, 2017a: 6):

> The current system of appointment of educators, as set out in section 6 of the EEA (Employment of Educators Act – own insertion), relies to a large extent on the existence of a functional governing body at a public school, with governing body members who have the necessary skills or who have access to persons with the necessary skills that can conduct the interviewing process.
>
> Many public schools, especially in deep rural areas, do not have functional governing bodies and persons with the necessary skills to conduct interview processes. The interview process requires persons with knowledge of curriculum statements and management processes, and content knowledge of subjects. In many instances, the interview committees do not have the necessary knowledge to know what is required of a principal, a deputy principal or a head of department.

The above reasoning potentially affects the co-operative relationship between SGBs and the education authorities in two ways. Firstly, this line of reasoning disregards the many SGBs that are indeed functional. Secondly, it ignores the obligation placed on provincial authorities to enhance the capacity of SGBs as prescribed by section 19 of the Schools Act. Section 19 prescribes that the provincial HOD must provide introductory and continuing training to SGBs to "promote the effective performance of their functions or to enable them to assume additional functions. The provincial legislature must appropriate funds for this purpose. Therefore, by acknowledging that many SGBs are dysfunctional, the Department of Basic Education is defaulting and ironically admitting to its own dysfunctionality in this regard. As argued earlier, the answer to a capacity deficit is not to centralise power, but rather that the national government must execute its constitutional obligation to develop capacity (Rautenbach, 2012:224). In addition, if a SGB has ceased or failed to perform a function allocated to it, section 25 of the Schools Act provides for the provincial HOD to appoint one or more persons to perform such a function for a period of three months.

Significantly, the Bill proposes the insertion of a new provision in the Schools Act to provide for dispute resolution mechanisms in the event of any dispute between the HOD and a SGB. It provides for the disputing parties to meaningfully engage with

each other to resolve the dispute. If the dispute cannot be resolved through the initial engagement, a nominated representative from each party must meet with a view to resolving the dispute. If an agreement cannot be reached, the dispute may be referred for mediation to a person agreed upon by the parties. The inclusion of factors to be considered and procedures to be followed by the provincial HOD should, however, also be viewed as an acknowledgement of past failures to apply the principles of reasonableness and fairness and to prevent actions that may be deemed to be *ultra vires* as discussed earlier. Some of the proposed amendments, however, may result in a reduction of the powers of SGBs and potentially be the cause of many disputes. For example, the Bill proposes that appointments to management positions in schools be determined from candidates identified by the HOD, "in the manner prescribed by regulation by the Minister". As yet, such regulations have not yet been promulgated, leaving SGBs and teacher unions uncertain as to what their level of participation in the appointment processes will be. In addition, as emphasised in Punt *High School,* Section 20 of the Schools Act obliges SGBs to promote the best interests of the school, and by implication, the best interests of learners. Should SGBs feel uncomfortable with candidates appointed to management positions in their school, this may provide sufficient grounds for declaring a dispute and/or resorting to legal action.

In terms of the admission and language policies of schools, the Bill proposes that the final approval of these policies would in future be vested in the provincial HOD. Noteworthy is the inclusion of factors that need to be considered when these policies are approved. This is an indication that the education authorities have taken note of the need to ensure procedural fairness and just administrative action.

3.9 CONCLUSION

Decentralisation is seen as a means to empower schools by granting them more autonomy and decision-making powers but these decentralised decision-making powers have resulted in disputes contestations between SGBs and departments of education. These situations of potential conflict are supposed to be governed by the constitutional principle of co-operative government as a key element for success. However, the application thereof is flawed in that the principle of co-operative

government implies that the parties involved must be accountable to each other. It is not only SGBs that need to be accountable to the state, but being representative of a local school community, they are also obliged to hold the state accountable. This 'two-way' accountability is a crucial element of education decentralisation without which the partnership model as envisaged in the Schools Act is undermined. .

In order to uphold the rights of all learners, parents and educators and to promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the state, the constitutional principle of co-operative government must be fully extended to schools as well. This is acknowledged by the Constitutional Court and the draft Basic Education Laws Amendment Bill. However, repeated violations of the principles of legality and just administrative action by different departments of education, as entrenched in the Constitution, not only threatens the mutual good will that is associated with co-operative government, but also threatens the legitimacy of the education system.

In line with the provision of section 41 (3) of the Constitution, by which every reasonable attempt must be made to resolve intergovernmental disputes, a statutory mechanism to enable SGBs to resolve disputes with provincial spheres of government and other organs of state needs to be established. The inclusion of such a dispute resolution mechanism in the draft Basic Education Laws Amendment Bill indicates that there is recognition of this need. However, government officials / functionaries and SGBs need to be able to trust each other and understand that they are duty-bound to seek solutions to their disputes in an honest spirit of mutual goodwill that will promote the best interests of every child. For this to happen, values and attitudes need to be geared towards the realisation of this goal. Furthermore, education functionaries / officials and SGBs need to have the necessary knowledge essential for to the promotion of the principle of co-operative government.

An uncompromising and biased approach to such disputes will not be conducive to cooperation, but will inevitably lead to further disputes being referred to the courts. As expressed in the judgment of *Overvaal:*

> “It is regrettably difficult to see how one can expect any measure of objectivity or fair play towards the embattled minority group and their language by a senior official intimately involved in these proceedings that is prepared to disclose her obvious bias in the answering affidavit.”

Hence, whether such a statutory dispute resolution mechanism will succeed at keeping disputes between SGBs and the education authorities out of the courts, still remains to be seen. For it to succeed, the disputing parties need to understand their constitutional obligation and be committed to engage with each other in good faith. This includes the duty to act in a procedurally fair and lawful manner. Without such a commitment, any partnership between the state and local school communities will be threatened and bound to fail.

CHAPTER 4

ARTICLE 3:

PROFESSIONAL DISCRETION OF SOUTH AFRICAN PUBLIC SCHOOL PRINCIPALS: WHERE DOES IT BEGIN AND END?

4.1 INTRODUCTION

The transformation of the political environment in South Africa since 1990 not only brought about change in the constitutional environment of the country through the Constitution of the Republic of South Africa of 1996, but also resulted in new legislation and policy which altered the education environment and the way in which schools are governed. A significant part of this new education environment is the decentralisation and democratisation of school governance and school self-management. In addition, principals have to perform their task in a legislative and regulatory environment full of risk, not only influenced by the centralisation and decentralisation debate, but also by neo-liberal and neo-conservative agendas, while coping with the burden of managerialism.

4.2 PROBLEM STATEMENT

The minimum requirement to be appointed as a principal is a recognised three or four year teaching qualification, registration with the South African Council for Educators and seven years of actual teaching experience (RSA, 2016a: B-46). Experience in a school management position (head of department or deputy-principal) is not required. Many principals therefore only have their educator training and some experiential knowledge to rely on. This does not prepare them adequately for the demands of being a principal and the variety of roles they have to perform. When appointed principal, they are catapulted into a world in which their pedagogical and subject knowledge is not sufficient.

The recently published Policy on the South African Standard for Principals (RSA, 2016b: 3) recognises that, due to the diversity of school contexts with the complex issues that this implies, principals require particular knowledge, action and context-

specific practical applications in the key areas of managing a school. These can only be determined by an individual principal working within a specific school and its wider community.

4.3 CONCEPTIAL ORIENTATION

In this article professional discretion of school principals is positioned against the accountability framework in which principals operate. Professional discretion denotes some degree of freedom to act on one's own by exercising choices and judgment. Wallender and Molander (2014: 1), by referring to Ronald Dworkin, explain that discretion is like the "hole in the doughnut". The hole represents the space for discretion or "space for autonomy", while the circle of the doughnut comprises the "belt of restriction". Creating space for professional discretion suggests being allowed freedom to act or judge on one's own, which would indicate a less restrictive context than one would expect in a hierarchical bureaucracy. This would allow for more creativity and autonomy by principals as compared to the strict impersonal compliance to elaborate rules and regulations which characterises bureaucratic hierarchies. In this regard Marishane (2016: 167) argues that principals need to apply "contextual intelligent school leadership" in order to ensure relevant and sustainable improvement in schools.

The "ring of the doughnut" (belt of constriction) implies that when exercising professional discretion, good judgement is required which is to be exercised within a framework of accountability. The action of exercising discretion can therefore be described as being careful, prudent, cautious, responsible and mature. Maile (2002: 329) uses the expression "answerability", which implies being judged by someone.

According to De Waal (2011: 177), the Constitution of South Africa of 1996 juxtaposes accountability with responsiveness and openness as three values that need to be guaranteed in an open and democratic society. Accountability is defined by Møller (2009: 39) as "having to answer for one's actions and particularly the results of those actions" and is a key element of professionalism. Møller (2009: 39) stresses the connection to trust, which, as defined by Heystek (2006: 474), is "a belief in the honesty and reliability of others". This means that the principal must

conduct the professional management of the school in an honest and reliable manner which can be described as “authentic leadership” (Robbins, Judge, Odendaal & Roodt, 2009: 328).

4.4 RESEARCH APPROACH

Discourse analysis was applied and for the purpose of this article, ‘discourse’ is used as expressed by Cohen, Manion and Morrison (2011: 574):”We use it here to indicate the meanings that are given to texts which create and shape knowledge and behaviour, not least by the exercise of power through texts and conversations”.

The underlying philosophy of discourse analysis is that “knowledge and meaning is produced through interaction with multiple discourses” (Starks & Trinidad, 2007: 1372). Discourse analysis therefore explores how meaning, identities, activities and relationships are negotiated and constructed (Starks & Trinidad, 2007: 1374).

Coding was not used. Instead of fragmenting text through coding, the text is kept together and I examined “how meaning is constructed through texts (policy, legislation and case law) at beyond the single sentence level” (Cohen, Manion & Morrison, 2011: 574). Here the focus was on “differentials of power and their reproduction” (Cohen, Manion & Morrison, 2011: 575). Therefore, this study cannot be characterised as a pure literature review or as traditional legal research (Russo, 2006: 6) or as a policy study (First, 2006: 131). So, what discourses were used? Literature, legislation, policies and case law were utilised as sources of discourses in order to shed light on a school principal’s professional discretion.

4.5 THE 1996 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AND THE BILL OF RIGHTS

The Constitution of the Republic of South Africa is the starting point from which principals must exercise their professional discretion. They are key in promoting the core values of human dignity, the achievement of equality and the advancement of human rights and dignity, non-racialism and non-sexism and the supremacy of the Constitution and the rule of law.

Section 7 of the Constitution stipulates that the Bill of Rights (Chapter 2) forms the cornerstone of democracy in South Africa and enshrines the rights of all people in the country. Thereby the democratic values of human dignity, equality and freedom are affirmed. The state – and schools - must respect, protect, promote and fulfil the rights as contained in the Bill of Rights and here principals take centre stage.

The rights in the Bill of Rights may be limited, but only in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on dignity, equality and freedom. Section 36 determines that the factors that should be considered when limiting a right are the nature of the right, the importance of the purpose of the limitation, the nature and the extent of the limitation, the relation between the limitation and its purpose and less restrictive means to achieve the purpose. Thus, where a limitation of a right can be justified according to the criteria as contained in section 33, it will be constitutionally valid.

Smit (2008: 216) explains that rights must be limited by means of a balancing process which entails two distinct formats. The balancing of rights may firstly refer to a situation where a head-to-head comparison of rights, values or interests occurs. In this case the value or weight of one right in relation to another is compared. Smit (2008: 216) uses the example of *S v Makwanyane*[15], where the Constitutional Court determined that a person's right to life will always outweigh the state's interests.

Secondly, the balancing process might refer to "the striking of a balance" (Woolman in Smit, 2008: 216). Smit (2008: 216) gives the following example as an illustration:

> ... when a learner has committed a misconduct such as disrupting a class by boisterous behaviour, then the learner can be disciplined without having to be suspended from school. The learner's right to basic education will so doing be brought into balance (equilibrium) with the school's right to maintain discipline. Neither the school's nor the learner's rights are limited in their entirety, but the extent of the right of the learner is adjusted.

[15] *State v Makwanyane 1995 (6) BCLR 665 (CC)*

The principal often finds himself or herself in a position where his or her actions or decisions may limit the provisions of sections of the Constitution and his or her discretion is then limited by Section 36.

4.6 *IN LOCO PARENTIS*

The principle of *in loco parentis* is grounded in South African common law and to a large extent confirmed by statutory law (Oosthuizen & Van der Walt, 1998: 89). *In loco parentis* literally means 'in the place of the parent' (Oosthuizen, 1992: 126). Oosthuizen (1992: 127) explains that the person acting *in loco parentis* (the teacher or principal) acts in the place of his/her associate (the parent) to educate and teach the child professionally in the absence of the parent. The right of the teacher and principal to exercise authority over the learner is a delegated power by the parent as an associate, as well as an original power as the teacher and principal act from within the societal relationship of the school with its own power structure.

Three pillars can be identified with the role that teachers and principals play when they find themselves *in loco parentis*. The first is the duty of care, which implies protecting the physical and mental well-being of learners. Teachers are at all times and in all situations expected to act as *diligens paterfamilae* and "reasonable persons" (Prinsloo, 2005: 9). Thus, when performing this duty of care, it must be done in the same way a diligent father of a family would care for his family. The second pillar is the duty to maintain order in a school which implies the duty teachers and a principal has to discipline learners (Prinsloo, 2005: 9; Oosthuizen & Van der Walt, 1998: 95). The third pillar is the obligation to educate (Oosthuizen & Van der Walt, 1998: 95).

When exercising his or her discretion, the principal must act as *a bonus paterfamilias* (a prudent teacher/educator compared with a good father of the family). When determining whether a person is liable for negligence, courts of law apply this test by asking the following questions (Joubert & Prinsloo, 2008: 148):

- Would a *diligens paterfamilias* in a similar position foresee the reasonable possibility of his or conduct (or lack thereof) injuring another or causing damage to property?
- Would a *diligens paterfamilias* in a similar position take reasonable steps to guard against the harm?
- Were preventative steps actually carried out?

Deeming a child's interests as of paramount importance is a common law principle which is included as a basic constitutional right in section 28 (2) of the Constitution. This principle is re-enforced in section 9 of the Children's Act, 38 of 2005, which stipulates that: "In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied".

Although the *in loco parentis* principle does not equate duties of an educator (and principal) to that of a parent, but only compare it to that of a reasonable parent **(**Oosthuizen & Van der Walt, 1998: 98), it is a key element to consider when exercising professional discretion. Over and above the duty to take care of the physical and mental well-being of the learner, school principals have the obligation to manage the teaching and learning processes in the school and has the right to maintain 'school'-authority over the learner and to discipline him/her at school in the context of the teaching and learning process **(**Oosthuizen & Van der Walt, 1998: 94).

4.7 THE JOB DESCRIPTION OF PUBLIC SCHOOL PRINCIPALS

The Personnel Administrative Measures (RSA, 2016a, A-32), as determined in terms of section 4 of the Employment of Educators Act, 76 of 1998, acknowledges that the core duties and responsibilities of principals are individual and varied, depending on the approaches and needs of the particular school. This allows for the varied contexts in which schools find themselves and therefore has a built-in mechanism for principals to exercise their professional discretion to matters relating to the professional management of public schools.

The core duties of the principal include tasks of a general and administrative nature, duties regarding personnel management, teaching, extra and co-curricular tasks, interaction with stakeholders and communication with a wide range of role players.

The functions of school principals are further specified in the Education Laws Amendment Act, 31 of 2007, which was inserted into the Schools Act as section 16A. The Personnel Administrative Measures (RSA, 2016a: A-32) provides a general job description for educators on different post levels, but the amendment to the Schools Act now places a greater emphasis on the role of principals in public schools and makes it clear that principals are representatives of the Head of Department.

These roles of the principal are, however, limited in the sense that he/she may not render assistance or perform this function in a manner which is in conflict with the instructions of the Head of Department, legislation or policy. The potential for division between the principal and the school governing body on the one hand, and between the principal and the education authorities on the other, is thus very real. An example would be when instructions are issued to a principal by the provincial Head of Department which contradicts a policy of the school governing body. This indeed happened when the Constitutional Court was asked to rule in the combined case *Head of Department, Department of Education, Free State Province v Welkom High School and others and Head of Department, Department of Education, Free State Province v Harmony High School and others*[16], which is discussed later in this article.

The Basic Education Laws Amendment Act, 15 of 2011, added to the number of duties and responsibilities of the principal. The principal is now required to assist the school governing body with the management of the school fund which includes the following compulsory functions:

- the provision of information relating to any conditions imposed or directions issued by the Minister, the Provincial Member of the Executive

[16] *Head of Department, Department of Education, Free State Province v Welkom High School and others and Head of Department, Department of Education, Free State Province v Harmony High School and others [2013] ZACC 25 (CC)*

Council (MEC) or the provincial Head of Department in respect of the financial matters of the school;

- the giving of advice to the school governing body on the financial implications of decisions relating to the financial matters of the school;
- taking all reasonable steps to prevent any financial maladministration or mismanagement;
- managing any matter that has financial implications for the school, as a member of a finance committee;
- reporting any maladministration or mismanagement of financial matters to the school governing body and the provincial Head of Department.

This places a huge additional responsibility on principals who do not necessarily have financial expertise.

In addition, subsection 16 (3) of the Schools Act, the principal is responsible for the professional management of the school. This includes the implementation of all the educational programmes and curriculum activities, the management of all educators and support staff, the management of the use of learning support material and other equipment, the performance of functions delegated to him or her by the Head of Department in terms of the Act, the safekeeping of all school records and the implementation of policy and legislation.

Subsection 16 (2) (d) requires the principal to assist the governing body in handling disciplinary matters. Subsection 19 (2) adds another dimension to this relationship between the school governing body and the school management team (Mncube, 2009: 36; Van Wyk, 2004: 53), as it involves the provincial education department:

> The [provincial] Head of Department must ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

This makes the principal also accountable when the capacity of governing bodies is enhanced.

4.8 PROFESSIONAL CODE OF ETHICS

The code of professional ethics as contained in the South African Council for Educators Act, 31 of 2000, prescribes standards of conduct for all members of the teaching profession in their relationship with learners, parents, the community, colleagues, the profession, the employer and the South African Council for Educators. In general this code expects teachers to:

- acknowledge the noble calling of their profession to educate and train the learners of the country;
- acknowledge that the attitude, dedication, self-discipline, ideals, training and conduct of those in the teaching profession determine the quality of education in the country;
- acknowledge, uphold and promote basic human rights as embodied in the Constitution of South Africa;
- commit themselves to do all within their power to act in accordance with the ideals of their profession as expressed in this code; and
- to act in a proper and becoming way such that their behaviour does not bring the teaching profession into disrepute.

Therefore, as the professional manager and leader of the school, the principal has the added obligation to create a climate in which the worth and dignity of every individual is respected and protected. This implies that the principal must, in exercising professional discretion, be a model with regards to his or her attitude and behaviour (Joubert & Prinsloo, 2008: 181).

4.9 WHAT CAN WE LEARN FROM CASE LAW?

In *Francois Xander Van Biljon v Neil R. Crawford and Others*[17] the court ruled that certain offences, which do not require the suspension or expulsion of learners, may be dealt with in an informal manner that recognises the discretionary powers of the principal. In this case the principal removed two learners from the prefect body after

[17] *Francois Xander van Biljon v Neil R. Crawford and Others 2007 SA 475 (SE)*

they had been found guilty of cheating during examinations. The court referred to the regulations promulgated by the Eastern Cape Education Department by Provincial Notice 10 of 2003 in Provincial Gazette No. 978 of 21 February 2003. Regulation 3(1) reads as follows:

> If a learner is accused of serious misconduct the principal may appoint [emphasis added] a person as investigator. The investigator must collect evidence to enable the principal to determine whether there are grounds for a disciplinary hearing. The investigator must submit a written report to the principal. The principal must decide [emphasis added] whether the transgression warrants a disciplinary hearing.

The court ruled that the principal had discretionary power to appoint an investigator which would then set in motion a process that might eventually lead to the appointment of, and a hearing by, a disciplinary committee. The court explained that it could never have been the intention of the legislator that the full disciplinary process be set in motion in all cases, whether or not suspension or expulsion was envisaged.

This discretionary power is also afforded principals in schools of other provinces. Section 3 (1) of the regulations promulgated by the Gauteng Education Department, by Provincial Notice 6903 of 2000 in Provincial Gazette No. 144 of 4 October 2000, states that only the principal may [emphasis added] institute disciplinary action against a learner in respect of serious misconduct.

In *Van Biljon v Crawford*, the court maintained that, if a principal is expected to set the full disciplinary proceedings in motion with each and every infraction, it would render the management of a school impossible.

Although the central issue of the combined case of *Welkom High School and another v Head of Department: Free State Province and another* and *Harmony High School and another v Head of Department: Free State Province and another*[18] was the unlawful action by the Head of the Education Department who instructed the principals to act in contravention of the policies of their respective school governing bodies, the court alluded to the discretionary powers of principals and school

[18] *Welkom High School and another v Head of Department: Free State Province and Another, unreported case, 5714/2010 (FB)*

governing bodies. He acknowledged that principals and governors of schools might go astray and stated that “governors and principals [had] no absolute and limitless powers to run (govern and manage) the schools as they please[d]”.

This ruling was confirmed in *Head of Department, Department of Education, Free State Province v Welkom High School and others* and *Head of Department, Department of Education, Free State Province v Harmony High School and others,* Dismissing the head of Department’s appeal, the Constitutional Court held that, as a matter of legality, supervisory authority must be exercised lawfully in accordance with the Schools Act and concluded that, because the Head of Department had purported to override school policies without following the relevant procedures set out in the Schools Act, he acted unlawfully. However, it was acknowledged that the pregnancy policies of the two schools at face-value infringed upon the constitutional rights of pregnant learners, including the rights to human dignity, to freedom from unfair discrimination and to receive a basic education. The two schools were ordered to review the policies in the light of the requirements of the Constitution, the Schools Act and the considerations set out in the judgment. The schools were further ordered to meaningfully engage with the Head of Department in the process of reviewing their policies, according to the principles of cooperative governance enshrined in the Schools Act. An approach which places the learners’ best interests as the starting point must contextualise disputes within the parties’ duties to engage and cooperate. However, any action to secure learners’ rights, no matter how well intentioned, must be lawfully taken.

The Welkom cases underlined the pivotal role of principals in ensuring that policies adopted by the school governing body are not in conflict the legislation and policy. This point was also illustrated in the decision in *MEC for Education, Kwazulu-Natal v Pillay*[19] where the Constitutional Court found in favour of a member of a cultural/religious group to engage in a practice that expressed her religious beliefs and culture (Lenta, 2009, 872). The central reason for the court’s decision was that the school’s interest in enforcing the school uniform regulations was weak. Although

[19] *MEC for Education, Kwazulu-Natal & Others v Pillay 2008 (1) SA 474 (CC)*

section 36 (1) of the Constitution does allow for the limitation of fundamental rights, they may be limited "only in terms of law of general application to the extent that the limitation is reasonable and justified in an open and democratic society based on human dignity, equality and freedom".

In the *Pillay* case, the Constitutional Court, by applying the process of balancing rights, found in favour of Mrs Pillay, who believed her daughter was discriminated against by her schools when she was not allowed to wear a golden nose stud. The nose stud was worn as a religious and cultural practice. Chief Justice Langa explained as follows in his judgment:

> It is worthwhile to explain ..., for the benefit of all schools, what the effect of this judgment is, and what it is not. It does not abolish school uniforms; it only requires that, as a general rule, schools make exemptions for sincerely held religious and cultural beliefs and practices. There should be no blanket distinction between religion and culture. There may be specific schools for specific practices where there is a real possibility of disruption if an exemption is granted. Or, a practice may be so insignificant to the person concerned that it does not require a departure from the ordinary uniform. The position may also be different in private schools, although even in those institutions, discrimination is impermissible. Those cases all raise different concerns and may justify refusing exemption. However, a mere desire to preserve uniformity, absent real evidence that permitting the practice will threaten academic standards or discipline, will not.

According to this ruling, it is difficult to see how granting an exemption to permit the wearing of a nose stud by a learner would interfere with the effective running of a school and the purposes the school uniform was designed to promote (Lenta, 2009: 828; Alston, van Staden & Pretorius, 2003: 166). It is therefore clear that a school's code of conduct must provide for reasonable accommodation of cultural differences.

In *Danielle Antonie v Governing Body, Settlers High School and Others*[20] a fifteen-year-old female learner, who embraced the Rastafarian religion, wore dreadlocks and a cap to school which was in conflict with the school's code of conduct. The principal's permission to wear this style was sought on several occasions, but the requests were denied. Believing that her right to freedom of religion and expression was being denied, she continued to attend school wearing dreadlocks and a black

[20] *Danielle Antonie v Governing Body, The Settlers High School and Head of Western Cape Education Department 2002 (4) SA 738.*

cap which matched the school colours. She was suspended for five school days for serious misconduct (repeatedly transgressing the code of conduct and ignoring the instructions of the principal).

The court ruled that the school had not acted in a spirit of mutual respect, reconciliation and tolerance and set aside the arguments of the school. Principals should therefore be careful not to suspend learners for offences which do not amount to serious misconduct.

In the matter between *Michiel Josias De Kock v the Head of the Department and Others, Province of the Western Cape*[21] the applicant's son, a seventeen-year-old learner, was accused of being in possession of marijuana and a recommendation for expulsion was submitted to the provincial Head of Department by the Governing Body of his school. Prior to the disciplinary hearing, the principal and deputy-principal found the learner in possession of a small plastic bank pouch containing a substance resembling tobacco and the assumption was made that it was marijuana. During the disciplinary hearing the learner was represented by his father and an attorney. The members of the disciplinary committee, which included the principal and deputy-principal, were unanimous in their decision to recommend permanent expulsion from the school. The court held that a gross irregularity had taken place in that the principal and deputy-principal had simultaneously acted as witness, prosecutor and judge. The decision to expel the learner was set aside.

It is apparent from this case that principals need to ensure that learners are treated impartially and that disciplinary decisions are made in good faith and without bias or prejudice. This means that disciplinary committees must listen to both sides of the story, keep open minds, only consider information which is relevant to the case, reach a reasonable decision which is based on facts, and not rely on hearsay (Joubert & Prinsloo, 2008, 133).

[21] *Michiel Josias de Kock v Head of Department of Education and Others. Province of the Western Cape 1998 (3) SA 12533 (C)*

In *Megan Tania Jacobs v The Chairman of the Governing Body of Rhodes High School and Others*[22], the principle by which a principal is held answerable for his judgement (discretion), is brutally illustrated. The case centred on the vicious assault of a teacher by a learner after he had been reported to the principal for writing threats against the teacher in his journal. The learner was made to sit on a chair outside the principal's office while the principal instructed his secretary to contact the police and the mother of the learner. Contrary to the instruction to remain seated, the learner returned to the teacher's classroom and assaulted the teacher with a hammer. The court ruled that the principal, by placing the learner on a chair outside his office unsupervised, should have foreseen that the learner could slip away to carry out his threats. In the view of the judge, the principal should have rather placed the learner in his office in order to keep him in his presence or instructed a member of staff to supervise the learner. Failure to do so constituted negligence on the part of the principal. The court ordered that the plaintiff be paid an amount of R1 114 685.53, interest on the awarded amount at the prescribed rate from the date of summons to the date of payment (approximately six years), as well as the plaintiff's costs of suit.

The court ook into consideration that, at the time of the incident, the principal was an experienced educator with 21 years of experience, during which time he had held various positions as Head of Department and Deputy Principal. As Senior Deputy Principal at the school where he had previously been employed, he had been responsible for discipline and therefore should have exercised better judgement.

The obligation of principals to ensure a safe school environment is also illustrated in *Member of the Executive Council for Education (MEC), Eastern Cape Province and Others v Queenstown Girls High School*[23]. This case confirms the lawfulness of a public school's admission policy insofar as it relates to disclosure of past conduct of a prospective learner at a previous school for purposes of determining potential physical and mental danger to others. The court reiterated that in order to make a proper determination or assessment of whether a prospective learner's past

[22] *Megan Tania Jacobs v The Chairman of the Governing Body of Rhodes High School and Others, unreported case, 7953:2004 (WCC)*

[23] *Member of the Executive Council, Eastern Cape Province and Others v Queenstown Girls High School 1041/07: 2007 ZAECHC 100*

behaviour may endanger others at a school, the process leading up to that assessment should be procedurally fair and the outcome of the process must be lawful and reasonable. This relates to the right to just administrative action. A practice by the principals to keep the content of the report on past behaviour secret would, however, be deemed to be procedurally unfair. Significantly, the professional discretion of principals is recognised in the judgment when it is stated that it is not the responsibility of other officials in the education department to second-guess the principal's decision. The court explained as follows:

> If, in the administration of the school's admission policy, the head of 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. The right to object to the refusal of admission is that of the parent, no-one else. In terms of section 5(9) [of the South African Schools Act] the parent may lodge an appeal to the Member of the Executive Council for Education, who must then make a decision on the merits of the appeal.

The National Policy pertaining to the programme and promotional requirements of the National Curriculum Statement (DBE, 2016b:38) provides principals and their management teams some discretion with regard to the promotion or retention of learners who have already repeated a year in a phase. In *Principal of Mbilwi High School v RM*[24], the Supreme Court of Appeal recognised this discretionary power. The court held that the school management has a discretion whether or not to retain or progress a learner following a second failure after consideration of available evidence whether it would be in the best interest of the learner to be progressed (section 9 of the Children's Act).

4.10 CONCLUSION

There is no gainsaying that the principal has discretionary power that is protected by legislation, policy and case law. However, these powers are limited and contribute to

[24] *Principal of Mbilwi High School v RM (633/2016) [2017] ZASCA 72 (1 June 2017)*

the exceptional degree of difficulty in the decision-making of a principal. Without such discretionary powers it would be almost impossible to be a principal.

Despite this, it is also clear that the principal is not only accountable to the Department of Basic Education and the school governing body, but that his/her accountability stretches much wider than that. It extends to the wellbeing of the learners and all staff working at the school as well as to the school community. In exercising discretion during his/her daily task of running the school, the principal needs to weigh every decision very carefully in order to conform to this demanding mandate placed upon him/her as every judgement call made by the principal will inevitably be questioned.

For this reason the training of principals has become crucial. In addition, they also need to continuously update themselves with regard the latest amendments to law and policies. They also need societal knowledge, managerial knowledge and knowledge in managing finances. Only with this knowledge will principals be “contextually intelligent” (Marishane, 2016) and will they be able to adhere to the demanding expectations set out in the Policy on the South African Standard for Principals (RSA, 2016b).

CHAPTER 5

ARTICLE 4:

POSSIBILITIES FOR DISTRIBUTED LEADERSHIP IN SOUTH AFRICAN SCHOOLS: POLICY AMBIGUITIES AND BLINDSPOTS

5.1 INTRODUCTION

The post-Apartheid South African dispensation was confronted with a highly differentiated, fragmented and disparate education system comprising of nineteen subsystems which catered for the various race and ethnic groups (Fataar, 1997:341). In addition, a characteristic of South Africa's education system during the apartheid era was that it was hierarchical and authoritarian in nature, which limited wider participation (Williams, 2011: 190) by teachers, parents and learners. In contrast, the immediate post-Apartheid era not only saw the amalgamation of all nineteen sub-systems in to one national education system, but also a shift from a centralised system of education management and governance to a more decentralised system (Williams, 2011: 190) in which schools were required to become democratic organisations which are open and transparent, necessitating a fresh conceptualisation of leadership (De Villiers & Pretorius, 2011: 575). This decentralisation approach can be associated with giving a voice to those at grassroots level and the distribution of leadership since in both the management and governance of public schools the aim now was to include more people in the action of leadership. However, the success and time it would take to implement such profound and far-reaching reforms would very much be dependent on whether the capabilities of those who are tasked with the implementation of these reforms were congruent with what is expected from them, and whether they receive the necessary support.

Related to the need for a new conceptualisation and expectations of leadership, is the recognition that effective school leaders have an indirect but powerful influence on the effectiveness of a school and on learner achievement (Harris, 2004: 11). Furthermore, it is suggested in the literature that leadership in schools is present at

various levels throughout a school and does not only reside in one formal leader. Such a leadership paradigm is called distributed leadership (Jackson & Marriott, 2012: 236; Muijs, 2011: 51). In addition, Williams (2011: 192) and Muijs (2011: 51) have pointed out that there is growing recognition of the positive correlation between school improvement and distributed leadership. Despite not receiving as much attention in South Africa as it has in other parts of the world, some notable research has been conducted on distributed leadership in South African schools. Against the backdrop of the South African context, Grant and Singh (2009: 299) argue that when looking at distributed leadership

> … we need to heed the warning that developing a culture of distributed leadership and teacher leadership in schools must be seen as an evolutionary process. In our fledgling democracy our first step must be to try to move schools away from autocratic forms of leadership and an understanding of leadership-as-control towards more distributed forms of leadership.

Similarly, Williams (2011: 198) warns that the imposition of distributed leadership in schools without paying due regard to the prevailing conditions in which these schools operate, would be imprudent. He however, recognises that in some schools varying degrees of distributed leadership might be desirable. In a study to determine teachers' perceptions of and readiness for teacher leadership, De Villiers and Pretorius (2011: 586) found that South African teachers support the notion of and is ready for teacher leadership, but in reality the actual practice of leadership beyond the classroom is limited. Using a mixed method approach, Naicker and Mestry (2011: 105) found that the qualitative investigation showed that leadership practices in Soweto schools is "rooted in traditional leadership practices and that a shift is needed from autocratic styles of leadership, hierarchical structures and non-participative decision-making if distributive leadership is to thrive". However, the quantitative data indicated some movement towards distributive leadership.

5.2 PROBLEM STATEMENT

In February and March 2016 two events significantly changed the policy landscape that framed the leadership and management practices of public schools in post-Apartheid South Africa. The first was the amendments to the Personnel

Administrative Measures (PAM) (RSA, 2016a) which explicitly made provision for leadership functions to be performed by teachers, senior teachers and master teachers. The second was the publication of the Policy on the South African Standard for Principals (RSA, 2016b: 8) which states the following: "Although the Standard focuses primarily on the role of the principal as the leading professional in the school, there is a strong emphasis on shared leadership". These two developments are aligned with international trends of school-based management (Bandur, 2012; Caldwell, 2008; Christie, 2010), shared or distributed leadership (Harris, 2004: 2008) and "a belief that school leaders can be emancipated and empowered to become self-directed professionals, as opposed to mere obedient functionaries of the state" (Williams, 2011: 198). .

Since school principals are accountable for the quality of education in their schools, it can be assumed that in a shared or distributive leadership model, leaders at levels lower than the principal should be equally accountable for the quality of education in the school. However, the conundrum facing school principals who wish to implement distributed leadership is that Sections 16, 16A and 58B of the Schools Act state that a school principal is solely accountable for the professional management and academic performance of a school and may be acted against in terms of the incapacity code and procedures for poor work performance referred to in Section16 of the Employment of Educators Act, 76 of 1998 should his/her school be deemed to be underperforming.

However, the bureaucratic nature of South Africa's education system raises the questions: Do current policies provide sufficient structure of space for principals to practice distributed leadership in a traditional hierarchical education system? Does the practice of decentralised decision-making empower school leaders? The traditional bureaucratic nature of the South African education system may create some ambiguities and uncertainty between the bureaucratic character of the South African education system and the inclination towards the promotion of shared or distributed leadership in policies such as Personnel Administrative Measures (PAM) and the Policy on the South African Standard for Principals.

In this article the emphasis on distributed leadership in the mentioned policy documents is contextualised in terms of a bureaucratic or hierarchical organisational

structure as espoused in the Personnel Administrative Measures (PAM) (RSA, 2016a, A-18, A-21, A-24) and the South African Schools Act, 84 of 1996 (hereafter referred to as the Schools Act) versus a heterarchical organisational structure within the contextual changes in South Africa distributed leadership is also to be understood against the conceptualisation of management and leadership, which in education often overlap. Management and leadership needs to be viewed as separate actions in order to understand the context in which principals who wish to implement distributed leadership practices, must operate. Distributed leadership is also potentially curtailed by the emphasis on managerialism which still prevails in a top-down organisational governance structure. This is explained in the rest of the article which is concluded with policy expectations of the role of principals in distributed leadership (RSA, 2016b: 8).

A characteristic of South Africa's education system during the apartheid era was that it was hierarchical and authoritarian in nature, which limited wider participation (Williams, 2011: 190) by teachers, parents and learners. By contrast, in the post-apartheid era (after 1994), education in South Africa has undergone a shift from a centralised system of education management and governance to a more decentralised system (De Villiers & Pretorius, 2011: 574; Williams, 2011: 190). This decentralisation approach can be associated with giving a voice to those at grassroots level and the distribution of leadership since both (education management and governance) aim at including more people in the action of leadership.

Decentralisation is also associated with school-based management which implies an increase in the responsibilities of the school principal and the management team (for school management) as well as the school governing body (for school governance) (Swanepoel, 2008: 40). In addition, schools are now also required to become democratic organisations which are open and transparent, necessitating a fresh conceptualisation of leadership (De Villiers & Pretorius, 2011: 575). This is illustrated by the recently published Policy on the South African Standard for Principals (RSA, 2016b:8) which states the following: "Although the Standard focuses primarily on the role of the principal as the leading professional in the school, there is a strong emphasis on shared leadership" which is aligned with international trends of school-

based management (Bandur, 2012; Caldwell, 2008; Christie, 2010) and shared or distributed leadership (Harris, 2004 & 2008).

The emphasis on distributed leadership in the Standard for Principals is contextualised in in terms of a bureaucratic or hierarchical organisational structure as espoused in the Personnel Administrative Measures (PAM) (RSA, 2016a: A-18, A-21, A-24) and the South African Schools Act, 84 of 1996 versus a heterarchical organisational structure within the contextual changes in South Africa distributed leadership is also to be understood against the conceptualisation of management and leadership, which in education often overlap. Management and leadership needs to be separated in order to understand the context in which principals who wish to implement distributed leadership practices, must operate. Distributed leadership is also potentially curtailed by the emphasis on managerialism which still prevails in a top-down organisational governance structure. This is explained in the rest of the article which is concluded with policy expectations of the role of principals in distributed leadership (RSA, 2016b: 8).

5.3 RESEARCH METHODOLOGY

Against the background of local and international literature, this article seeks to determine whether there are indeed possibilities for distributed leadership in South African schools and to identify possible ambiguities and blind spots in the South African policy landscape. Conducted from a complexity theory perspective and in order to explore how meaning, identities, activities and relationships are negotiated and constructed with regards to the phenomenon of shared or distributed leadership, multiple discourses, each with its own distinctive origin, appearance and configuration was analysed. These multiple discourses included relevant laws and policy documents.

Discourse analysis requires the analysis of naturally occurring communicatory events and interactions within a context (Lee & Adler, 2006: 46). Coding was not used. Instead of fragmenting text through coding, the text is kept together and the investigation focused on “how meaning is constructed through texts at beyond the single sentence level” (Cohen, Manion & Morrison, 2011: 574). Here the focus was

on “differentials of power and their reproduction” (Cohen, Manion & Morrison, 2011: 575).

Firstly, bureaucracy, hierarchy and heterarchy is conceptualised and because the Policy on the South African Standard for Principals (RSA, 2016a: 8) specifically refers to “shared leadership” which is connected to the more generally used concept of distributed leadership, the relationship between these two concepts are clarified. In the second section of the article, policy blind spots and ambiguities in the leadership / management functions principals are expected to perform are identified and set against the role of principals in a South African public school.

5.4 BUREAUCRACY, HIERARCHY AND HETERARCHY

A bureaucracy is described as a form of management that is characterised by centralised hierarchical authority with ordered relationships in which particular individuals accept responsibility for specialised tasks (Hoyle & Wallace, 2014: 247; Esau, 2006: 48). It is characterised as being rule bound and meritocratic with no room for the personal element when conducting work (Sager & Rosser, 2009: 1137). It is therefore seen to be rigid in nature, leaving little or no room for innovative ideas. This hierarchical arrangement of authority characterising bureaucracies, is typically viewed as a pyramid and allows for those at the top to control those at the level below them, eventually giving those at the top control over the whole organisation (Madan, 2014: 98). Exchanges between people are routine. The relationships in a hierarchy are authoritative in nature with low fault tolerance. Communication between organisational members is characterised by routine, with relationships based on rationality. Knowledge exchange is policy driven and the rate of change is slow and incremental (Stephenson, 2009: 6). In this type of organisational structure we find that members are ranked according to relative status and that there is a sense of honour and prestige which distinguishes those who command from those who are commanded (Madan, 2014: 98).

In contrast to the above, a heterarchy may be defined as “the relation of elements (components, parts or divisions – own insertion) to one another when they are unranked or when they possess the potential for being ranked in a number of different ways” (Crumley, 1995). Heterarchies are characterised by intermittent exchanges among organisational members and knowledge management happens

through agreements (Stephenson, 2009: 6). Heterarchies need well-planned coordination to ensure the alignment of tasks across multiple units of an organisation (Stephenson, 2009: 6). This involves relations of 'interdependence' and collaboration as compared to relations of 'dependence' as found in hierarchies, or relations of 'independence' as found in markets (Stark, 2001: 24). The political change in South Africa to an all-inclusive and open democracy and the accompanied emphasis on participation suggest a need for heterarchical organisational structures which, in turn, suggest a need for distributed leadership or shared leadership practices rather than the more traditional autocratic or bureaucratic approaches. These elements of interdependence and collaboration associated with greater leadership participation causes us to pay some attention to the possibilities for the application of shared or distributed leadership by principals.

5.5 DISTRIBUTED (SHARED) LEADERSHIP

Many authors would argue that distributed leadership can be deemed to include shared, democratic, dispersed and other related forms of leadership (Bolden, 2011: 256) and it seems that the so-called shared leadership that the Policy on the South African Standard for Principals (RSA, 2016a: 8) is referring to, is similar to the conceptualisation of distributed leadership. Harris (2008: 174) describes distributed leadership as a form of lateral leadership where organisational members share the practice of leadership, whilst Carson, Tesluk and Marrone. (2007: 1218) define shared leadership as "an emergent team property that results from the distribution of leadership influence across multiple team members". Similarly, Pearce (2004: 418) explains that:

> Shared leadership occurs when all members of a team are fully engaged in the leadership of the team and are not hesitant to influence and guide their fellow team members in an effort to maximize the potential of the team as a whole.

This relates to work on distributed leadership theory which has focused on the "leader plus" aspect of leadership (Harris, 2011: 7; Hartley, 2010: 355; Spillane, 2009: 70), which recognises that leading and managing schools can involve multiple individuals (Spillane, 2009: 70). Grant (2008: 86) believes that leaders can assist at

all levels of an organisation and supports an inclusive approach to leadership. Spillane (2009: 70) explains that the distributed frame “presses us to reach beyond the principle to pay attention to other designated leaders” and other school staff members who perform leadership functions.

Spillane (2009: 72) argues for a move beyond the current fixation with the principal. Similarly, Mulford and Silins (2003: 186) argue that faith in one person might bring initial, temporary success, but that the culture of dependency it creates will eventually lead to mediocrity. Distributed leadership theory views leadership in terms of activities and interactions that are distributed across multiple people and situations (Williams, 2011: 191; Harris, 2008: 174) and that there are multiple sources of influence within any organisation (Bush and Glover, 2012: 22; Harris, 2011: 7).

Distributed leadership theory calls for schools to ‘decentre’ the leader (Muijs & Harris, 2003: 439) and in this sense leadership is understood as ‘fluid and emergent’ (Grant & Singh, 2009: 291; Gronn, 2008: 144). The idea that leadership is not vested in one individual could however be equated with a preference for ‘looseness’ or ‘open-endedness’ (Gronn, 2008: 144) or could be used as a synonym for a ‘bossless-team; or a ‘self-managed team’ (Harris, 2008: 174). This could be the result of tensions which resulted from the need to, as expressed by Gronn (2008: 145), “achieve a workable balance between central control and local discretion”. Although this shift to distributed leadership may reflect disillusionment with individual conceptions of leadership or the ‘great man’ idea and bureaucratic organisational structures (Bush & Glover, 2012: 22; Hartley, 2009: 141), Harris (2011: 8) and Spillane (2009: 71) contend that it does not imply that principals are redundant, but rather that, without the initiative and support of the principal, it is unlikely that distributed leadership would prosper or be sustained. Furthermore, the active cultivation and development of leadership abilities within all members of a team is emphasised. Leadership capability and capacity is not fixed, but can be extended (Harris, 2008: 174). Basing his argument on empirical work, Spillane (2009: 71) states that from a distributed perspective, the prominence of principals will differ depending on the school, school subject and activity. According to Spillane (2009: 72) and Harris (2008: 174), the key element is that organisational influence and decision-making is directed by the interaction of individuals, rather than by individual

direction. The assumption is that there are multiple spheres of influence within any organisation (Bush & Glover, 2012: 22; Harris, 2011: 7).

It is particularly in the categories of teachers, senior teachers and master teachers that clear evidence exists that distributed leadership is embedded in official documentation in South Africa. It is noteworthy that the job descriptions of all three categories of teachers in the Personnel Administrative Measures (PAM) (RSA, 2016a: A-18, A-21, A-24) prescribe that, apart from their administrative and teaching duties, teachers in these two categories are expected to "take on a leadership role in respect of the subject, learning area or phase [they are involved in], if required" (Authors' own insertion). Additionally, they are required to perform more leadership associated activities such as contributing to the professional development of colleagues, and to participate in agreed-upon school/teacher appraisal processes. Importantly, it is specifically prescribed that senior teachers and master teachers act as mentors and coaches for less experienced teachers, and that they collaborate with and support teachers in their instructional procedures and personal growth. The increased responsibilities and accountability of school leadership are creating a need for a distributed or shared form of leadership and it is therefore important that leaders other than the principal be equally accountable and prepared to assume leadership and be accountable for the quality of education in the school.

However, there is ambiguity in the leadership / management function principals are expected to perform. This ambiguity has distinct implications for the successful implementation and practice of distributed (shared) leadership in South African public schools and is manifested in a number of ways. This is discussed in the sections below.

5.6 THE GAP BETWEEN POLICY AND PRACTICE

The first ambiguity in the leadership and management functions principals are expected to perform is found in the gap between policy and practice. The demand for change being imposed both from above and outside schools has expanded the role of South African public school principals. Leading and managing change in increasingly complex school contexts require principals to not only be proficient and

knowledgeable in terms of the pedagogical element of their work, but they also need societal knowledge, managerial knowledge, knowledge in managing finances, and be able to apply this knowledge in their leadership practices. Only with this knowledge will principals be 'contextually intelligent' (Marishane, 2016) and will they be able to answer the demanding expectations set out in the Policy on the South African Standard for Principals (RSA, 2016b). In South Africa, however, the minimum requirement to be appointed as a principal is a recognised teaching qualification, registration with the South African Council for Educators (SACE) and seven years of actual teaching experience (RSA, 2016a: B-46). Thus, no experience or training in a leadership and/or management position (head of department or deputy-principal) is required to be appointed as principal. However, as argued by Bush, Kiggundu and Moorosi (2011: 32), "it is unfair to appoint new principals without effective induction" and there must be recognition that effective preparation is "a moral obligation" and that it makes a difference. It cannot be ignored. As stated by Bush, Kiggundu and Moorosi (2011: 32):

> The flexibility and initiative required to lead and manage schools in periods of rapid change suggest that preparation should go beyond training principals to implement the requirements of the hierarchy to developing rounded and confident leaders who are able to engage all school stakeholders in the process of school improvement for the benefit of learners and their communities.

For distributed (shared) leadership to be successfully implemented, preparation and training of aspiring principals need to be congruent with the expectations as contained in the policy documents. Due to the specialised and complex nature of principalship it cannot expected that current and aspiring principals merely must rely on their own experience or model their leadership and management practice on principals under whom they have worked. The implementation of the Standard of Principalship (RSA, 2016b) must hence be accompanied by formal training and preparation of both current and aspiring principals, which currently it is not. .

5.7 CONCEPTUAL (CON-) FUSION PERTAINING TO LEADERSHIP AND MANAGEMENT

The first manifestation is found in that there seems to be conceptual (con-) fusion in the Schools Act and the PAM on the one hand, and the Standard for Principals

(RSA, 2016a) on the other with regard to leadership and management as these two concepts are often used interchangeably. This indicates confusion with regard to the true purpose of the action of management and the true purpose of the action of leadership. Firstly it seems in the policy documents as if leadership actions and management actions are not clearly defined, resulting in confusion. Secondly it appears that management and leadership is viewed as been the same thing - fusion. Potentially this may result in principals becoming confused with regards to whether they are managers only, leaders only, or both.

The 2016 revision of the job description of principals in the PAM (RSA, 2016b: A-32 – A-35) does not specifically allocate any leadership role to public school principals, but has aligned the job description of principals with the Schools Act by incorporating the predominantly managerial elements of Sections 16 and 16A of the Schools Act into the job description. This is in contrast to the Integrated Quality Management System (IQMS) and the Standard for Principals (RSA, 2016a), both having explicit expectations that principals must not only perform a leadership role, but that leadership functions must also be distributed (shared). For example, Sections 16 (3) and 16 A (1) of the Schools Act respectively determines that:

> "Subject to this Act and any applicable provincial law, the professional management of a public school must be undertaken by the principal under the authority of the [provincial] Head of Department (Author's own insertion).
>
> The Principal of a public school represents the [provincial] Head of Department in the governing body when acting in an official capacity …".

In this regard the 2016 version of the PAM (p. A-32) states the following:

> "To be responsible for the professional management of a public school as contemplated in section 16A(3) of SASA, …".

The above reinforces the notion that the role of public school principals is embedded in a bureaucratic hierarchy. Being the representative of the provincial Head of Department, principals are expected to be the voice of the Head of Department, and hence their own leadership voice is suppressed. In contrast, the introductory section to the Standard for Principals (RSA, 2016a: 8) states the following:

> "Although the Standard focuses primarily on the role of the principal as the leading professional in the school, there is a strong emphasis on shared leadership. Thus, recognition is given to the expectation and requirement in South Africa that good principals do not act in isolation but lead and manage their schools professionally and in ways that are grounded in and embraced by the principles of Batho Pele [people first] and Ubuntu (Author's own insertion)".

The significance of the above lies in the difference between what is expected in the law and what is presented in a policy document which may not be in contravention of the law. This is indicative of an element of conceptual (con-) fusion of leadership and management among education authorities and policy makers. Because of the strong focus on management in the law (the Schools Act), this conceptual (con-) fusion relating to the leadership and management functions of school principals will not only inhibit principals from performing and developing their own leadership capabilities, but will also inhibit distributed (shared) leadership, despite what is envisaged in the South African Standard for Principals (RSA, 2016a).

5.8 MANAGERIALISM

The second manifestation of possible ambiguity in the leadership/management functions in South African public schools is the mind-set of managerialism being applied by the education bureaucrats. Paradoxically, policies allowing for de-regulation and greater autonomy are viewed by many as being associated with managerialism and the emergence of a process of "re-regulation" (Ball, 2003: 217) or "managerial restructuring" towards a form of "decentralised-centralism" (Karlsen, 2000) which has resulted in educational strategies that focus on the monitoring of learner and school achievement (Strandler, 2015: 890). This has led to the emergence of a "compliance society" which is characterised by a "remotely accountable and technocratic centre" that takes the initiative and where relationships of dependency and compliance have developed rather than relationships of interaction, negotiation and mutual respect (Glatter, 2012: 562).

Fitzgerald, Youngs and Grootenboer (2003: 93) contend that the increasing level of bureaucratic control over teachers' professional work and activities of governments in decentralised systems are inherently problematic. Quality is linked to accountability through a process called "quality assurance" which has its origin in the term "quality control" used in manufacturing industries (Codd, 2005: 201). Codd, 2005: 201) explains the distinction between "quality assurance" and "quality control" as follows:

> Quality control is concerned with the testing of products to see whether or not they meet the specification. Thus batches of widgets may be tested and sent for scrapping or reworking if they are found to be defective. …Quality assurance (QA) is concerned with ensuring that the production processes are such that defective products are not made in the first place, so that the need for extensive quality control mechanisms at the end point of production is not pressing.

Schools are thus expected to change their focus from educational processes to outputs and learning outcomes (Codd, 2005: 201). Ball (2003: 226) explains this by stating:

> Knowledge and knowledge relations, including the relationship between learners, are de-socialised. It is this externalisation and de-socialisation that the teachers … are struggling with and against.

Consequently, education has been reduced to a commodity, meaning that it is no longer seen as a public good, but as a private good. Local communities are represented "as clients or customers" and the "central aim of education becomes the narrow instrumental one …" (Codd, 2005: 196). It is argued by Kimber and Ehrich (2011: 181) that such restructuring of an education system creates what they call a "democratic deficit". They explain that, rather than strengthening accountability, the use of managerial practices weakens it. Secondly, the over-reliance on, and inappropriate use of performance practices derived from the private sector have led to traditional roles and values associated with the public sector, being ignored. Thirdly, they argue that a "hollow state" has emerged "where public goods and services have been removed from the public sector, and citizens have been redefined as customers or clients".

Those advocating accountability in terms of performance measures or targets (mainly quantitative data) aimed at the attainment of "standards" argue that it is effective (Wilkens, 2011: 391). Wilkens (2011: 391) is of the opinion that this

audit/target culture has, however, “led to an ultimately damaging risk-averse, target chasing ethos where traditional notions of context-specific practice emerging through professional dialogue are suppressed”. He continues his argument by stating: “In this context, professional development is a “top down” imposition rather than a genuine personal and collegial enterprise, and is likely to be viewed more as a disciplinary device than an empowering one”. In addition, the culture of performativity has introduced what Wilkens (2011: 391) calls “interventionist regulatory mechanisms” that allow for underperforming professionals to be disciplined and which has been viewed by some as “a deliberate antagonistic assault on the notion of the autonomous profession” and an undermining of the essence of classical professionalism. Hargreaves (2000: 169) contends that this introduction of “performance management through targets, standards, and paper trails of monitoring and accountability … may have comforted governments with ‘procedural illusions of effectiveness’, but they have also subjected teachers to the micro-management of ever-tightening regulations and controls that are the very antithesis of any kind of professionalism”. In the South African situation an example of such an instrument that may result in a ‘procedural illusion of effectiveness’ is presented in Figure 5. 1.

Figure 5.1: School Based Assessment Moderation Report 2015 (Adapted from: District Memorandum 146, Tshwane South District, Gauteng Department of Education).

SBA MODERATION REPORT				
	Yes	**No**	**Observation**	**Recommendations**
Educator’s File				
1. Are there complete details on the cover of the Educator's file?				
2. Is the formal programme of assessment available?				
3. Have the three phases of moderation (pre-, process and post- moderation) been done? Comment.				
4. Comment on quality of school moderation by HOD.				
5. Instructions of tasks with relevant assessment tools				

6. Is the educator's file well-arranged and neatly organised?				
Quality of tasks / tests				
7. Are the instructions on the tasks clear or unambiguous?				
8. Is there a variety of questions to cater for the different levels of learner's needs?				
Record sheets				
9. Are marks transferred correctly on the mark sheet from learners' evidence of .performance?				
10. Have marks been correctly calculated?				
11. Is there enough evidence for awarding a 0 (zero) to learners for a task? Is there an explanation / evidence of expanded opportunities provided?				
Learner's tasks				
12. Explain/ comment whether the tasks have been assessed according to the set criteria or rubric.				
13. Have learners understood and interpreted the task correctly?				
14. Have learners' tasks been fairly, consistently and accurately assessed?				
15. Have the tasks been dated?				
16. Have the marks been totalled correctly?				
17. Have educators given developmental feedback?				
18. Standard of marking: Is the quality of marking acceptable?		**Lenient**	**Fair**	**Strict**

Fullan and Watson (2000: 459) assert that external accountability structures must be underpinned by a capacity-building philosophy. They are supported by De Grauwe (2004: 9) who states that, because greater school autonomy requires that more support is given to schools, the roles of local district offices also need to change. They will need quality information on schools in order to determine who needs

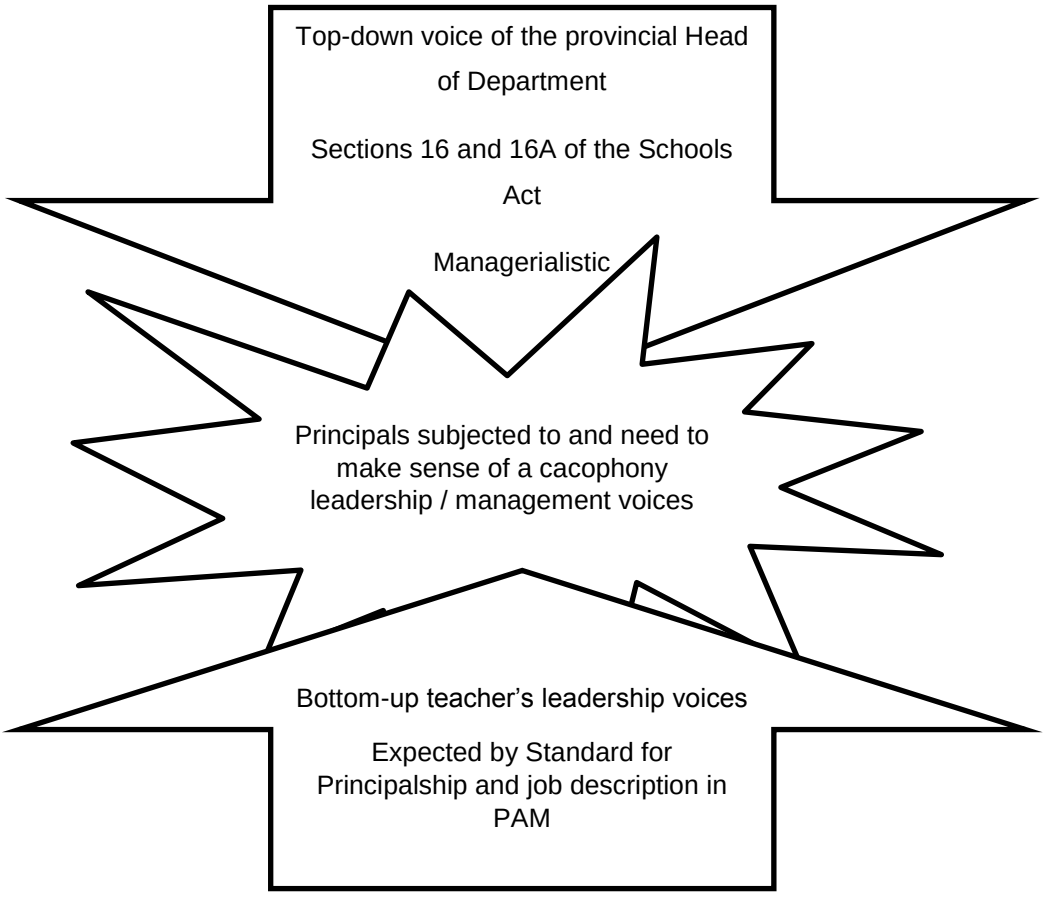
support and what type of support will be the most useful. De Grauwe (2004: 9) explains: “Their role will be transformed from control over the respect of official roles and regulations to supporter of innovation and initiative taking – or in other words, from a supervisor to a colleague”. One may thus infer that support which is underpinned by a philosophy of capacity-building and improvement correlates with the expansion of autonomy and decision-making powers at local school level. On the other hand, support that is underpinned by a philosophy of ensuring compliance will restrict local autonomy and, although it may ensure that a school functions relatively well, capacity-building and improvement will be constrained. Unless the education bureaucrats change their mind-set to the former, the notion of distributed (shared) leadership in South African schools will be still-born and the Policy for the South African Standard for Principals (RSA, 2016a) may be another unrealisable idealistic policy.

5.9 TOP-DOWN AND BOTTOM-UP DISSONANCE

Related to the above, the third manifestation of the leadership-management ambiguity lies in the conversion and dissonance between the top-down managerial voice of the education authorities (through the principal) as imposed through Sections 16 and 16A of the Schools Act and the bottom-up leadership voice as contained in the job description of teachers (RSA, 2016b: A-32 – A-35) and envisaged by the Standard for Principals (RSA, 2016a) (see figure 5.2).

The bottom-up approach is associated with a distributed or shared approach to leadership with the emphasis being on the local voices, including the voices emanating from the lower level in the governance structure of the school. However, more often than not, principals would be inclined to hear - and react to - the voice which has the greatest volume. The top-down voice, having its source in the law in the form of the Schools Act, obliges principals to listen to the voice of the education authorities. In in so doing they could not be acted against in terms of the incapacity code and procedures for poor work performance referred to in Section16 of the Employment of Educators Act, 76 of 1998 should his/her school be deemed to be underperforming. Principals would hence be more inclined to follow the less risky option of ignoring the bottom-up leadership voices and thereby be less open to leadership distribution in their schools.

Figure 5.2: Top-down and bottom-up dissonance



5.10 DISTRIBUTED LEADERSHIP AND BUREAUCRACY IN THE SOUTH AFRICAN CONTEXT(S)

The challenge in this potential ambiguous managerialistically dominated environment is to clarify whether it is possible for principals to apply distributed leadership with its associated open, democratic and participative approaches. Distributed leadership is associated with system reconfiguration and organisational redesign in schools (Harris & Spillane, 2008: 31; Harris, 2008: 179), and a move away from bureaucratic practices to more collaborative practices (Harris, 2011: 8; Murphy et al., 2009: 181). This necessitates more lateral (flatter) decision-making processes, where the practice of leadership is shared among organisational members (Bush and Glover, 2012: 22; Muijs, 2011: 51). However, in South Africa the opposite occurred. Instead

of having flatter organisational structures in schools, new post descriptions were created in the bureaucratic tradition through the introduction of senior and master teachers (RSA, 2016b: A-21, A-24). Distributed leadership is linked to democracy, or democratic processes and leadership (Hargreaves & Fink, 2008).

Although it is argued by Hartley (2010: 282) that "the 'heterarchy' of distributed leadership resides uneasily within the formal bureaucracy of schools", an evolutionary process occurred in the South African schooling system which put in motion a shift from a centralised to a decentralised system of education management (De Villiers & Pretorius, 2011: 574; Williams, 2011: 190). This evolutionary process can be ascribed to South Africa's strong emphasis on democracy and democratic processes post-1994 which has a more specific meaning in the context of this country. In this regard it is argued by Naicker and Mestry (2013: 3) that the shift from a focus on a single leader towards collective or team leadership corresponds with the direction in which South African schools are expected to move. Yet education in South Africa is still essentially functioning according to bureaucratic principles. There are hierarchies and specific job descriptions for each post in the hierarchy and the regulatory and policy framework safeguards the authority and power of the higher echelons of the hierarchy. Although there is a stronger emphasis on democratic principles where participation and collaboration receives more attention, for example in the IQMS, a distribution of leadership is in opposition to the strong bureaucratic approach employed by the education authorities. It may therefore be a balancing act to ensure distributed leadership with real power and authority for decision-making in a system where participative decision-making may not be a common phenomenon.

The need for such a balancing act is found in Resolution 8 of 2003 of the Education Labour Relations Council (ELRC, 2003: 3) which prescribes that a Staff Development Team (SDT) consisting of the principal, the whole school evaluation co-ordinator, democratically elected members of the school management and elected post level 1 educators be established. The school management team (SMT) and the Staff Development Team (SDT) are expected to work together on all matters relating to the IQMS. Another example can be found in one of the key areas of the Standard (RSA, 2016a: 18), namely "Developing and Empowering Self and Others",

which inter alia expects South African school principals to encourage the development of shared leadership, participation in decision-making, teambuilding and teamwork and other positive working relationships. This is in line with Harris (2008: 175) and Spillane (2009) who argue that distributed cognition transpires through interactions and across various teams and that distributed leadership implies that the practice of leadership is shared and realised within extended groupings and networks of which some would be formal and others informal. According to Harris (2008: 175) this could be observable in schools through the work of subject departments, cross-curricular groupings, action learning groups and school improvement groups and where teachers are working together to solve pedagogical problems, "they will occupy leadership 'space' within the school". The inclusion of the expectation that teachers take on a leadership role in respect of the subject, learning area or phase they are involved in, if required in the job description of teachers (RSA 2016b: A-18, A-21, A-24) implies an expectation that teachers must occupy leadership space within the hierarchy of a school.

There is thus an expectation that schools have well-functioning school leadership teams with the principal being the "leading leader". This denotes a form of system reconfiguration and organisational redesign in schools (Harris & Spillane, 2008: 31; Harris, 2008: 179) and a move away from bureaucratic practices to more collaborative practices (Harris, 2012: 8; Murphy et al., 2009: 181) which are features of distributed leadership. This means that because principals cannot escape the bureaucratic accountability parameters as contained in Sections 16 and 16A of the Schools Act, they need to balance their leadership role in order to establish and maintain equilibrium between the hierarchical bureaucratic formations and these implanted arrangements which are heterarchical in nature.

Pertinent to the South African situation are the multiple and diverse contexts in which South African schools are operating. Evaluating the possibilities and constraints of distributed leadership in South African schools, Williams (2011: 198) suggests that the situational context of a school will be key in determining the degree to which distributed leadership will be desirable. Marishane (2016: 164-165) explains that there is a symbiotic relationship between context and school leadership:

> While the school context influences leadership, leadership shapes the school context. For instance, the situation in which leaders work influences their behaviour, approaches, practices and style. Their leadership success in this regard depends on how context-responsive they are.

The above discussion brings into play Gronn's (2008:150) argument for a "hybrid" approach in which he makes a distinction between hierarchical and heterarchical modes of ordering responsibilities and relations, explaining that whilst in hierarchical ordering "each level is successfully implicated in the next level", in heterarchy "various levels exert a determinate influence on each other in some particular aspect". Adding to this is Hartley's (2010: 282) argument that "the 'heterarchy' of distributed leadership resides uneasily within the formal bureaucracy of schools".

5.11 THE ROLE OF THE PRINCIPAL IN DISTRIBUTED LEADERSHIP IN SOUTH AFRICA

In contrast to Section 16A of the Schools Act and the PAM, the Standard for Principals (RSA, 2016a) places a stronger emphasis on leadership in its attempts to provide a clear description of what is expected from a principal. The Department of Basic Education (DBE) has it in mind to build on the quality of leadership and successful outcomes observed at schools that are functioning well within their communities, and to attend to poor leadership and inadequate outcomes of schooling at other schools. The DBE acknowledges that effective leadership and management, backed up by well-conceived and needs-driven development of leadership and management, is essential to achieve its transformational goals for education. The purpose of the transformation of the South African education system is "to bring about sustainable school improvement and a profound change in the culture and practice of schools" (RSA 2016a, 3). However, the contextual conditions of poverty and the "widespread apartheid-era capacity deficit" which is prevalent in most communities may be reinforcing existing inequalities (Karlsson, 2002: 331). Recognising the influence of the complex and wide range of socio-economic, political and health factors that affect diverse communities in both urban and rural contexts, the Standard emphasises the importance of schools providing for a nurturing and supportive environment, and it states that this "will depend on the professionalism of their leaders and the quality of the leadership and management that those leaders provide" (RSA 2016a, 3).

As argued by Murphy et al. (2009: 183), distributed leadership requires many principals to reconfigure themselves as a leader, which on the one hand would compel them to reframe their own conception of leading from "reliance on bureaucratic and institutional lenses toward viewing schools as community-anchored organisations". On the other hand it often means that new skills need to be developed together with "a new set of performances" not necessarily associated with the education of school leaders. According to Harris (2012: 8) "it implies the relinquishing of some authority and power, which is not an easy task, and a repositioning of the role from exclusive leadership to a form of leadership that is more concerned with brokering, facilitating and supporting others in leading innovation and change". However, this "relinquishing" of authority within a bureaucratic, hierarchical setting with its accountability constraints, may create a dilemma for school principals, especially if a capacity deficit exists at their schools. The complexity of this dilemma is demonstrated in the 2012 report of the National Education Evaluation and Development Unit (NEEDU, 2012:79) as follows:

> There is a general acceptance that significant parts of the South African state and civil service are affected by patronage as a mechanism for the appointment and promotion of staff. In general, lines of patronage run along established networks and a host of informal associations: families, churches, political parties, trade unions, old school tie, sport, criminal associations, the list is endless. Bribery and other forms of corruption often serve to grease the networks.

Principals are hence critical figures in the leadership equation as they occupy centre stage in promoting distributive leadership in schools (Harris, 2012: 8; Naicker & Mestry, 2011: 105). They play a key role in deciding what is distributed, to whom it is distributed and how distribution is accomplished (Bush & Glover, 2012: 34; Grant & Singh, 2009: 291). The paradox, according to Harris (2007: 322), is that "without a stable, consistent [principal] leadership in schools, distributed leadership will be incredibly vulnerable and ultimately fragile" (author's own insertion). Conversely, a capacity deficit and a diversity in capacity levels as experienced in the South African education system will make it extremely difficult for principals to equally distribute leadership within schools.

Wahlstrom and Louis (2008: 461) argue that when principals share leadership responsibilities with staff, they must be prepared and ready to abide by the actions initiated by educators. They describe this as a "high-stakes stance when the bottom line for accountability rests with the principal". This point is particularly pertinent to the South African situation in terms of the accountability demands of Sections 16 and 16A of the Schools Act. Relational trust linked to the principal's respect and personal regard for educators, competence of educators and personal integrity is thus needed for distributed or shared leadership to succeed (Wahlstrom & Louis, 2008: 462).

The central role of the principal is thus retained by the accountability framework within which schools must operate (Bush & Glover, 2012: 34; Muijs & Harris, 2006: 962). This is in line with the view of Gronn (2008: 151) that there still has to be regular monitoring by principals, particularly when people are inexperienced in distributed leadership practices (MacBeath, 2005: 363). Therefore, such a shift from a 'one-person leadership' approach requires training for principals and their fellow leaders since they will need to acquire new attitudes, skills and knowledge to accomplish a distributed approach to leadership (Christie, 2010).

The Standard further expects the principal to promote empowerment of their staff by providing opportunities for shared leadership, teamwork, and participation in decision-making. This is in line with the reasoning of Steyn (2005: 271) that shared and distributed leadership will create conditions in which educators will believe they are empowered to make meaningful and feasible changes to the school. Singh (2005: 17) explains this point as follows: "Freedom to participate, being empowered and recognised as significant role players will lead to joint accountability and responsibility".

School leaders should therefore develop a supportive and enabling environment which would include paying attention to the psychological well-being of educators as well as managing their workload (Vos et al., 2012: 56-57

It is significant that the Standard states that the principal should ensure fairness in the devolution of responsibility (RSA, 2016a: 18). Principals therefore play a key role in deciding what leadership roles need to be distributed, and how the distribution of these roles is to be accomplished (Bush & Glover, 2012: 34; Grant & Singh, 2009: 291). This corresponds with distributed leadership, which is associated with system

reconfiguration and organisational redesign in schools (Harris & Spillane, 2008: 31; Harris, 2008: 179), and a shift from bureaucratic practices to more collaborative practices (Harris, 2012: 8; Murphy et al., 2009: 183).

In addition, the Standard expects principals to be knowledgeable about relationships between performance management, continuing professional development, and sustainable school improvement, as well as approaches to promote continuing professional development and adult learning (RSA, 2016a: 18). It is this capacity-building aspect which Grant (2008: 86) places at the heart of the distributed leadership model, which means that the potential and capabilities of teachers to lead within the organisation must be extended (Muijs & Harris, 2006: 961).

However, the bureaucratic nature of a principal's task is also reinforced by the Standard in that it also has managerial expectations of principals relating to practices and procedures of quality assurance systems, mechanisms for the collection and use of performance data and other evidence to monitor, evaluate and improve school performance across all aspects of its operation, and processes and systems underpinning accountability, responsiveness and responsibility (RSA, 2016a: 20).

5.12 CONCLUSION

The Report to the Minister of Education of the Ministerial Committee on Schools that Work (Christie, Butler &

Potterton, 2007: 81) states that a policy dispensation that expects all schools to achieve the same outcomes in very different circumstances is simply not realistic. This has specific implications for the PAM and the Standard in that schools operate in diverse contexts and it will therefore be difficult to implement these policies at an equal and standardised basis. Therefore, to give fruition to the expectation of distributed or shared leadership as expressed in the Standard for Principals (RSA, 2016:8), principals will need not only to have a good understanding of what it means to be accountable, but also need to be courageous in how they lead and manage their schools. This means that they need to be well equipped to implement distributed and shared leadership practices and have well developed contextual intelligence.

It is evident that there is a definite expectation that leadership should be distributed in schools to the different post levels in various forms, as is clear from the emphasis on shared leadership in the Standard for Principals. It is, however, noteworthy that the expectation of distribution of leadership to the broader staff component in schools relates mainly to staff professional development and organisational improvement.

It is also clear that principals are expected to design a configuration of systems and procedures that will allow teachers at all levels to perform leadership functions. This calls for organisational redesign in schools, which places the heterarchy of distributed leadership in danger of being compromised by the existing hierarchical bureaucracy of the education system.

However, it is evident that the accountability framework established in the Schools Act requires the principal to be the central accountable figure in the school. Principals will therefore be key in determining what leadership functions should be distributed, and to whom. Manifestations of managerialism and heterarchical-hierarchical tension is present in the policies in that although there is a requirement that shared or distributed leadership be implemented, it is expected that this be done in a way that is congruent with policy frameworks and plans. It therefore remains to be seen whether the principals will use the possibility provided by the Standard for Principals to truly distribute leadership functions within their schools, either according to a ‘one size fits all’ approach or according to the local needs and abilities of the teachers.

Although there seems to be wide scope for distributed leadership within the new policy framework in South Africa, this is a new and different approach for most principals, as well as their management teams and leaders at different levels. As policy does not automatically translate into practice and because “principals play a crucial role in facilitating the conditions and climate conducive to distributive leadership in schools” (Naicker & Mestry, 2011: 105), principals themselves need to be empowered. This implies that departmental officials at provincial and district levels have an equally important role to play. They too need to have knowledge and a good understanding of the structure, agency and the social and cultural context of the schools under their control (Williams, 2011: 198). Therefore, for shared or

distributed leadership to be embraced in schools, new attitudes, skills and knowledge need to be developed, not only by principals and their teachers, but also by those in the higher echelons of the hierarchy.

There are potential challenges to the implementation and practice of distributed leadership. For example, Storey (2004: 257) asserts that there may potentially be ambiguity between the boundaries of management and leadership between the leaders at the various levels as indicated in the expectations of the PAM (RSA, 2016b, A-21, A-24) and the Standard for Principalship (RSA, 2016b: 8) in South Africa. Distributed leadership must, as asserted by Mascall et al. (2008: 224), be well planned. Harris (2003: 321) warns that distributed leadership is “not a matter of delegation, direction or distribution of responsibility [which are rather managerial functions - authors own insertion insertion], but rather a matter of teachers’ agency and their choice in initiating and sustaining change”. This is potentially a threat to distributed leadership in the South African context, as the responsibilities and duties of teachers, master teachers, and heads of department may be interpreted as mere delegation or distribution of responsibilities, rather than as empowering these people to be leaders.

CHAPTER 6

CONCLUSION, RECOMMENDATIONS AND REFLECTIONS

6.1 INTRODUCTION

How autonomous are South African public schools with regard to governance and management? The argument for the thesis is that it seems as if there is a tendency towards greater centralisation in the South African education system which is essentially regarded as a decentralised system. This is creating some tension between what school governing bodies are expected and supposed to do and what the government is allowing them to do. At times this brings some of the governing bodies into conflict with the national and provincial departments of education which then requires a solution to resolve this conflict. Although the constitutional principle of co-operative government as contained in Chapter 3 of the Constitution, dictates how such conflicts should be prevented or resolved, school governing bodies and school governing body organisations are forced to approach the courts in order to protect their rights.

The tension between centralisation and decentralisation is reflected in the potential decision-making discretion of the principal, not only with regard to his/her decision-making as part of the governance of the schools, but also as the professional manager of a school. Additionally, this discussion is associated not only with the autonomy of school principals but also their accountability, and therefore distributed leadership, or shared leadership as it is referred to in the Policy on the South African Standard for Principals (RSA, 2016b) becomes a contentious issue.

The above issues relate to the autonomy of both school governing bodies and principals of public schools and their obligation to ensure quality education. Local level autonomy and the decentralisation of power to the local decision-making structures at schools is thus juxtaposed against the democratic principles contained in the Constitution (RSA, 1996c) and the South African Schools Act (RSA, 1996a) and the key aspects of complexity theory as discussed in Chapter 1.

In this chapter, I present a summary of the findings according to the themes of the four articles. This is followed by my conclusions and recommendations. The chapter is then concluded with my reflections on the methodology, research paradigm and format of the study. The weaknesses and strengths of the study are discussed and suggestions are made regarding areas in need of further research.

6.2 SUMMARY OF THE FINDINGS

This section presents a summary of the findings of each of the four articles. These findings are, where appropriate, related to relevant literature.

6.2.1 The emergence of decentralised-centralism

Article 1 aimed at answering the first research sub-question, namely: How is the South African education system decentralised in terms of school governance and management?

Bimber (1993: 14 & 16) argues that the difference between a centralised (or bureaucratic) organisation and a decentralised organisation is located where decisions are made in the administrative hierarchy. Accomplished leaders at local level often play a key role in the success of decentralisation and therefore careful consideration should be given to power sharing arrangements as a means of decentralisation. It is important to note that decentralisation on the one hand generally results in diminished central control and on the other hand, a strengthening of local participation, management and governance.

Hanson (1998: 115) identifies four centres of power that can have a meaningful impact on educational decentralisation programmes. The most important of these is whether or not the main political parties have a shared vision with regard to the decentralisation reforms and are willing to collaborate. Secondly, for decentralisation to succeed, it is imperative that all government institutions collaborate. Thirdly, it is imperative to have the buy-in and commitment of the teacher unions. Lastly, for decentralisation to succeed, one needs the co-operation of community members.

Weighing the South African education governance system on the centralisation-decentralisation scale, it is evident that the South African education system is progressing from a mostly decentralised system in the direction of ‘decentralised

centralism'. This relates to the emergence-aspect of complexity theory. It is becoming highly regulated in that local school communities through their school governing bodies are expected to take responsibility for decentralised functions with limited decision-making autonomy. This development of a highly regulated system with a compliant teacher corps which is tightly monitored and under constant surveillance, point towards a positive movement towards the implementation of a more centralised approach. An example of such a monitoring or surveillance instrument is provided in Chapter 5 (Article 4)]. Berkhout's (2002: 73) assertion that "decentralisation seldom constitutes a clear shift of power from the centre to the periphery, but was an amalgamation of decentralisation rhetoric and concealed centralisation measures" is being confirmed in that genuine autonomy at local school level is nothing but an illusion. Applied to the 'doughnut' principle as conceptualised by Dworkin (1978), this means that the "belt of restriction" (Wallender & Molander, 2014: 1) is being pulled very tight, leaving very little room for local governance and management autonomy and discretion. This is demonstrated by the intensification of 'top-down one-size-fits-no-one' approach for which the motives are presented below.

6.2.1.1 The effect of vested interests

Linked to the interaction, connectedness and non-linear aspects of complexity theory is the involvement of multiple powerful actors with diverse and often contradictory interests. According to the World Development Report (The World Bank, 2018: 193) "in many cases policies are not chosen for their effectiveness in improving learning", but "are guided instead by the vested interests of powerful actors". Three examples are referred to in Artcle 1 (Chapter 2).

Being affiliated to the Congress of South African Trade Unions (COSATU), one of the strategic partners in the ANC-led ruling tripartite alliance, these vested interests are played out through the influence of the South African Democratic Teachers Union (SADTU) on the South African education landscape. The government finds itself in a precarious position in order to, in their attempts to improve the education system, balance the interests of SADTU with their obligation to deliver on the promises of equal and quality education. In order to avoid confrontation with SADTU, it seems as if the government has opted for an approach of changing legislation and adopting unrealistic policies rather than offending SADTU. These changes in

legislation and new policies are more often than not aimed at strengthening government's control.

Chronic mismanagement and corruption by the Department of Basic Education (and Provincial Education Departments) can be linked to the Clause 11 of the draft Basic Education Laws Amendment Bill which proposes to amend Section 21 of the Schools Act to empower the provincial Head of Department (HOD) to centrally procure identified learning support material for public schools, after consultation with the SGB and on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards (RSA, 2017a). The significance of this proposed amendment is that it firstly seem to contradict Sub-Sections 21 (1) (c) and 21 (2) of the Schools Act. Secondly, the powers of well-functioning SGBs to decide which learning materials are best suited for their individual school's needs is being limited, and thirdly, this proposed amendment is must be viewed against irregular practices regarding the procurement of textbooks as illustrated at the start of this section.

Local interests of school communities are often in conflict with the political and ideological objectives of the ruling ANC-government. An example of how this has played out is the recent *Hoêrskool Overvaal* case and the reaction of the Gauteng MEC of Education to this court ruling. With the admission and language policy of this school being placed in the spotlight by this court battle, Clause 3 of the of the draft basic Education Laws Amendment Bill which proposes to amend Section 5 of the Schools Act in order to provide the final authority to admit a learner to a public school to the HOD, has particular significance. In addition, Clause 4 of the Bill seeks to amend Section 6 of the Schools Act to provide for the governing body to submit the language policy of a public school, and any amendment thereof, to the Head of Department for approval.

6.2.1.2 Policy idealism as opposed to practical reality

Aligned to the context-aspect of complexity theory, the non-alignment of post-apartheid education policies with the realities of poverty and the lack of capacity and resources demonstrates a level of naivety in that the adoption of progressive policies alone is not enough to generate substantive change in quality education. As alluded

to by Deacon et al. (2010: 99-100), it is evident that the problems facing the South African education system “were much larger than had been envisaged, the means far smaller and the capacity far less”. This is particularly applicable to schools in the far rural areas where there is a lack of qualified and able school governing bodies, sufficient and adequately trained teachers, a lack of infrastructure, such as poor roads, a lack of transport, under resourced and badly maintained school buildings, combined with the preference of well-qualified teachers to live and work in urban areas, has made it difficult to attract well-qualified teachers to the far rural areas (NEEDU, 2013: 2). This has led to it often being suggested that ”education policy is merely symbolic, little more than grandiose and glamorous window dressing’’ (Deacon et al., 2010: 101).

As indicated in the 2012 and 2013 National Reports of the National Education Evaluation and Development Unit, the gap between the policy intentions and its implementation can to a large extent be attributed to organisational instability (NEEDU, 2012: 52) and a lack of professionalism in the public service (NEEDU, 2013: 79-80). The assumption was that the decentralisation of decision-making power to the local levels would improve the quality of the system since the local level knows best with regard to local needs. However, as pronounced in the 2013 National Report of the National Education Evaluation and Development Unit (NEEDU, 2013: 79), the unreliable practice of ascertaining teacher competence by defining competence in terms of years of service, and the system of patronage which is associated with bribery and corruption has had the opposite effect. Similarly the Ministerial Task Team appointed to investigate allegations into the selling of posts of educators by members of teacher unions and departmental officials in provincial education departments concluded that “the deployment of officials to the Department from Unions weakens the Department because those so deployed are not there because they have professional intentions or even abilities, but are placed there as reward” (DBE, 2016a: 133). Additionally, the Task Team concluded that some teacher unions have captured significant areas of the education system thereby contributing to the Department of Basic Education’s inability to control and develop the system. This weakness is acknowledged in the National Development Plan 2030 (RSA, 2012: 310). Further, the naivety of policy idealism is recognised by the National Development Plan when it *inter alia* attributes the shortcomings of the

education system to human capacity weaknesses in teaching, management and school support, as well as to a lack of cooperation among major stakeholders, particularly the unions and the government (RSA, 2012: 302). Hence, the recommendation of additional support to school governing bodies and that a strong sense of community ownership should be developed (RSA, 2012: 311). In addition, the National Development Plan recommends that schools should be provided with the capacity to implement policy and that top performing schools must not only be recognised and supported, but that they must also not be "saddled with unnecessary burdens" and that "their support should be enlisted to assist underperforming schools" (RSA, 302-303). This is in contrast to what is proposed in the draft Basic Education Laws Amendment Bill which "seeks to amend section 20 of the South African Schools Act by limiting the powers of a school governing body with regard to recommending candidates for appointment" (RSA, 2017a: 5). Thus, instead of addressing a fundamental weakness within the education system, the government is opting for an 'easy-way-out' by striving to preserve hegemony.

Lack of capacity in the underperforming schools is blamed for the chronic underperformance of the education system (Maarman & Lamont-Mbawuli, 2017: 266; Van den Berg et al., 2011: 4) and is used to motivate the escalation of centralism. An example related to the context, emergence and feedback-aspects of complexity theory in terms of the capacities of school governing bodies is found in the memorandum of motivation that accompanied the draft Basic Education Laws Amendment Bill (RSA, 2017a: 6) which refers to many school governing bodies not knowing what is required of a school principal and hence not having the capacity to appoint school principals.

However, although these measures may result in improved effectiveness in the majority of the previously disadvantaged schools, those schools with highly functioning school governing bodies and who are consistently performing well, are being forced to submit to a restrictive regulatory environment - Dworkin's (1978) 'doughnut' principle - impeding their resourcefulness and advancement. A more centralised approach not only ignores the complexity of the multiple contexts in which South African schools are expected to function, but also ignores the multiple

historical, socio-economic, cultural and language backgrounds of South African children.

In addition and related to the interaction and connectedness aspects of complexity theory and the 'doughnut principle' of Dworkin (1978), the high premium being placed on the implementation of regulatory instruments designed for monitoring and assurance of (policy) compliance points to an erosion of the partnership-model as originally envisaged by the South African Schools Act (RSA, 1996a). This is demonstrated by the insertion of Section 58C into the Schools Act by means of section 11 of the Education Laws Amendment Act of 2007 (RSA, 2007). As explained in Chapter 2 (Article 1), Section 58C of the Schools Act expects a Member of the Executive Council (MEC) for Education, in accordance with an implementation protocol as indicated in section 35 of the Intergovernmental Relations Framework Act (RSA, 2005b), to ensure compliance in terms of norms and standards relating to a number of aspects pertaining to the functions of school governing bodies, minimum outcomes and standards set regarding curriculum and assessment and performance standards for educators which may be prescribed by the Minister in terms of the Employment of Educators Act (RSA, 1998a).

It is important to read Section 58C of the South African Schools Act (RSA, 1996a) in conjunction with Section 61 of the Schools Act and sub-section 3(4) of the National Education Policy Act (RSA, 1996b) which grants the Minister additional powers to promulgate additional regulations. This has resulted in a number of regulations being published that curtail autonomy levels pertaining to the professional management of schools and the policy-making functions of SGBs. This has led to a process of re-regulation pertaining to the appointment of teachers, curriculum and assessment, admission and language policies, financial policies of schools and the procurement and contractual ability of school governing bodies.

Likewise there is a strong emphasis on external, bureaucratic accountability at the expense of internal professional accountability. Hence the prominent use in South African legislation and policy documentation, such as the Policy on the South African Standard for Principals (RSA, 2016b) and the Personnel Administrative Measures (RSA, 2016a), of terminology such as 'assuring quality and ensuring accountability', 'quality assurance systems', 'evaluation and performance management', 'account

regularly in accessible and accurate ways'. This is what Mifsud (2016: 452) describes as "the paradox of 'decentralised centralism' where the State relentlessly strives for the retention of hegemony, as mediated through the exercise of disciplinary power and the shadow of hierarchy".

As a result, everything points towards the powers of school governing bodies being reduced to being merely implementers of policy with very little real decision-making authority and little room for autonomy. The hole in Dworkin's (1978) doughnut is thus relatively small. Should the draft Amendment Bill (RSA, 2017a) be passed into law, the hole in Dworkin's doughnut will become even smaller with only two remnants of the decision-making power originally decentralised to school governing bodies remaining. The one lies in the function still afforded to school governing bodies to recommend candidates for the appointment as Post Level 1 teachers and non-teaching staff (school secretaries and general workers). The other is the power afforded to the 40% of schools that may levy school fees.

This can be ascribed to the government (and the education system) experiencing a legitimacy crisis due to the lack of credibility perpetuated by chronic underperformance, lack of support to schools, the capacity deficit of teachers and departmental officials, corruption, the practice of cadre deployment and the interconnectedness of all these factors. Hence there is a need for government authorities, through political realism, to reclaim power - the emergence aspect of complexity theory. This is discussed in the next section.

6.2.1.3. Legitimacy crisis and Political realism

Coupled with practices of corruption, patronage and cadre deployment (DBE, 2016a: 133; NEEDU, 2013: 79), the inability of the education authorities to consistently deliver on their mandate has thrust the Department of Basic Education (and the education system) into a legitimacy crisis. Because the initial expectation that a post-apartheid education would not only ensure access to education, but would also provide equal and quality education is not being met, the government is now being forced to counteract any decline in legitimacy due to loss of credibility. This has resulted in the upsurge of political realism in the domain of education governance.

As it is difficult to exert influence over others merely because of the possession and use of power (interaction aspect of complexity theory), having legitimacy is important to authorities and institutions if they wish to achieve success (Tyler, 2006: 375). Legitimacy is associated with the level of trust placed in authorities and is seen to be related to an easier and better functioning state, such as the willingness to pay taxes and follow state directives (DeRouen & Goldfinch, 2012: 504), On the other hand, as explained by DeRouen and Goldfinch (2012: 504), "the legitimacy of the state is also related to its ability to perform its functions adequately, i.e. legitimacy both influences and is influenced by state performance and effectiveness" – connectedness-aspect of complexity theory. The importance of legitimacy is explained by Gilley (2006: 499) as follows: "States that lack legitimacy devote more resources to maintaining their rule and less to effective governance, which reduces support and makes them vulnerable to overthrow or collapse". Because the initial expectation that a post-apartheid education would not only ensure access to education, but would also provide equal and quality education has not been met, the government is being forced to counteract any decline in legitimacy due to loss of credibility. This has resulted in the upsurge of political realism in the domain of education governance (emergence-aspect of complexity theory).

Political realism assumes that power is (or ought to be) the primary end of political action and asserts that politicians do, or should, strive to maximize their power (Mosley, no date). As demonstrated by Jansen (2002: 200), this is played out in the South African education environment through "the preoccupation of the state with settling policy struggles in the political domain rather than the realm of practice". In other words, as expressed by Tikly (1997: 165), "education policies take the form of political programmes of government and attempt to use technologies of government to implement these programmes in a way that is consistent with the underlying rationality of government". This predisposition to safeguard political power through political realism indicates motives that are alien to the promotion of educational objectives. Furthermore, it suggests that the central authorities fear that they are losing legitimacy and that they are no longer trusted to deliver on the promise of equal and quality education (context-aspect of complexity theory).

However, it is recognised by the National Development Plan (RSA, 2012) that in order to realise the goals as stated in the plan, South Africa needs to draw on "the energies of its people", build capabilities and promote leadership and partnership throughout society and for top performing schools to "remain the beacons of our education system, they need to be supported …" (RSA, 2012: 303). The commitment of the current government to realise these recommendations of the National Development Plan is questionable considered against proposed amendments as contained in the draft Basic Education Laws Amendment Bill (RSA, 2017a).

6.2.2 School governing bodies and the principle of-co-operative government

Article 2 focuses on the relationship between the macro and micro levels of the South African education system. The parameters for this relationship are provided by the constitutional principle of co-operative government as contained in Chapter 3 of the Constitution (RSA, 1996c). It recognises that the national, provincial and local spheres of government and different organs of state are distinctive, interdependent and interrelated which speaks to key aspects of complexity theory.

Decentralisation is seen as a means to empower schools by granting them more autonomy and decision-making powers but these decentralised decision-making powers have resulted in confrontations between governing bodies and departments of education. These disputes are not only limited to disputes between advantaged former 'white-only' schools, but also occur between so-called 'previously disadvantaged' schools and the education authorities and are thus not limited to schools from particular socio-cultural, socio-political or socio-economic contexts. For example, in *Diphetoho School Governing Body and Others vs Department of Education (Free State) and Others* the school governing body challenged the appointment of a school principal by the Provincial Head of Department. *In Governing Body of Bopasetjhaba and Others vs the Premier of the Free State Province and Others a decision of the Free State Provincial Government* not to erect school buildings for the Bopasetjhaba Primary School was reviewed and set aside.

These potential situations of conflict (interaction and connectedness aspects of complexity theory) are supposed to be governed by the constitutional principle of

co-operative government as a key element for it to succeed. However, the application thereof is flawed, in that principle co-operative government implies that the parties involved must be accountable to each other. Not only do school governing bodies need to be accountable to the state, but being representative of a local school community, they are also obliged to hold the state accountable. This 'two-way' accountability is a crucial element of education decentralisation without which the partnership model as envisaged in the South African Schools Act is undermined. .

Significant to the principle of co-operative government is the rule of law and just administrative action. Notwithstanding the rulings in a number of court cases, the principles of co-operative government, and the rule of law and just administrative action continues to be challenged as recently observed in *Governing Body Hoërskool Overvaal and Another v Head of Department of Education and Others.* The manner in which the constitutional principles of co-operative government, the rule of law and just administrative action are continuously ignored, is not only placing them under threat, but is also eroding the legitimacy of the motives of the education authorities. This relates to what Gilley (2006: 501) describes as "the separability of political power from other types of social power and the validity of subjective views as the basis of legitimacy". In other words, the question can be asked whether the actions of the Department of Basic Education and the provincial education departments through their political and executive functionaries are motivated by educational concerns, or whether they are driven in their decisions by other agendas.

Being organs of state, provincial governments have public powers and perform public functions and section 125(3) of the Constitution (RSA, 1996c) stipulates that the national government must assist provinces to develop the administrative capacity required for the effective exercise of the powers and functions. As such, ignorance of the law with regard to their powers and functions is no excuse. Being organs of state, they have the added responsibility to be fully informed of the legal provisions applicable in their sphere. Thus, it can be argued that the solution to the incapacity which is experienced in the education system does not lie in the centralisation of power. Rather, it lies in the non-compliance of the government in the fulfilment of the constitutional duty to develop capacity (Rautenbach, 2012: 224).

As indicated in Article 2 (Chapter 3), and related to the interaction and connectedness aspects of complexity theory, schools - with their school governing bodies acting as functionaries - are organs of state. In order to uphold the rights of all learners, parents and educators and to promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the state, the constitutional principle of co-operative government must be fully extended to schools as well. This is acknowledged by the Constitutional Court and the draft Basic Education Laws Amendment Bill (RSA, 2017a). However, as demonstrated in Article 2 (Chapter 3), repeated violations by different provincial departments of education of the principles of legality and just administrative action as entrenched in the Constitution, not only undermines the mutual good will that is associated with co-operative government, but also threatens the legitimacy of the education system. This is illustrated by the following quotation from the *Overvaal* judgment (feedback-aspect of complexity theory):

> It is regrettably difficult to see how one can realistically expect any measure of objectivity or fair play towards the embattled minority group and their language by a senior official intimately involved in these proceedings who is prepared to disclose her obvious bias in the answering affidavit. In my view there are clear signs of an attempt by the second respondent [District Director of the Sedibeng East District of the Gauteng Department of education – own insertion] to defeat the ends of justice for the reasons mentioned …

In line with the provision of section 41 (3) of the Constitution (RSA, 1996c), by which every reasonable attempt must be made to resolve intergovernmental disputes, a statutory mechanism to enable school governing bodies to resolve disputes with provincial spheres of government and other organs of state needs to be established. Related to the emergence-aspect of complexity theory, the inclusion of such a dispute resolution mechanism in the draft Basic Education Laws Amendment Bill (RSA, 2017a) indicates that there is recognition of this need. However, related to the interaction-aspect of complexity theory, government officials / functionaries and school governing bodies need to be able to trust each other and understand that they are duty-bound to seek solutions to their disputes in an honest spirit of mutual goodwill that will promote the best interests of every child. For this to happen, values and attitudes need to be geared towards the realisation of this goal.

An uncompromising and biased approach to such disputes will not be conducive to cooperation, but will inevitably lead to further disputes being referred to the courts. Hence, whether such a statutory dispute resolution mechanism will succeed at keeping disputes between school governing bodies and the education authorities out of the courts, still remains to be seen. For it to succeed, the disputing parties need to understand their constitutional obligation and be committed to engage with each other in good faith and to act in a procedurally fair and lawful manner. This is important for any partnership between the local school communities and the state to succeed. Against this backdrop, the recommendation of the National Development Plan (RSA, 2012) that "the interests of all stakeholders should be aligned to support the common goal of achieving good educational outcomes that are responsive to community needs" becomes particularly significant.

6.2.3 Micro-level autonomy: professional discretion of public school principals

From Dworkin's (1978) 'doughnut'-perspective, Article 3 addresses micro level autonomy by attempting to ascertain whether school principals do have and are allowed to apply discretionary powers and when. In other words, this relates to what a principle 'may' do and decide, as opposed to what he/she 'must' do and concerns the legal, regulatory and policy environment (context-aspect of complexity theory) in which principals must operate. Lessons learnt from case law (emergence aspect of complexity theory) provide a valuable guide to direct principals in their discretionary actions and becomes an important aspect of the legal environment principals and departmental officials and functionaries need to take cognisance of.

6.2.3.1 The belt of constriction

The Constitution of the Republic of South Africa (RSA, 1996c) is the starting point from which principals must exercise their professional discretion. They are key in promoting the core values of human dignity, the achievement of equality and the advancement of human rights and dignity, non-racialism and non-sexism and the supremacy of the Constitution and the rule of law. Section 7 of the Constitution stipulates that the Bill of Rights (Chapter 2 of the Constitution) forms the cornerstone of democracy in South Africa and enshrines the rights of all people in the country. It

is therefore a guide to how people should interact with one another - the interaction-aspect of complexity theory. Thereby the democratic values of human dignity, equality and freedom are affirmed. The connectedness-aspect of complexity theory manifests itself in that the state – and schools - must respect, protect, promote and fulfil the rights as contained in the Bill of Rights and here principals take centre stage.

The rights in the Bill of Rights may be limited, but only in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on dignity, equality and freedom. Section 36 of the Constitution determines that the factors that should be considered when limiting a right are the nature of the right, the importance of the purpose of the limitation, the nature and the extent of the limitation, the relation between the limitation and its purpose and less restrictive means to achieve the purpose. Thus, where a limitation of a right can be justified according to the criteria as contained in Section 33, it will be constitutionally valid.

Smit (2008:216) explains that rights must be limited by means of a balancing process which entails two distinct formats. The balancing of rights may firstly refer to a situation where a head-to-head comparison of rights, values or interests occurs. In this case the value or weight of one right in relation to another is compared. Smit (2008:216) uses the example of *S v Makwanyane* (1995:55), where the Constitutional Court determined that a person's right to life will always outweigh the state's interests.

Secondly, the balancing process might refer to "the striking of a balance" (Woolman in Smit, 2008: 216). Smit (2008: 216) gives the following example as an illustration:

> ... when a learner has committed a misconduct such as disrupting a class by boisterous behaviour, then the learner can be disciplined without having to be suspended from school. The learner's right to basic education will by so doing be brought into balance (equilibrium) with the school's right to maintain discipline. Neither the school's nor the learner's rights are limited in their entirety, but the extent of the right of the learner is adjusted.

The principal often finds himself or herself in a position where his or her actions or decisions may limit the provisions of sections of the Constitution and his or her

discretion is then limited by Section 36. However, reinforcing the connectivity and interaction aspects of complexity theory, a principal's task is further complicated by the job description. The Personnel Administrative Measures (RSA, 2016a: A-32), as determined in terms of Section 4 of the Employment of Educators Act, 76 of 1998 (RSA, 1998a), acknowledges that the core duties and responsibilities of principals are individual and varied, depending on the approaches and needs of the particular school. This allows for the varied contexts in which schools find themselves (context-aspect of complexity theory) and therefore has a built-in mechanism for principals to exercise their professional discretion in matters relating to the professional management of public schools (the hole in Dworkin's (1978) doughnut). The core duties of the principal include tasks of a general and administrative nature, duties regarding personnel management, teaching, extra and co-curricular tasks, interaction with stakeholders and communication with a wide range of role players.

The functions of school principals are further specified in the Education Laws Amendment Act, 31 of 2007, which was inserted into the Schools Act as section 16A (emergence-aspect of complexity theory). The Personnel Administrative Measures provides a general job description for educators on different post levels, but the 2007 amendment to the Schools Act now places a greater emphasis on the role of principals in public schools and makes it clear that principals are representatives of the Head of Department, reinforcing their connectedness.

These roles of the principal are, however, limited in the sense that he/she may not render assistance or perform this function in a manner which is in conflict with the instructions of the Head of Department, legislation or policy. This relates to the hole in the Dworkin-doughnut. From an interaction connectedness perspective, the potential for division between the principal and the school governing body on the one hand, and between the principal and the education authorities on the other, is thus very real. An example would be when instructions are issued to a principal by the provincial Head of Department which contradict a policy of the school governing body. This indeed happened when the Constitutional Court was asked to rule in the combined case *Head of Department, Department of Education, Free State Province v Welkom High School and others* and *Head of Department, Department of*

Education, Free State Province v Harmony High School and others (discussed in the next sub-section).

In addition, subsection 16 (3) of the Schools Act states that the principal is responsible for the professional management of the school. This includes the implementation of all the educational programmes and curriculum activities, the management of all educators and support staff, the management of the use of learning support material and other equipment, the performance of functions delegated to him or her by the Head of Department in terms of the Act, the safekeeping of all school records and the implementation of policy and legislation.

Subsection 16 (2) (d) requires the principal to assist the governing body in handling disciplinary matters. Subsection 19 (2) adds another dimension to this relationship between the school governing body and the school management team (Mncube, 2009: 36; Van Wyk, 2004: 53), as it involves the provincial education department. Subsection 19 (2) of the South African Schools Act (RSA, 1996a) state the following:

> The (provincial-own insertion) Head of Department must ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act. The connectedness between the provincial head of Department and school governing bodies, via the principal, is thus reinforced. This makes the principal also accountable when the capacity of governing bodies is enhanced.

Notwithstanding the above, and corresponding to the interaction and connectivity aspects of complexity theory, the code of professional ethics as contained in the South African Council for Educators Act, 31 of 2000, prescribes standards of conduct for all members of the teaching profession in their relationship with learners, parents, the community, colleagues, the profession, the employer and the South African Council for Educators. Therefore, as the professional manager and leader of the school, the principal has the added obligation to create a climate in which the worth and dignity of every individual is respected and protected. This implies that the principal must, in exercising professional discretion, be a model with regards to his or her attitude and behaviour (Joubert & Prinsloo, 2008: 181).

While performing all the functions as discussed in the preceding paragraphs, the principal remains *in loco parentis.* Grounded in South African common law and to a large extent confirmed by statutory law (Oosthuizen & Van der Walt, 1998: 89), i*n loco parentis* literally means 'in the place of the parent' (Oosthuizen, 1992: 126). Oosthuizen (1992: 127) explains that the person acting *in loco parentis* (the teacher or principal) acts in the place of his/her associate (the parent) to educate and teach the child professionally in the absence of the parent. The right of the teacher and principal to exercise authority over the learner is a delegated power by the parent as an associate, as well as an original power as the teacher and principal act from within the societal relationship of the school with its own power structure.

Three pillars can be identified with the role that teachers and principals play when they find themselves *in loco parentis*. The first is the duty of care, which implies protecting the physical and mental well-being of learners. Teachers are at all times and in all situations expected to act as *diligens paterfamilae* and "reasonable persons" (Prinsloo, 2005: 9). Thus, when performing this duty of care, it must be done in the same way a diligent father of a family would care for his family. The second pillar is the duty to maintain order in a school which implies the duty teachers and a principal have to discipline learners (Prinsloo, 2005: 9; Oosthuizen & Van der Walt, 1998: 95). The third pillar is the obligation to educate (Oosthuizen & Van der Walt, 1998: 95).

When exercising his or her discretion, the principal must act as *a bonus paterfamilias* (a prudent teacher/educator compared with a good father of the family). When determining whether a person is liable for negligence, courts of law apply this test by asking the following questions (Joubert & Prinsloo, 2008: 148):

- Would a *diligens paterfamilias* in a similar position foresee the reasonable possibility of his or her conduct (or lack thereof) injuring another or causing damage to property?
- Would a *diligens paterfamilias* in a similar position take reasonable steps to guard against the harm?
- Were preventative steps actually carried out?

Deeming a child's interests as of paramount importance is a common law principle which is included as a basic constitutional right in section 28 (2) of the Constitution. This principle is re-enforced in section 9 of the Children's Act (RSA, 2005a), which stipulates that: "In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied".

Although the *in loco parentis* principle does not equate the duties of an educator (and principal) to that of a parent, but only compares it to that of a reasonable parent **(**Oosthuizen & Van der Walt, 1998: 98), it is a key element to consider when exercising professional discretion. Over and above the duty to take care of the physical and mental well-being of the learner, school principals have the obligation to manage the teaching and learning processes in the school and have the right to maintain 'school'-authority over the learner and to discipline him/her at school in the context of the teaching and learning process **(**Oosthuizen & Van der Walt, 1998: 94).

6.2.3.2 The hole in the doughnut (discretionary space)

Case law provides valuable insights with regard to how discretionary powers of principals should be correctly applied. Case law also provides insight into the complex nature of a principal's work and proves the complexity of a principal's task as it contains the key elements of complexity theory, namely the interaction-aspect, the aspect of feedback, the aspect of connectedness, the aspect of emergence (Cohen, Manion & Morrison, 2011: 29), the aspect of context (Haggis, 2008:167) and the non-linear aspect (Cohen, Manion & Morrison, 2011: 28, 30). Significantly, in some situations, principals not only may exercise discretion, but are duty bound to exercise discretion. In *Francois Xander Van Biljon v Neil R. Crawford and Others*, the court ruled that certain offences, which do not require the suspension or expulsion of learners, may be dealt with in an informal manner that recognises the discretionary powers of the principal. The court held that, if a principal is expected to set the full disciplinary proceedings in motion with each and every infraction, it would render the management of a school impossible.

The obligation of principals to ensure a safe school environment is illustrated in *Member of the Executive Council for Education (MEC), Eastern Cape Province and Others v Queenstown Girls High School.* This case confirms the lawfulness of a

public school's admission policy insofar as it relates to disclosure of past conduct of a prospective learner at a previous school for purposes of determining potential physical and mental danger to others. The court reiterated that in order to make a proper determination or assessment of whether a prospective learner's past behaviour may endanger others at a school, the process leading up to that assessment should be procedurally fair and the outcome of the process must be lawful and reasonable. This relates to the right to just administrative action. A practice by the principals to keep the content of the report on past behaviour secret would, however, be deemed to be procedurally unfair. Significantly, the professional discretion of principals is recognised in the judgment when it is stated that it is not the responsibility of other officials in the education department to second-guess the principal's decision.

The National Policy pertaining to the programme and promotional requirements of the National Curriculum Statement (DBE, 2016b:38) provides principals and their management teams some discretion with regard to the promotion or retention of learners who have already repeated a year in a phase. In *Principal of Mbilwi High School v RM*, the Supreme Court of Appeal recognised this discretionary power. The court held that the school management has a discretion as to whether or not to retain or progress a learner following a second failure, after consideration of available evidence whether it would be in the best interests of the learner to be progressed (section 9 of the Children's Act, RSA, 2005a).

Case law also provides insights (feedback) with regard to the incorrect application of professional discretion as illustrated in the following cases. Although the central issue of the combined case of *Welkom High School and another v Head of Department: Free State Province and another* and *Harmony High School and another v Head of Department: Free State Province and another* was the unlawful action by the Head of the Education Department who instructed the principals to act in contravention of the policies of their respective school governing bodies, the court alluded to the discretionary powers of principals and school governing bodies and acknowledged that principals and governors of schools might go astray and stated that "governors and principals [had] no absolute and limitless powers to run (govern and manage) the schools as they please[d]". This ruling was confirmed in *Head of Department, Department of Education, Free State Province v Welkom High School*

and others and *Head of Department, Department of Education, Free State Province v Harmony High School and others*. Dismissing the head of Department's appeal, the Constitutional Court held that, as a matter of legality, supervisory authority must be exercised lawfully in accordance with the Schools Act and concluded that, because the Head of Department had purported to override school policies without following the relevant procedures set out in the Schools Act, he acted unlawfully. However, it was acknowledged that the pregnancy policies of the two schools at face-value infringed upon the constitutional rights of pregnant learners, including the rights to human dignity, to freedom from unfair discrimination and to receive a basic education. The two schools were ordered to review the policies in the light of the requirements of the Constitution, the Schools Act and the considerations set out in the judgement. The schools were further ordered to meaningfully engage with the Head of Department in the process of reviewing their policies, according to the principles of cooperative governance enshrined in the Schools Act. An approach which places the learners' best interests as the starting point must contextualise disputes within the parties' duties to engage and cooperate. However, any action to secure learners' rights, no matter how well intentioned, must be lawfully taken.

The *Welkom* cases underlined the pivotal role of principals in ensuring that policies adopted by the school governing body are not in conflict with the legislation and policy. This point was also illustrated in the decision in *MEC for Education, Kwazulu-Natal v Pillay* where the Constitutional Court ruled in favour of a member of a cultural/religious group to engage in a practice that expressed her religious beliefs and culture (Lenta, 2009: 872). The central reason for the court's decision was that the school's interest in enforcing the school uniform regulations was weak. Although section 36 (1) of the Constitution does allow for the limitation of fundamental rights, they may be limited "only in terms of law of general application to the extent that the limitation is reasonable and justified in an open and democratic society based on human dignity, equality and freedom".

In the *Pillay* case, the Constitutional Court, by applying the process of balancing rights, ruled in favour of Mrs Pillay, who believed her daughter was discriminated against by her school when she was not allowed to wear a golden nose stud. The nose stud was worn as a religious and cultural practice. According to this ruling, it is difficult to see how granting an exemption to permit the wearing of a nose stud by a

learner would interfere with the effective running of a school and the purposes the school uniform was designed to promote (Lenta, 2009: 828; Alston, van Staden & Pretorius, 2003: 166). It is therefore clear that a school's code of conduct must not only provide for reasonable accommodation of cultural differences, but also in applying a school's code of conduct, principals need to exercise discretion.

In *Danielle Antonie v Governing Body, Settlers High School and Others* a fifteen-year-old female learner who embraced the Rastafarian religion, wore dreadlocks and a cap to school which was in conflict with the school's code of conduct. The principal's permission to wear this style was sought on several occasions but the requests were denied. Believing that her right to freedom of religion and expression was being denied, she continued to attend school wearing dreadlocks and a black cap which matched the school colours. She was suspended for five school days for serious misconduct (repeatedly transgressing the code of conduct and ignoring the instructions of the principal). The court ruled that the school had not acted in a spirit of mutual respect, reconciliation and tolerance and set aside the arguments of the school. Principals should therefore be careful not to suspend learners for offences which do not amount to serious misconduct.

In the matter between *Michiel Josias De Kock v the Head of the Department and Others, Province of the Western Cape* the applicant's son, a seventeen-year-old learner, was accused of being in possession of marijuana and a recommendation for expulsion was submitted to the provincial Head of Department by the governing body of his school. Prior to the disciplinary hearing, the principal and deputy-principal found the learner in possession of a small plastic bank pouch containing a substance resembling tobacco and the assumption was made that it was marijuana. The members of the disciplinary committee, which included the principal and deputy-principal, were unanimous in their decision to recommend permanent expulsion from the school. The court held that a gross irregularity had taken place in that the principal and deputy-principal had simultaneously acted as witness, prosecutor and judge. The decision to expel the learner was set aside. It is apparent from this case that principals need to ensure that learners are treated impartially and that disciplinary decisions are made in good faith and without bias or prejudice.

Megan Tania Jacobs v The Chairman of the Governing Body of Rhodes High School and Others (2004:7953), centred on the vicious assault of a teacher by a learner. The court ordered that the plaintiff pay a substantial amount in damages. The court took into consideration that, at the time of the incident, the principal was an experienced educator with 21 years of experience, during which time he had held various positions as Head of Department and Deputy Principal. As Senior Deputy Principal at the school where he had previously been employed, he had been responsible for discipline and therefore should have exercised better judgement when the learner was reported to him.

It is thus evident that principals do have discretionary power and, at times, they are obliged to exercise this power. This is particularly pertinent to situations where the safety of others is at risk. However, these powers are limited and contribute to the exceptional degree of difficulty in the decision-making of a principal. Without such discretionary powers it would be almost impossible to be a principal.

Despite this, it is also clear that the principal is not only accountable to the Department of Basic Education and the school governing body, but that his/her accountability stretches much wider than that. It extends to the wellbeing of the learners and all staff working at the school as well as to the school community. In exercising discretion during his/her daily task of running the school, the principal needs to weigh every decision very carefully in order to conform to this demanding mandate placed upon him/her as every judgement call made by the principal will inevitably be questioned.

6.2.4 Micro-level autonomy: possibilities for distributed leadership in South African public schools

As illustrated in the previous section, principals not only remain critical figures in the leadership equation, but are also the promotors of distributive leadership in schools (Harris, 2011: 8; Naicker & Mestry, 2011: 105; Murphy et al. 2009:181; Grant 2008: 89). They decide what is distributed and how distribution is accomplished (Bush & Glover, 2012: 34; Grant & Singh, 2009: 291). However, in terms of Sections 16, 16A and 58B of the South African Schools Act (RSA, 1996a) and Section16 of the Employment of Educators Act (RSA, 1998a), principals cannot escape the accountability framework within which they must operate and related to Dworkin's (1978) 'doughnut' principle This has potential implications for the distribution of leadership since the principal cannot abdicate his/her accountability to other levels of leadership in the school. This and other ambiguities in policy are illuminated in Article 4.

The expectation regarding distributed leadership, as suggested in the Personnel Administrative Measures (RSA, 2016a) and the Policy on the South African Standard for Principals (RSA, 2016b), is that principals need to reconfigure themselves as leaders. This would require that they reframe their own conception of leading, '[from] reliance on bureaucratic and institutional lenses toward viewing schools as community-anchored organisations' (Murphy et al., 2009: 183). The general acknowledgement by the Personnel Administrative Measures and the Policy on the South African Standard for Principals is that schools operate in diverse contexts, which calls for principals and teachers to improvise and be innovative and resourceful in order to address the local challenges or local demands of their school communities. This need is recognised in the *Report to the Minister of Education of the Ministerial Committee on Schools that Work* (Christie, Butler & Potterton, 2007: 81), where it states that a policy dispensation that expects all schools to achieve the same outcomes in very different circumstances is simply not realistic.

It is evident that there is a definite expectation that leadership should be distributed in schools to the different post levels in various forms, as is clear from the emphasis on shared leadership in the Standard for Principals (RSA, 2016b). It is, however, noteworthy from the Standards for Principals that the expectation of distribution of leadership to the broader staff component in schools relates mainly to staff

professional development, organisational improvement, and the co-curricular and extracurricular activities of schools. The implication is that it seems that lower-level leaders in a school are not really expected to have decision-making powers, but that their leadership functions are directed towards activities related actions such as mentoring, coaching and teacher appraisal.

It is also clear that principals are expected to design a configuration of systems and procedures that will allow teachers at all levels to perform leadership functions. This calls for organisational redesign in schools, which places the heterarchy of distributed leadership in danger of being compromised by the hierarchical bureaucracy of the education system. This is because the accountability framework as contained in the South African Schools Act (RSA, 1996a) and the Employment of Educators Act (RSA, 1998a), which includes the Personnel Administrative Measures (PAM), requires the principal to be the central figure in the school. Principals will therefore be key in determining what leadership functions should be distributed, and to whom. Manifestations of managerialism and the existence of heterarchical-hierarchical tension are present in the PAM and the Standard for Principals, in that although there is a requirement that innovative ideas be implemented, it is expected that this be done in a way that is congruent with policy frameworks and plans. It therefore remains to be seen whether the education authorities will allow principals the freedom to distribute leadership functions within their schools, or whether a '*one size fits all*' approach will dominate the approach of principals in applying and developing policies.

Although there seems to be wide scope for distributed leadership within the new policy framework in South Africa, the Policy on the South African Standard for Principals (RSA, 2016b) and the job descriptions of teachers at the various post levels as contained in the Personnel Administrative Measures (RSA, 2016a), distributed leadership will be a new and different approach for most principals, as well as their management teams and leaders at different levels. This new approach to leadership will require development of new attitudes, skills and knowledge by principals and staff members, to enable them to embrace so-called shared leadership, or distributed leadership. It is important to realise that specifically in a distributed leadership model, it cannot be only the principal that is accountable for the quality of education (Heystek, 2015). According to the Personnel Administrative

Measures, all the teachers at the different levels in the school have their specific responsibilities, and thus they are also accountable for the quality of education.

There are potential challenges for the implementation and practice of distributed leadership. For example, Storey (2004: 257) asserts that there may potentially be ambiguity between the boundaries of management and leadership between the leaders at the various levels, while Mascall, Leithwood, Straus and Sacks (2008: 224) maintain that distributed leadership must be well planned. Harris (2003: 321) warns that distributed leadership is "not a matter of delegation, direction or distribution of responsibility but rather a matter of teachers' agency and their choice in initiating and sustaining change". This is a real possible threat to distributed leadership in the South African context, and as argued in Article 4, the responsibilities and duties of teachers, master teachers, and heads of department may be interpreted as mere delegation or distribution of responsibilities, rather than as empowering these people to be leaders.

6.2.5 School governance autonomy

The South African education system makes provision for differentiated school governance autonomy. This differentiation is expressed in two ways. Firstly, as illustrated in Article 2, Section 21 of the South African Schools Act (RSA, 1996a) provides an avenue for differentiated decentralised autonomy in that it makes provision for school governing bodies to apply to the provincial Head of Department to be allocated additional functions pertaining to the maintenance and improvement of a school's facilities, the extra-mural curriculum of the school, the purchasing of textbooks and other educational material, to pay for services to the school, to provide an adult basic education class and other functions consistent with the provisions of the Schools Act and applicable provincial law. The second way in which differentiated school autonomy finds expression is in the national Norms and Standards for School Funding (NNSSF) (RSA, 2017b) which determines that the poorest 60% of public schools are declared non-fee-paying schools, receiving all their funding from the state, whilst the 'richer' 40% of public schools are fee-paying schools, receiving substantially less from the state, which equates to approximately six times that received by fee-paying schools. This not only provides so-called fee-paying schools with a substantial degree of autonomy, but also requires greater

levels of accountability to the local school community. However, during the last decade there has been a steady curtailment of the autonomy levels of school governing bodies, both through official statutory regulatory channels and through repeated unlawful attempts that had to be resolved by the courts.

6.2.5.1 Statutory curtailment of school governance autonomy

An important mechanism to provide the education authorities with influence in school governing bodies was the insertion of Section 16A into the South African Schools Act by The Education Laws Amendment Act 31 of 2007. Section 16 A stipulates that the principal of a public school represents the provincial Head of Department on the school governing body. In addition, Section 16A determines that a public school principal may not assist the school governing body in a manner which is in conflict with the instructions of the provincial Head of Department. The insertion of these amendments to the Schools Act has thus provided the Department of Basic Education, through the principals, a vehicle to be represented on governing bodies of public schools and as such, a means to influence governing body decisions. This is an example of how, under the pretence of decentralisation, the authorities are actually centralising the governance system.

Other examples of statutory curtailment of school governance autonomy can be found in the Section 58C of the Schools Act, inserted by means of Section 11 of the Education Laws Amendment Act of 2007 (RSA, 2007). As argued in Article 1, the constraining elements and the potential for centralisation contained in Section 58C can be juxtaposed against a twofold motivation for government to apply a form of selective decentralisation. The first is related to the need to achieve equity and hence to utilise financial resources more effectively where needed most. However, in so doing, government must rely on school communities who can afford it, to contribute in the form of school fees, thus being forced to allow some financial decision-making autonomy. Conversely, political realities (political realism), for example the decline in legitimacy due to underperformance of the education system, are forcing the government to implement a more centralised approach This corresponds to Lauglo's (1995: 9) rationale of political legitimacy for the implementation of decentralisation measures, which places the emphasis on 'who has the right to make what decisions'.

It is important that Section 58C of the Schools Act (RSA, 1996a) be read in conjunction with Section 16 of the Schools Act and sub-section 3(4) of the National Education Policy Act (RSA, 1996b) which grants the Minister of Basic Education additional powers to promulgate additional regulations. This has resulted in a number of policies and regulations being published that curtail autonomy levels pertaining to the professional management of schools and the policy-making functions of school governing bodies. Examples of national policy determined by the Minister in terms of sub-section 3 (4) of the Policy Act that may have a limiting effect on local school governance autonomy, are:

- General Notice 2432 of 1998 – Admission Policy for Ordinary Public Schools (RSA, 1998b); and
- Government Notice 1307 of 2003 – National Policy on Religion and Education (RSA, 2003).

Regulations curtailing the autonomy levels of school governing bodies published under Section 61 of the Schools Act include the following:

- General Notice 1701 of 1997 - Norms and Standards for Language Policy in Public Schools (RSA, 1997);
- Government Notice 776 of 1998 - Guidelines for the consideration of governing bodies in adopting a code of conduct for learners (RSA, 1998c);
- Government Notice 1040 of 2001 - Regulations for safety measures at public schools (RSA, 2001);
- Government Notice 1589 of 2002 - Regulations to prohibit initiation practices in schools (RSA, 2002); and
- Government Notice R1052 of 2006 as amended by Government Notice 1149 of 2006 – Regulations for the exemption of parents from the payment of school fees, 2005 (RSA, 2006b).

The above examples dictate the parameters within which school governing bodies must draft their policies. It also illustrates the vast extent of the Minister of Basic Education’s powers to prescribe to school governing bodies how they must govern their schools and influence what is happening at local school level.

Notwithstanding the above, it is especially in matters concerning the appointment of teachers, admission policies and language policies of public schools, and the procurement and contractual ability of school governing bodies that the draft Basic Education Laws Amendment Bill (RSA, 2017a) provides clear signs that the government has set its sights on a course towards greater centralisation.

6.2.5.2 The draft Basic Education Laws Amendment Bill (2017)

Firstly, the draft Basic Education Laws Amendment Bill (2017a) seeks to adjust the powers of school governing bodies with regard to recommending candidates for appointment to management positions in schools in favour of the HOD. It is argued by the memorandum of motivation that accompanied the draft Amendment Bill, that in terms of the appointment of teachers in management positions, dysfunctional school governing bodies in rural areas do not have functional governing bodies and persons with the necessary skills and necessary knowledge to conduct interview processes and to know what is required of a principal, a deputy principal or a head of department. Furthermore, the current system restricts the HOD in terms of whom he or she may appoint. However, this does not hold true for schools with well-functioning school governing bodies. This proposed amendment to the Schools Act also contradicts the recommendation of the National Development Plan (RSA, 2012) that top performing schools should be supported and not be saddled with unnecessary burdens.

Secondly, the draft Amendment Bill (RSA, 2017a) seeks to limit the powers of school governing bodies in respect of the admission policies of schools by amending section 5 of the Schools Act to provide for the provincial HOD to have the final authority to admit a learner to a public school. Should this proposed amendment be passed by Parliament, it will become a good example of the centralisation of decision-making power and how education authorities are granted statutory powers to intervene at local governance level under the guise of freedoms promised by decentralisation and local autonomy.

The Norms and Standards for Language Policy stipulate that school governing bodies must determine how the school will promote multilingualism in their schools. In addition, the Norms and Standards for Language Policy (RSA, 1997) stipulate that a school must provide for learners to be taught in a different language to the school's

language of teaching and learning if a reasonable demand exists. This has resulted in a number of court cases - the latest being the cases involving Overvaal High School. These regulations can be regarded as instruments of centralisation in an attempt to counterbalance decentralised decision-making powers of school governing bodies since the school governing bodies do not have full autonomy and a wide discretion in their decision-making power in adopting language policies for schools.

The proposed amendment in the draft Basic Education Laws Amendment Bill (RSA, 2017a) that the provincial HOD be empowered to centrally procure identified learning support material for public schools and that school governing bodies must seek the approval of the MEC for Education in the province to enter into lease agreements of any purpose, may not only limit the decision-making powers of capable school governing bodies, but is contrary to the recommendations of the National Development Plan (RSA, 2012) in that it will place an “unnecessary burden” on well-functioning school governing bodies.

Therefore, instead of building on the differentiated school governance approach as initially contained in the South African Schools Act, the Department of Basic Education is following an approach of curtailing the powers of well performing governing bodies which, according to the National Development Plan, should be “recognised as national assets” (RSA, 2012: 303). In addition, the National Development Plan has as an objective to “develop a strong sense of community ownership” and acknowledges the need to provide additional support to school governing bodies (RSA, 2012: 311). Thus, instead of curtailing local governance autonomy, means of incentivising and rewarding school governing bodies to strive towards substantive and durable improvement must be sought. In this way the constitutional principle of co-operative governance will be strengthened. Unfortunately, according to Indicator 22 of the Department of Basic Education’s *Action Plan to 2019: Towards realisation of schooling in 2030* (DBE, 2015) school governing bodies are measured against minimum criteria of effectiveness which primarily means that school governing bodies need to only be “properly constituted and holding the required minimum of four meetings per year” to be deemed as effective (DBE, 2015: 43). Such superficial measures of effectiveness will not only not result in improvement of the effectiveness of school governance, but will also

undermine governance autonomy as an “important cornerstone of democracy and accountability in the schooling system” (DBE, 2015: 42). Thus, governance autonomy at local school level requires school governing bodies to be meaningfully effective. In other words, without meaningful effectiveness, governance autonomy will not be possible.

6.2.6 Management and leadership autonomy at school level

Compared to school governance autonomy, there is less room for autonomy in terms of school management and leadership. Although public school principals are in terms of Section 16 of the Schools Act (RSA, 1996a) responsible for the professional management of their schools, Section 16 A stipulates that the principal of a public school represents the provincial Head of Department on the school governing body. Therefore, and as indicated earlier in this chapter, discretionary powers of public school principals are limited in that they may not act in conflict with the instructions of the Head of Department, legislation or policy and that the potential for a conflict of interests between the principal and the school governing body on the one hand, and between the principal and the education authorities on the other, is very real.

Notwithstanding the above, public school principals are still expected to apply discretion in terms of disciplinary issues of learners (*Van Biljon v Crawford*), ensuring the lawfulness of school policies (*Welkom* cases), protecting and promoting the rights of learners (Welkom, *Pillay*, *Antonie* and *Josias de Kock* cases) and in ensuring the safety of everyone in the school (*Queenstown Girls High School* and *Tania Jacobs* cases). In exercising discretion, principals need to apply the common law principles of *in loco parentis* and *diligence paterfamilias* (prudent father) in safeguarding and promoting the well-being of everyone in the school.

An important example of a principal and his management team applying professional discretion whilst deviating from the interpretation of a national policy by district officials can be found in the *Mbilwi High School* case. However, such a deviation from national policy needs to be well justified. For example, exercise of discretion and deviation of policy must be in the best interests of a learner as demanded by Section 9 of the Children’s Act (RSA, 2005a).

Although the Policy on the South African Standard for Principals (RSA, 2016b) envisages the application of shared or distributed leadership in South African schools, the concepts of 'management' and 'leadership' are used interchangeably in policy documents. An example is that Section 16A of the Schools Act (RSA, 1996a) expects principals to be responsible for the "professional management" of a school, where according to the National Development Plan "the main responsibility of a school principal should be to lead [own emphasis] the core business of the school" (RSA, 2012:309). Although this may be regarded by many as semantics, organisational theory makes a clear distinction between the two and the interchangeable usage of these concepts in official documentation dilutes the individual value and importance of each concept. In addition, the Department of Basic Education is applying a strong managerialistic form of monitoring and control which makes it unlikely that leadership activity will flourish. Also, the strong emphasis on school principals being the representative of and accountable to the provincial Head of Department is not conducive to principals creating conditions in their schools for shared and collaborative leadership practices.

There appears to be a substantial discrepancy between the current relatively low levels of autonomy afforded to principals and school management teams and what is proposed in the National Development Plan (RSA, 2012). Significantly the National Development Plan proposes that the management function of principals be expanded to include functions that currently fall within the ambit of school governing bodies. The National Development Plan proposes that greater management autonomy be granted to public school principals by recommending that principals gradually should be given "more administrative powers as the quality of school leadership improves, including in financial management, the procurement of textbooks and other educational material, and human resources management" (RSA, 2012: 310). Firstly, leadership is being associated with "administrative powers", once again pointing to some conceptual (con)-fusion. Secondly, financial management of schools and procurement of textbooks are governance functions specifically allocated to school governing bodies in the Schools Act. Implementing such a recommendation would require amendments to the Schools Act which are notably absent in the draft Basic Education Laws Amendment Bill (RSA, 2017a) in its current form. Should the Schools Act be amended to allow for these recommendations, school governance in

its current form will change and contrary to the partnership-model as envisaged in the South African Schools Act, the role of school governing bodies, especially the well-functioning governing bodies, will be radically watered down. Thirdly, such extension of the powers of principals will necessitate drastic changes to the minimum entry requirements of school principals (and other school management positions). Public school principals will not only need to have a sound knowledge of the law and be proficient in applying the law and related legal principles, but they will also have to be well (and better) -trained and proficient in school financial management. These additional competencies and knowledge are important as principals will be held accountable for functions previously allocated to school governing bodies.

Just as in the case of governance autonomy, meaningful autonomy in school management will only be possible if accompanied by capacity. Principals will have to demonstrate high levels of competence for them to be entrusted with greater levels of autonomy, a principle acknowledged by the National Development Plan (RSA, 2012: 310).

6.3 CONCLUSIONS

In this section I focus on the value and contribution to theoretical insights of the study in the arena of school governance and management decentralisation and school autonomy as manifested in the South African education system.

6.3.1 Challenging the notion of decentralisation in the South African education system

In terms of the preamble of the South African Schools Act (RSA, 1996a), the South African education system is positioned as being a system which advances the democratic transformation of South African society and promotes a partnership model for the organisation, governance and funding of public schools. However, this study exposes the South African education system as a system in which decentralised-centralism is being advanced. As a result, the promotion and advancement of the democratic transformation of society is being frustrated and the promotion of a partnership between the State and local school communities is

obstructed. This is caused by the education system and the authorities experiencing a legitimacy crisis due to the unsatisfactory performance of the education system and a resultant return to autocratic and managerialistic approaches in an attempt to restore legitimacy. This is linked to political realism which takes as its assumption that political power is, or ought to be, the primary end of political actions.

The movement towards decentralised-centralism in the South African education system is manifested by previous and proposed amendments to South African education legislation, the latest being the draft basic Education Laws Amendment Act (2017a or b), and numerous contestations in the Constitutional Court questioning the application (or lack thereof) of the constitutional principles relating to the rule of law, just administrative action and co-operative government by education authorities.

Closer to grassroots, the insertion of Section 16 A to the Schools Act (RSA, 1996a) has significantly reduced the autonomy of school principals. This is in direct contrast to the proposal of the National Development Plan that principals should gradually be given more powers as the quality of school leadership improves (RSA, 2012: 310). In addition, the draft Basic Education Laws Amendment Bill (RSA, 2017a) proposes significant reductions in the autonomy levels of school governing bodies of public schools on all levels of the functionality spectrum. Although the draft Bill has yet to be promulgated, it signals the direction in which the government is moving in terms of realising the objectives of instilling democratic principles into our society and promoting the acceptance of shared responsibility for education.

6.3.2 The lack administrative capacity and capabilities of the South African education authorities

Linked to the legitimacy crisis of the South African education system, is the capacity deficit within all levels of the South African education system. Despite the stipulation contained in Section 125(3) of the Constitution (RSA, 1996c) that the national government must assist provinces to develop the administrative capacity required for the effective exercise of their powers and of their functions, continual unlawful actions, particularly relating to just administrative action, point to an inability of the education authorities to not only perform their administrative functions effectively, but

also to execute these functions correctly. Whereas much of the blame for the underperformance of the education system is directed towards the lack of capacity of principals, teachers and governing bodies, this study indicates that the lack of capacity is equally problematic in the higher political and executive echelons of the education system.

6.3.3 Questioning the motives of the South African education authorities

In addition to the previous section, this study also challenges the motives the South African education authorities. Because the initial expectations that a post-apartheid education system would not only ensure access to education, but would also provide equal and quality education, has not been met, the government is being forced to counteract any decline in legitimacy due to loss of credibility. This predisposition to safeguard political power through political realism indicates motives that are alien to the promotion of educational objectives. Furthermore, it suggests that the central authorities fear that they are losing legitimacy and that they are no longer trusted to deliver on the promise of equal and quality education.

6.3.4 The (mis-) alignment of South African education policies

This study exposes the misalignment of South African education policies in more ways than one. Firstly, the study highlights the gap between policy idealism and the practical reality of the South African education environment. Secondly, in terms of the development, management and leadership capabilities at local school level, discrepancies between what is prescribed in the Policy on the South African Standard for Principals (RSA, 2016b), the Personnel Administrative Measures (RSA, 2016a) and the Integrated Quality Management System (ELRC, 2003) is uncovered. Thirdly, measures as proposed in the draft Basic Education Laws Amendment Bill (RSA, 2017a) and the actions as demonstrated by for example, the Member of the Executive Council (MEC) for Education in the Gauteng Province, indicate a misalignment between the current tendency to victimise top performing schools and the recommendations of the National Development Plan that top performing schools must not be unnecessarily burdened, but rather be (appropriately) supported and cherished as national assets (RSA, 2012: 303).

6.3.5 Limited possibilities for shared leadership practices in South African schools.

The possibilities for shared leadership practices in South African schools are questioned. The study uncovered conceptual (con-) fusion in South African policy documents with regards to leadership on the one hand and management on the other hand. Further, linked to the section on the misalignment of policies, there is a strong emphasis in the South African Schools Act (RSA, 1996a) on principals being managers, as opposed to the leadership role expected from principals as contained in the Policy on the South African Standard for Principals (RSA, 2016b). In addition, the prominence of managerialistic approaches by provincial departments of education undermines the discretionary freedoms associated with leadership actions and creates top-down bottom-up dissonance which plays out in the principal being expected to apply more participatory and democratic principles in his/her school, whilst at the same time being expected to adhere to a strict managerialistic regime as imposed by the education authorities. These conditions how difficult it is for even experienced principals to apply collaborative leadership practices. Nevertheless, it was determined that principals of public schools do have (professional) discretionary powers, but in order to appropriately and effectively apply professional discretion, principals of public schools also need to have a sound knowledge of relevant legislation and legal principles.

6.4 RECOMMENDATIONS

It is recommended that the government, more specifically the Department of Basic Education, re-evaluate the motives of the change of course in policy towards greater centralisation in the education system. It appears as if the motivations for this trend towards greater centralisation is influenced by vested interests and not aimed at benefitting the most vulnerable stakeholder in the education system, the learners.

The co-operative relationship between the provincial education departments and school governing bodies need urgent attention. Although the draft Basic Education Laws Amendment Bill addresses this issue to a certain extent, the many instances

where the provincial authorities are transgressing the principles of the rule of law, just administrative action and co-operative government, indicates that a national initiative need to be launched in creating awareness of these principals among provincial education officials and office bearers. In addition, agreement among school governing body organisations, teacher unions and the Department of Basic Education must be reached in terms of a national protocol to promote and uphold the rule of law, just administrative action and the principle of co-operative government. Hence, it is recommended that a national indaba be held where all relevant stakeholders are represented.

In the context of this study, there is a particular need for school principals, school management teams, school governing bodies and district officials to be trained in education law. Knowledge of the law and how to apply the law is of the utmost importance for these role players to understand their accountability framework.

It is further recommended that policies such as the South African Policy on the Standard of Principalship, the Personnel Administrative Measures, the Integrated Quality Management System and Whole School Evaluation be revised to eliminate the ambiguities that exist in leadership and management terminology. It is further recommended that these policies and/or relevant legislation be amended to improve consistency in what is expected from district officials, school governing bodies and school principals.

The education system as a whole needs to be assessed in terms of whether it is really functioning in the best interest of the children of our country, a principle which must be paramount throughout the system. The move towards decentralised-centralism indicates a single-minded and uncompromising approach in attending to the inequalities and the multi-dimensional contexts confronting the South African education system. This is evident in the motivation provided for the proposed curtailing of the powers of school governing bodies in the draft Basic Education Laws Amendment Bill (RSA, 2017a). However, because these proposed amendments will, as indicated in Articles 1 and 2, effectively only restrict the powers of well-functioning governing bodies, the result will be that these governing bodies and their

schools will be regarded and be treated in the same way as the non-functional schools on the other side of the spectrum. This approach to achieving equality will not only be counterproductive in terms of improving the overall performance of the education system, but it is contrary to the recommendation in the National Development Plan that top-performing schools must be regarded as national assets and be supported to "remain the beacons of our education system" (RSA, 2012: 303). The counter productivity of such an approach will more likely promote 'top-down regression' by perpetuating the 'poverty trap' (Van Den Berg et al., 2011) in that the "beacons of our education system" will be de-valued. An overly restrictive approach towards top-performing schools will place unnecessary burdens on these schools, making it more difficult to maintain their high standard. Instead of being examples of what schools and school communities should strive towards, hence promoting 'bottom-up progression', these schools will find it more difficult to maintain and improve their high standard or gradually lose headway as a "beacon" of the education system, hence stimulating 'top-down regression'. Other than the pressure placed on them by the Department of Basic Education and local communities, poorly performing schools will have no incentive to improve, making 'bottom-up progression' less likely to occur. In this regard the National Development Plan recommends that a careful balance should be maintained between making the conditions for improvement too difficult for schools, thereby discouraging them to work towards improvement, and making them too easy so that they make a difference to performance (RSA, 2012: 309).

Fundamental to 'bottom-up' progression is that a more focused approach to improving the South African education system is needed (RSA, 2012: 313). According to the National Development Plan (RSA, 2012: 303), this can be achieved by, among other things, developing skills and the commitment of teachers through targeted support by district offices, recognising and supporting top-performing schools, rewarding schools that show continuous improvements and developing a strong sense of community ownership (RSA, 2012: 311). These recommendations of the National Development Plan not only point to an approach that will promote 'bottom-up' progression, but also pave the way to a differentiated approach to decentralisation.

It is therefore recommended that a model that allows for differentiated levels of school autonomy be developed for and implemented in the South African education system. Such a principle of differentiated school autonomy is not foreign to the South African education system. As indicated in Article 1 and alluded to earlier in this chapter, Section 21 of the Schools Act already makes provision for such differentiation, albeit in a limited way in that it prescribes only a few additional functions with financial implications, and not powers, that school governing bodies may apply for.

6.5 REFLECTION ON THE METHODOLOGY OF THE STUDY

Fellow researchers have remarked that they experienced 'aha!'-moments during their research endeavours and I was fortunate to have experienced two of these moments. Research methodology courses tend to focus on and emphasise the more traditional epistemological and methodological paradigms. Although it was obvious that my study would be interpretive and qualitative in nature and that I had the option of applying a different methodology and research design for each of the articles, it did not entirely satisfy a choice of research design that would enable me to answer the research questions. I needed an acceptable and appropriate way of "viewing the system holistically" and "as having its own ecology of multiple interacting elements" (Cohen, Manion & Morrison, 2011: 29). As articulated by Cohen, Manion and Morrison (2011:29): "To atomise phenomena … and then to focus on certain of these is to miss the synergy and the significance of the whole". This was provided by the paradigm of complexity theory – the first 'aha!'-moment. Now I needed a suitable research design. I needed a method of looking through the eyes of as many actors (participants) and stakeholders as possible that would enable "… multiple causality, multiple perspectives and multiple effects to be chartered" (Cohen, Manion & Morrison, 2011: 30). Hence, discourse analysis – the second aha!-moment.

As mentioned in Chapter 1, the main attraction for using discourse analysis in this study lay in its emic nature as the study involved capturing the subjective meanings placed on situations (Cohen, Manion & Morrison, 2011: 222) and that it allowed for a 'culture' to be studied or described in terms of their internal elements and their functioning. In investigating the phenomena of education decentralisation and school

autonomy, discourse analysis enabled me to engage in an analysis and critique of the different discourses as both ‘instruments of power’ and ‘effects of power’ (Cohen, Manion & Morrison, 2011: 589). In other words, how does power operate and what are its effects. Thus, discourse analysis enabled me to look beyond sentence grammar in order to focus on the study of actions and interactions within the South African education system.

However, I often needed to be reminded that as a qualitative researcher I had to be conscious of the fact that the texts on which the discourses used in this study are based carry many levels of meaning and had “to strive to catch these different levels or layers” (Cohen, Manion & Morrison, 2011: 575). In addition, I soon realised that discourses related to decentralisation and school autonomy in the South African education system are very interrelated and affected by other discourses on issues such as racism, equality, poverty, language rights and education quality. This “intertextuality” and “interdiscursivity” (Vincent, 2017) was a particular challenge as I often caught myself becoming embroiled in a discourse relating to another issue. An example was the court battle between the Governing Body of Overvaal High School and the Gauteng Department of Education which took place whilst I was writing the first article. The intense public debate on the language rights of Afrikaans-medium schools that accompanied this case threatened to divert my attention from the actual discourses applicable to the study.

Notwithstanding the above, the contextual elements surrounding the discourses (as explained in Chapter 1), particularly the broader socio-political and historical contexts in which discourses are embedded and are related to, provided valuable agencies through which to analyse discursive texts. I was guided in the inferences I made by asking questions about the origin and motives for a particular discursive text, the intended audience of the text and the consequences or potential consequences of the text.

Because this study is based on discourses, in other words “a group of [subjective-own insertion] statements which structure how we think about things and how we act on the basis of these thoughts” (Cohen, Manion & Morrison, 2011: 589), coupled with my own interpretation thereof, the danger exists that this study may be criticised as being too subjective. Thus, as explained by Cohen, Manion and Morrison (2011:

21), “the very process whereby one interprets and defines a situation is itself a product of the circumstances in which one is placed”. However, this critique of many of the interpretative research approaches is negated to an extent by the way discourse analysis is applied in this study, in that, other than, for example, a case study design in which semi-structured interviews are used where the researcher imposes his/her own definitions of situations on participants, the approach in this study did not allow me to influence the actors involved.

Another risk associated with interpretive approaches is that they open themselves to be criticized for “their narrowly micro-sociological approaches” because interpretive researchers are often guilty of putting “artificial boundaries around subjects’ behaviour” (Cohen, Manion & Morrison, 2011: 21). This danger was neutralised by the way discourse analysis was applied in this study in that I was unable to shape events and the behaviour of the actors. Therefore, instead of viewing those involved as participants, they were actors in events over which I had no influence.

Discourse analysis also enabled me to accommodate and allow for the multi-disciplinary nature of my research problem. I was thus able to identify “intertextual and interdiscursive relationships between utterances, texts, genres and discourses” (Vincent, 2017). In addition, discourse analysis afforded a means to, from a complexity theory perspective, understand that this multiplicity of interactions (discourses) through time is what produces effects (Haggis, 2008: 167).

Linked to the complexity theory paradigm, discourse analysis was found to be in that it allowed me to look at decentralisation and school autonomy “through the eyes of as many participants and stakeholders as possible” (Cohen, Manion & Morrison, 2011: 30). In other words, discourse analysis strengthened the study in the sense that that allowed me to ‘take in’ multiple perspectives.

6.6 REFLECTIONS ON THE STRENGTHS AND WEAKNESSES OF THE STUDY

The strengths of this study can also be found in its weaknesses. The first strength and weakness lies in the study being a PhD by publication. On the one hand it could be argued that having to submit four articles to four different journals exposes one’s work to four different sets of reviewers and hence the quality of work should be higher. However, one has to take special care that each individual article optimally

contributes to answering the research question(s). In the case of this study, it was possible to add several more sub-questions. For example: What are the possibilities for distributed leadership in the structures of provincial education departments? Or: How can district offices promote a co-operative relationship with school governing bodies? Therefore, limiting this study to only four articles presents a weakness in the sense that it may be argued that the main research question is not fully answered.

Secondly and also related to being an article-based study, being forced to adhere to the conventions of different individual journals, for example word limits, forced me to select, structure and motivate the arguments presented in each of the articles very carefully. This resulted in the arguments being more focused. However, had I had more freedom in terms of word limits, as would be the case in a traditional thesis, it would have been possible to not only more strongly substantiate some of the arguments, but also to add a greater variety of examples. Therefore, this 'contextual constraint' may have impacted on the overall quality of the arguments presented.

The third strength of this study lies in that it has a provocative element in that not only does it challenge whether the South African education system is truly decentralised, but it also challenges research conventions with regards to its format (being article-based and the structure of the thesis itself), the use of the paradigm of complexity theory and discourse analysis and not having employed more traditional fieldwork and data gathering techniques. Albeit an emerging paradigm in educational research, the paradigm of complexity theory however permitted me to place an emphasis on networks, linkages, holism, feedback relationships and interactivity" (Cohen, Manion & Morrison, 2011: 29; Mason, 2008a: 36) in the context and sub-contexts of the South African education system which is a dynamic, evolving, fluid and open situation. However, it may be argued that this provocative element causes the study to fall short of the so-called "'gold standard' of research" (Cohen, Manion & Morrison, 2011: 29), because it may be questioned whether it is scientific or empirical enough.

Lastly, this study contributes to the discourse on school governance and management decentralisation, and school autonomy in the South African education system in that it not only illuminates the current state of decentralisation in the system, but highlights the direction in which the system is leaning, namely towards

decentralised centralism. In addition to this dynamic element, the study underscores that the system cannot be divorced from the multiplicity of the relationships and interactions within the system and the connectivity of these relationships and interactions. On the other hand, the subjective nature of this contribution to the discourse on decentralisation and school autonomy in the South African education system must be acknowledged. Although, as a researcher, my intention was to analyse and engage with the system as an outsider, I also became an active actor or participant in the discourse, interacting with the system through the arguments, findings and recommendations I presented in the study. This underscores the dynamic element of research of this nature.

6. 7 SUGGESTIONS FOR FURTHER RESEARCH

The rationales for the decentralisation of education systems are referred to in Article 1 (Chapter 2). However, having concluded that the South African education system is characterised by decentralised-centralism, rather than decentralism, the phenomenon of decentralised-centralism provides an area in obvious need of research. In addition, it is suggested that the reasons and rationales for this movement towards decentralised-centralism warrants research. For example, although this study suggests that the legitimacy crisis experienced by the education system, the need of those in political power to (re-)assert themselves through political realism and the policy-practice gap (policy idealism) are all factors that have led to the emergence of decentralised centralism in the South African education system, these - and other possible factors - need to be researched in more depth. Linked to the above, research into the motivations behind and the implications of the elements in the draft Basic Education Laws Amendment Bill (RSA, 2017a) which are deemed to be restricting local school governance and management autonomy deserve to be examined.

It is further suggested that the effects of the multiple contexts in the South African education environment require research. In particular, ways to address the policy-practice gap and the capacity deficit within the different contexts in the South African education system need to be studied. Linked to this, the introduction of so-called ‘professional’ degrees at Master’s and Doctoral levels and the impact thereof on the capacity deficit in the South African education system need to be investigated.

Generally post-graduate studies in education are aimed at equipping students in becoming researchers, not better practitioners. Professional degrees will not only be better suited to preparing students to cope with the demands of the world of practice, but also to facilitate research in addressing the gaps in practice. Such research should thus have a strong leaning towards pragmatism as a paradigm and presents research opportunities to those researchers who are specifically interested in researching the interrelatedness of the higher education sector and the basic education system.

Related to the above and against the backdrop of the Policy on the South African Standard for Principals (RSA, 2016b), much research is needed on the job description of principals. Such research needs to be framed against the professional discretion of principals and their accountability framework in which they are expected to function. Moreover, it should be recognised that, although being fields of research in their own right, the tendency to view school governance, school management and educational leadership as separate fields of research has its disadvantages. This is because actions related to school governance, management and leadership are often compartmentalised. I therefore present a case for research aimed at the interconnectivity of school governance, school management and educational leadership.

The constitutional principle of co-operative government as it relates to school governance is very much under-researched. The need for further research in this aspect is motivated by the many legal battles between school governing bodies and education authorities on the one hand, and the inclusion of dispute resolution mechanisms to resolve disputes between school governing bodies and education authorities in the draft Basic Education Laws Amendment Bill (RSA, 2017a) on the other hand. Such research can also be linked to a model for differentiated levels of school autonomy.

As the relationship between the different autonomy levels in a model for differentiated levels of school autonomy is captured by the concept of emergence, a wide range of research possibilities is presented by the development of such a model, particularly in the South African education system with its multiple contextual complexities and the objectives as articulated in the National Development Plan

(RSA, 2012). This is because such a model should recognise that “each level contains the objects that are present in the other levels, but that they can be analysed differently” (Walby, 2003: 10). Such a model could potentially present a framework for research in matters not just related to school governance, school management and educational leadership, but also for example with regards to policy development, policy implementation and curriculum development, and the interconnectivity with context.

Additionally, this study invites further debate on the ontological depth and emergence of complexity theory as a non-reductive analytic strategy. The same applies to discourse analysis.

6.8 REFLECTION ON A PhD BY PUBLICATION

I initially registered for a conventional research-based PhD and successfully defended a research proposal on a somewhat related topic in 2015 while being principal of a fairly large English-medium fee-paying school in Pretoria. However, in April 2016 I accepted a position as a lecturer in the Department of Education Management and Policy Studies in the Faculty of Education at the University of Pretoria. Shortly afterwards, my supervisor suggested that I consider changing to a PhD by publication. I was initially apprehensive because I had to complete the study within four years after first registering for the degree and, in order to change to a PhD by publication, I was required to once again prepare and defend a research proposal, which I managed to do early in 2017. The obvious advantage of completing a PhD by publication is that it would contribute to ‘fast tracking’ my academic career by affording me the opportunity to build a publication record more quickly than would be the case with a conventional PhD. However, as alluded to in Chapter 1, it was like being catapulted into a situation of doing a PhD and a ‘post-doc’ simultaneously.

It is generally accepted that any PhD study is a lonely undertaking and in choosing to embark on a thesis by publication, I chose “a road less travelled” (Frost, 2016), thus having fewer directions and fewer people to approach for advice in terms of the road ahead, making this study an even lonelier undertaking. The unconventional nature of a thesis by publication meant that my colleagues, who are experienced researchers in their own right, could not relate to many of my frustrations or provide

advice. This may be ascribed to my own institution not offering or making provision for a PhD by publication. Apart from the very scant guidelines for a thesis by publication provided by the Faculty of Education of North-West University, my supervisor and I were left to navigate this “road less travelled” by ourselves.

I was, however, fortunate to obtain a PhD thesis by publication written by Carolyn Grant (2010). Although it provided me with valuable insight, the challenges I experienced were in many cases very different. Firstly, because she had three publications with two draft articles almost ready for journal submission before registering for her PhD, Carolyn Grant’s thesis was designed retrospectively (Grant, 2010: 333). In my case, I had the opportunity to, as suggested by Grant (2010: 334), follow a more forward thinking and logical approach “where articles can be conceptualised and written up in direct response to the questions and the requirements of the research design”. Grant (2010: 334) however expresses the following reservation:

> … I am uncertain just how easy it would be to get articles of this nature published in reputable journals. Many journals have clear guidelines on the aim, scope and format of contributions and it remains to be tested how journals would receive articles as conceptualised in the above example.

I can confirm that, based on my experience, these reservations as expressed by Grant are valid. Where in a traditional doctoral thesis one would have relative freedom in terms of word limits to formulate and substantiate arguments, I found that the word limits imposed by individual journals often meant that I was forced to repeatedly revise the draft articles in order to adhere to the journal prescriptions. The multidisciplinary nature of my four articles required me to conduct a thorough search of journals that were accredited by the Department of Higher Education and Training that would consider my drafts as being within their scope and worthy of reviewing. Two of the four articles needed to be re-submitted to other journals after being rejected by the first choice journals on this basis. Additionally, I was constantly aware that I had to balance the arguments in each of the individual articles with the overall objectives of the study. Investigating four different but related problems in each article required me to create multiple ‘findings’ instead of one findings chapter as in a traditional or more conventional doctoral thesis.

Although it is not a requirement to include a formal literature review chapter as is conventional in a traditional doctoral thesis, this was my first point of departure when I commenced with the study. After deciding to embark on a so-called article-based PhD, I invested a significant amount of time in conducting and writing an 'informal' literature review as if it were required. This resulted in a document of more than 80 pages. This strategy paid off handsomely as much of the material that was needed to substantiate my arguments in each of the four articles was readily at hand. It also enabled me, within a relatively short period of time, to adapt some of the articles in order to incorporate two current developments, namely the publication of the Draft Basic Education Laws Amendment Bill (RSA, 2017) and the *Overvaal* court case (January, 2018). I would advise other doctoral students attempting a doctorate by publication to follow the same strategy.

An irritating and time-consuming aspect was the conversion of the technical elements required by each of the journals, such as method of referencing, to ensure consistency of style throughout the thesis. For example, the journals to which the first two articles were submitted require the footnote style of referencing, whereas the other two journals required different versions of the Harvard style of referencing.

6.9 CONCLUDING THOUGHTS

This thesis shows that the South African education system is a complex system characterised by a continual organisation and re-organisation of its constituent elements or agents and that, related to complexity theory, these elements or agents are connected to and interacting with each other in many different ways (Mason, 2008a: 36). Also, in line with the anti-reductionist nature of complexity theory (Walby, 2003: 3), this thesis illustrates that if, as Haggis (2008: 166) puts it, "there is a sufficient number of these interactions, and if they take place over a sufficiently long period of time, specific forms of order, or organisation, will periodically emerge from the system".

More specifically, the above is illustrated by the movement towards decentralised-centralism in the South African education system due to the failure of idealistic policy

initiatives and because of a capacity deficit and ignorance of the challenges posed by the multiple South African sub-contexts, and the resultant need of those in power to safeguard not only their own legitimacy, but through political realism, to strengthen their power. The principle of co-operative government demonstrates that linkages and interactivity in context is present in the South African education system particularly in terms of the relationship between public school governing bodies and the education authorities. The draft basic Education Laws Amendment Act (RSA, 2017a) is indicative of the dynamic and emerging nature of the South African education system in so far as it affects, and potentially may affect, the interactivity in the relationships between public school governing bodies and the authorities.

As important actors in the South African education system, public school principals need to apply professional discretion in their school management and educational leadership actions. It is however, in the light of current policy and legal discrepancies, questionable whether distributed or shared leadership can be regarded as a preferred option against which principals can frame their management and leadership actions.

Differentiated levels of school autonomy may offer an alternative to the present tendency towards decentralised-centralism as it could suggest ways in which schools in different sub-contexts can achieve greater autonomy. A key element is that upward progression must be stimulated, underpinned by a philosophy of support in order to improve as opposed to a philosophy of support to ensure compliance. In this way the recommendations of the National Development Plan (RSA, 2012) can be realised.

So, can we say that the South African education system is truly decentralised? In short my answer is no. Decentralised-centralism has penetrated the South African education system at the expense of the partnership-principles as envisaged in the pre-amble of the South African Schools Act (RSA, 1996a).

What are the reasons for this movement towards decentralised-centralism? The answer to this question is much more complex and narrates the interrelatedness of the inability of the education system as a whole to implement idealistic policies in a

multi-contextual South African situation, ignorance of the constitutional principles of the rule of law and co-operative government, the appearance of political-realism, the suppression of local autonomy and discretion coupled with inadequate support of public school governing bodies, and insufficient training of public school principals to meet the standards expected of them.

How can the objectives with regards to education as articulated in the National Development Plan (RSA, 2012) be achieved? Unless the system reverts to an approach which promotes upward progression, it is unlikely that the education-related objectives of the National Development Plan (RSA, 2012) will be attained. Optimal use of existing capacity is required and that implies that it must be harnessed and exploited wherever it exists within the education system. A possible manner in which this can be done is by developing and implementing a model for differentiated school autonomy.

Appropriate to the paradigm of complexity theory, I close with the following paragraph of Francis Fakuyama's *The Origins of Political Order* (2012: 483):

> There is, however, an important reason to think that societies with political accountability will prevail over ones without it. Political accountability provides a peaceful path toward institutional adaptation. The one problem that the Chinese political system was never able to solve in dynastic times was that of the 'bad emperor', like the empress Wu or the Wanli emperor. An authoritarian system can periodically run rings around a liberal democratic one, under good leadership, since it is able to make quick decisions unencumbered by legal challenges or legislative second guessing. On the other hand, such a system depends on a constant supply of good leaders; under a bad emperor, the unchecked powers vested in the government can lead to disaster. This problem remains key in contemporary China, where accountability flows only upward and not downward.

REFERENCE LIST:

Alston, K.G., Van Staden, J.G. & Pretrius, J.L. 2003. The constitutional right to freedom of expression: How enforcable are school dress codes? *South African Journal of Education,* 23 (3): 163-167.

Arenas, A. 2005. Decentralisation of Education Policies in a Global Perspective. In: J. Zajda, (ed.). *International Handbook on Globalisation, Education and Policy Research.* Dordrecht: Springer.

Bacchi, C. 2000. Policy as discourse: What does it mean? Where does it get us? *Discourse: Studies in the Cultural Politics of Education*, 21(1): 45-57.

Ball, S.J. 2003. The teacher's soul and the terrors of performativity. *Journal of Educational Policy* 18(2): 215-228.

Bandur. A. 2012. School-based management developments: challenges and impacts. *Journal of Educational Administration*, 50(6): 845 – 873.

Beckmann, J. 2009. Recent legislation regarding the appointment of public school educators: the end of the decentralisation debate in education? *Acta Academica, 41*(3): 128-141.

Beckmann, J. & Prinsloo, S. 2009. Legislation on school governors' power to appoint educators: friend or foe? *South African Journal of Education*, 29: 171-184.

Berkhout, S.J. 2002. The Decentralisation Debate: Thinking about Power. *International Review of Education,* 51(4): 313-327.

Bimber, B. 1993. *School Decentralisation: Lessons from the Study of Bureaucracy*. Santa Monica: Rand Corporation.

Bolden, R. 2011. Distributed leadership in organisations: A review of theory and research. *International Journal of Management Reviews,* 13: 251–269.

Botha, N. 2006. Leadership in school-based management: a case study in selected schools. *South African Journal of Education*, 26(3): 341-353.

Botha, R.J. 2004. Excellence in leadership: demands on the professional school principal. *South African Journal of Education*, 24(3): 239-243.

Botha, R.J. 2002.'Outcomes-based education and educational reform in South Africa, *International Journal of Leadership in Education,* 5(4): 361-371.

Burger, A.J. 2009. *A Guide to Legislative Drafting in South Africa*. Landsdowne: JUTA Law.

Bush, T. & Glover, D. 2012. Distributed leadership in action: Leading high-performing leadership teams in English schools. *School Leadership & Management: Formerly School Organisation,* 32(1): 21–36.

Bush, T., Kiggundu, E. & Moorosi, P. 2011. Preparing new principals in South Africa: the ACE School Leadership Programme. *South African Journal of Education* 31: 31-43.

Caldwell, B.J. 2008. Reconceptualising the self-managing school. *Education Management Administration & Leadership*, 36(2): 253-252.

Caldwell, B.J. & Spinks, J.M. 2013. *Leading the Self-Transforming School*. Paper presented at the Annual Roundtable of the Asia Pacific Centre for Leadership and Change, Hong Kong Institute of Education, held at East China Normal University, Shanghai, China, March, 10-12, 2013.

Carr-Hill, R., Rolleston, C., Pherali, T. & Schendel, R. 2015. *The effects of school-based decision making on educational outcomes in low and middle income contexts: a systematic review, 3ie Grantee Final review*. London: International Initiative for Impact Evaluation (3ie).

Carnoy, M. 2005. Globalization, educational trends and the open society. In: *OSI Education Conference: "Education and Open Society: A Critical Look at New Perspectives and Demands"* (1-31). Open Society Institute.

Carson, J.B., Tesluk, P.E. & Marrone, J.A. 2007. Shared leadership in teams: An investigation of antecedent conditions and performance. *The Academy of Management Journal,* 50(5): 1217-1234.

Chisholm, L. 2013. The textbook saga and corruption in education. *Southern African Review of Education,* 19(1): 7-22.

Christie, P. 2010. Landscapes of leadership in South African schools: Mapping the changes. *Educational Management Administration & Leadership,* 38(6): 694–711.

Christie, P., Butler, D. & Potterton, M. 2007. *Report to the Minister of Education Ministerial Committee on Schools that Work*. Pretoria: Department of Basic Education.

Clase, P., Kok, J. & Van der Merwe, M. 2007. Tension between school governing bodies and education authorities in South Africa and proposed resolutions thereof. *South African Journal of Education*, 27(2): 243-263.

Codd, J. 2005. Teachers as 'managed professionals' in the global education industry: the New Zealand experience. *Educational Review,* 57(2): 193-206.

Cohen, L., Manion, L. & Morrison, K. 2011. *Research Methods in Education*. New York: Routledge.

Conyers, D. 2007. Decentralisation and Service Delivery: Lessons from Sub-Saharan Africa'. *IDS Bulletin,* 38: 19.

Corder, H. 2012. Judicial review of parliamentary actions in South Africa. In: D.M. Chirwa & L. Nijzink (eds.): *Accountable Government in Africa: perspectives from Public Law and Political Studies.* Claremont: UCT Press.

Cross, M., Mungadi, R. & Rouhani, S. 2002. From policy to practice: Curriculum reform in South African education. *Comparative Education*, 38(2): 171-187.

Crumley, C.L. 1995. Heterarchy and the analysis of complex societies. *Archeological Papers of the American Anthropological Association*, 6(1):1-5. Available at: http://www.sonoma.edu/users/p/purser/Anth590/crumley%20heterarchy.pdf (accessed 1 June 2015).

Darch, C. & Underwood, P.G. 2005. Freedom of information legislation, state compliance and the discourse of knowledge: The South African experience. *International Information & Library Review*, 37(2): 77-86.

Daun, H. 2004. Pivatisation, decentralisation, and governance in education in the Czech Republic, England, France, Germany and Sweden. *International Review of Education – Internationale Zeitschrift fu¨r Erziehungswissenschaft – Revue Internationale de l'Education*, 50: 325–346,

Deacon, J. 2016. *E-mail to author*, 22 August 2016.

Deacon, R., Osman, R. & Buchler, M. 2010. Education policy studies in South Africa, 1995-2006. *Journal of Education Policy*, 25(1): 95-110.

De Clercq, F. 2013. Professionalism in South African education: the challenges of developing teacher professional knowledge, practice, identity and voice. *Journal of Education*, 57: 1-24.

De Grauwe, A. 2005. Improving the quality of education through school based management: Learning from international experiences. *Review of Education*, 51(1): 269-287.

De Grauwe, A. 2004. School-based management (SBM): does it improve quality? *Paper commissioned for the EFA Global Monitoring report 2005, The Quality Imperative.*

Department of Basic Education (DBE). 2016a. *Report of the Ministerial Task Team Appointed by Minister Angie Motshekga to Investigate Allegations into the Selling of Posts of Educators by Members of Teacher Unions and Departmental Officials in Provincial Education Departments.* Pretoria: Department of Basic Education.

Department of Basic Education (DBE). 2016b*. National policy pertaining to the programme and promotion requirements of the National Curriculum Statement Grades R – 12.* Pretoria: Department of Basic Education.

Department of Basic Education (DBE). 2015*. Action Plan to 2019: Towards realisation of schooling in 2030* Pretoria: Department of Basic Education.

DeRouen, K. & Goldfinch, S. 2012. What makes a state stable and peaceful? Good governance, legitimacy and legal-rationality matter even more for low-income countries. *Civil Wars*, 14(4): 499-520.

De Villiers, E. & Pretorius, S.G. 2011. Democracy in schools: Are educators ready for teacher leadership? *South African Journal of Education,* 31: 574–589.

De Waal, E. 2011. Legal accountability for public school discipline – fact or fiction? *South African Journal of Education*, 31: 175-189.

Doherty, 2007. Critically framing education policy: Foucault, discourse and governmentality. In: *Counterpoints,* Vol. 292, Why Foucault? New Directions in Educational Research. JSTOR.

Dyer, C. & Rose, P. 2005. Decentralisation for educational development? An editorial introduction. *Compare: A Journal of Comparative and International Education,* 35(2): 105-113.

Dworkin, R. 1978. *Taking Rights Seriously*. Cambridge, Massachusetts: Harvard University Press.

Education Labour Relations Council (ELRC). 2016. *ELRC Constitution Part A: General Provisions*. ELRC, Pretoria.

Education Labour Relations Council (ELRC). 2003. *Collective Agreement No. 8 of 2003*.

Esau, M.V. 2006. Max Weber's bureaucracy – A structure or obstacle to improved service delivery? *Journal of Public Administration* 41(1): 47-60.

Essuman, A. & Akyeampong, K. 2011. Decentralisation policy and practice in Ghana: the promise and reality of community participation in education in rural communities. *Journal of Education Policy*, 26(4): 513-527

Fairclough, N. 2005. Discourse analysis in organization studies: The case for critical realism. *Organisation Studies*, 26(6): 915-939.

Fakuyama, F. 2012. *The Origins of Political Power: From Prehuman Times to the French Revolution*. London: Profile Books Ltd.

Fataar, A. 1997. Access to schooling in a post-Apartheid South Africa: linking concepts to context. *International Review of Education*, 43(4): 331-348.

February, J. 2006. More than a law-making production line? Parliament and its oversight role. In: S. Buhlungu, J. Daniel, R. Southhall & J. Luthman (eds.). *State of the Nation, South Africa, 2005-2006*. Pretoria: HSRC Press.

First, P.F. 2006. Researching legal topics from a policy studies perspective. In: S. Permuth, & R. Mawdsley (eds.). *Research Methods for Studying Legal Issues in Education*. Dayton, Ohio: Education Law Association.

Fitzgerald, T., Youngs, H. & Grootenboer, P. 2003. Bureaucratic control or professional autonomy? Performance management in New Zealand schools. *School Leadership and Management,* 23(1): 91-105.

Fleisch, B. 2010. The politics of the governed: South African Democratic Teachers' Union Soweto strike, June 2009. *South African Review of Education,* 16: 117 -131.

Freeman, S. 2018. The manuscript dissertation: A Means of increasing competitive edge for tenure-track faculty positions. *International Journal of Doctoral Studies*, 13: 273-292.

Frost, R. 1916. *The road not taken*, poem by Robert Frost.

Fuchs, C. 2003. Structuration theory and self-organization. *Systematic Practice and Action Research*, 16 (2): 133-167.

Fullan, M. & Watson, N. 2000. School based management: Reconceptualising to improve learning outcomes. *School Effectiveness and School Improvement*, 11(4): 453-473.

Gauteng Department of Education. 2000. *Provincial Gazette No. 144*. Government printer: Pretoria.

Gershberg, A. & Winkler, D. 2004. Education decentralization in Africa: A review of recent policy and practice. In: Levy, B. & Kpundeh, S. (eds.) *Building State Capacity*

in Africa: New Approaches, Emerging Lessons. World Bank Institute, Washington DC.

Gilley, B. 2006. The meaning and measure of state legitimacy: Results for 72 countries. *European Journal of Political Research*, 45: 499-525.

Glatter, R. 2012. Persistent preoccupations: The rise and rise of school autonomy and accountability in England. *Educational Management Administration and Leadership* 40(5): 559-575.

Grant, C. 2010*. Distributed teacher leadership in South African schools: troubling the terrain*. Thesis presented for the degree of Doctor of Philosophy, University of KwaZulu-Natal.

Grant, C. 2008. We Did Not Put Our Pieces Together: Exploring a professional development initiative through a distributed leadership lens. *Journal of Education,* 44: 85–107.

Grant, C. 2006. Emerging Voices on Teacher Leadership. *Educational Management, Administration & Leadership*, 34: 511-532.

Grant, C. & Singh, H. 2009. Passing the buck: This is not teacher leadership! *Perspectives in Education* 27(3): 289–301.

Gronn, P. 2008. The future of distributed leadership. *Journal of Educational Administration,* 46(2): 141–158.

Haggis, T. 2008. 'Knowledge must be contextual': Some possible implications of complexity and dynamic systems theories for educational research. *Educational Philosophy and Theory*, 40(1): 158-176.

Hajer, M.A. 2005. Coalitions, practices, and meaning in environmental politics: From acid rain to BSE. In: Howarth, D. & Torfling, J.: *Discourse Theory in European Politics: Identity, Policy and Governance*. Palgrave Macmillan: New York.

Hanson, E.M. 1998. Strategies of educational decentralisation: key questions and core issues. *Journal of Educational Administration*, 36(2): 111-128.

Hargreaves, A. 2000. Four ages of professionalism and professional learning. *Teachers and Teaching: History and Practice,* 6(2): 151- 182.

Hargreaves, A. & Fink, D. 2008. Distributed leadership: Democracy or delivery? *Journal of Educational Administration,* 46(2): 229–240.

Harris, A. 2011. Distributed leadership: implications for the role of the principal. *Journal of Management Development*, 31(1): 7-17.

Harris, A. 2008. Distributed leadership: According to the evidence. *Journal of Educational Administration,* 46(2): 172–188.

Harris, A. 2007. Distributed leadership: Conceptual confusion and empirical reticence. *International Journal of Leadership in Education: Theory and Practice,* 10(3): 315–325.

Harris, A. 2004. Distributed leadership and school improvement: Leading or misleading? *Educational Management Administration & Leadership,* 32(1): 11–24.

Harris, A. 2003. Teacher leadership as distributed leadership: Heresy, fantasy or possibility? *School Leadership & Management: Formerly School Organisation,* 23(3): 313–324.

Harris, A. & Spillane, J. 2008. Distributed leadership through the looking glass. *Management in Education,* 22(1): 31-34.

Hartley, D. 2010. The management of education and the social theory of the firm: from distributed leadership to collaborative community. *Journal for Educational Administration and History,* 42(4): 345-361.

Hartley, D. 2009. Education policy, distributed leadership and socio-cultural theory. *Educational Review*, 61(2): 139-150.

Heystek, J. 2015. Principals' perceptions of the motivation potential of performance agreements in underperforming schools. *South African Journal of Education* 35 (2): Art. # 986, 10 pages. doi: 10.15700/saje.v35n2a986.

Heystek, J. 2007. Reflecting on principals as managers or moulded leaders in a managerialistic school system. *South African Journal of Education, 27* (3): 492-505.

Heystek, J. 2006. School governing bodies in South Africa: Relationship between principals and parent governors - a question of trust? *Educational Management Administration & Leadership, 34* (4): 473-486.

Hoexter, C. 2006. Administrative Action in the courts: Country studies. *Acta Juridica*, 2006: 303-324.

Hopkins, D. 2013. Exploding the myths of school reform. *School Leadership and Management,* 33 (4): 304-321.

Hoyle, E. & Wallace, M. 2014. Organisational studies in an era of educational reform. *Journal of Educational Administration and History,* 46(3): 244-269.

Hulpia, H. & Devos, G. 2010. How distributed leadership can make a difference in teachers' organizational commitment? A qualitative study. *Teaching and Teacher Education,* 26(3): 565–575.

Jansen, J.D. 2002. Political symbolism as policy craft: Explaining non-reform in South African education after apartheid. *Journal of Education Policy*, 17(2): 199-215.

Jackson, K.M. & Marriott, C. 2012. The interaction of principal and teacher instructional influence as a measure of leadership as an organizational quality. *Educational Administration Quarterly,* 48(2): 230–258.

Joubert, R. & Prinsloo, S. 2008. *The law of education in South Africa.* Pretoria: Van Schaik.

Karlsen, G.E. 2000. Decentralised centralism: framework for a better understanding of governance in the field of education. *Journal of Education Policy*, 15(5): 525-538.

Karlsson, J. 2002. The role of democratic governing bodies in South African schools. *Comparative Education*, 38(3): 327-336.

Kimber, M. & Ehrich, L.C. 2011. The democratic deficit and school-based management in Australia. *Journal of Educational Administration*, 49(2): 179-199.

Klein, D. & Viljoen, F. 2010. *Beginner's Guide for Law Students*. Fourth Edition. Claremont: Juta.

Kogan, M. 2002. The subordination of local government and the compliant society. *Oxford Review of Education*, 28(2-3): 331-342.

Larson-Freeman, D. & Cameron, L. 2008. Research methodology on language development from a complex systems perspective. *The Modern Language Journal*, 92(ii):200-213.

Lauglo, J. 1995. Forms of decentralisation and their implications for education. *Comparative Education*, 31(1): 5-30.

Lavonen, J. 2017. Governance decentralisation in education: Finnish innovation in education. *Revista de Educación a Distancia,* 53 Artic. 1: 1-22.

Lee, J. & Adler, L. 2006. Qualitative research redux: Researching contemporary legal issues concerning education. In: Permuth, S. & Mawdsley, R. (eds.). *Research Methods for Studying Legal Issues in Education*. Dayton, Ohio: Education Law Association.

Lenta, P. 2009. Taking diversity seriously: religious associations and work-related discrimination. *The South African Law Journal, 126* (4): 827-860.

Lesufi, P. 2018. *Language used as a 'false shield' for exclusion'*, News24 (19 January 2018). [Online]. Available at: https://www.news24.com/Columnists/GuestColumn/panyaza-lesufi-language-being-used-as-a-false-shield-for-exclusion-20180119, [Accessed: 29 January 2018].

Letseka, M., Bantwini, B. & King-McKenzie, E. 2012. Public-Union Sector Politics and the Crisis of Education in South Africa. *Creative Education*, 3(7): 1197-1204.

Lewis, S.G. & Motala, S. 2004. Educational de/centralisation and the quest for equity, democracy and quality, in Chisholm, L. (ed.*), Changing Class: Educational and Social Change in Post-Apartheid South Africa.* Cape Town: HSRC Press.

Lo, W. Y. W. 2010. Educational decentralization and its implications for governance: explaining the differences in the four Asian newly industrialized economies. *Compare*, 40(1): 63-78.

Maarman, G.J. & Lamont-Mbawuli, K. 2017. A review of challenges in South African education and possible ways to improve educational outcomes as suggested by decades of research. *Africa Education Review,* 14(3-4): 236-289.

MacBeath, J. 2005. Leadership as distributed: A matter of practice. *School Leadership & Management: Formerly School Organisation,* 25(4): 249–366.

Madan, A. 2014. Max Weber's critique of the bureaucratisation of education. *Contemporary Education Dialogue,* 11(1): 95-113.

Maile, S. 2002. Accountability: an essential aspect of school governance. *South African Journal of Education, 22* (4): 326-331.

Makara, S. 2018. Decentralisation and good governance in Africa: A critical review. *African Journal of Political Science and International Relations*, 12(2): 22-32.

Malan, L. 2005. Intergovernmental relations and co-operative government in South Africa: the ten-year review. *Politeia*, 24(2): 226-243.

Malherbe, R. 2006. Centralisation of power in education: have provinces become national agents? *Journal of South African Law*, 2: 237-252.

Malherbe, R. 2001. Administrative justice and access to information: Implications for schools. *Perspectives in Education*, 19(4): 65-87.

Manson, S. & O'Sullivan, D. 2006. Complexity theory in the study of space and place. *Environment and Planning*, 38: 677-692.

Marishane, M.R. 2016. Leadership and context connectivity: Merging two forces for sustainable school improvement. In: Popov, N., Wolhuter, C., Kalin, J., Hilton. G., Ogunleye, J. & Niemczyk, E. (eds.). *Education Provision for Everyone: Comparing Perspectives from Around the World*. *BCES Conference Books* 14(1): 163-169. Sofia: BCES.

Mascall, B., Leithwood, K., Straus, T. & Sacks, R. 2008. The relationship between distributed leadership and teachers' academic optimism. *Journal of Educational Administration* 46(2): 214–228.

Mason, M. 2008a. What is complexity theory and what are its implications for educational change? *Educational Philosophy and Theory*, 40(1): 35-49.

Mason, M. 2008b. Complexity Theory and the Philosophy of Education. *Educational Philosophy and Theory*, 40(1): 4-18.

McLennan, A. 2003. Decentralisation and its impact on service delivery in education in post-apartheid South Africa. In: Mhone, G. & Edigheji, O. (eds.). *Governance in the New South Africa: The Challenges of Globalisation*. Landsdowne: University of Cape Town Press.

Mifsud, D. 2016. Decentralised neoliberalism and/or 'masked' re-centralisation? The policy and practice trajectory of Maltese school reform through a lens of neoliberalism and Foucault. *Journal of Education Policy*, 31(4): 443-465.

Mncube, V. 2009. The perceptions of parents of their role in the democratic governance of schools in South Africa: Are they on board? *South African Journal of Education*, 29: 95-97.

Mogoeng, M. 2013. Transcript: The Rule of Law in South Africa: Judicial Performance and Meeting Standards. [Online]. Available: https://constitutionallyspeaking.co.za/transcript-chief-justice-mogoeng-on-the-rule-of-law-in-south-africa> [Accessed: 4 February 2018].

Møller, J. 2009. School leadership in an age of accountability: tensions between managerial and professional accountability. *Journal of Educational Change,* 10: 37-46.

Mosely, A No date. 'Political Realism', The Internet Encyclopaedia of Philosophy, available at http://www.iep.utm.edu/polreal/), retrieved 19 February 2018.

Mulford, B 2003. School leaders: Changing roles and impact on teacher and school effectiveness: changing roles and impact on teacher and school effectiveness. A paper commissioned by the Education and Training Policy Division, OECD, for the Activity Attracting, Developing and Retaining Effective Teachers. April 2003.

Mqeke, R.B. 2008. Lawmaking in the new South Africa. In: Arnscheidt, J. van Rooij, B. & Otto, J.M. (eds.). *Lawmaking for Development: Explorations into the Theory and Practice of International Legislative Projects*. Leyden: Leyden University Press.

Msibi, T. & Mchunu, S. 2013. The knot of curriculum and teacher professionalism in post-apartheid South Africa. *Education as Change,* 17(1): 19-35.

Muijs, D. 2011. Leadership and organisational performance: From research to prescription? *International Journal of Educational Management*, 25(1): 45–60.

Muijs, D. & Harris, A. 2006. Teacher led school improvement: Teacher Leadership in the UK. *Teaching and Teacher Education,* 22(8):961–972.

Muijs, D. & Harris, A. 2003. Teacher leadership – improvement through empowerment. An overview of the literature. *Educational Management, Administration & Leadership*, 31: 437-448.

Mulford, B. & Silins, H. 2003. Leadership for organisational learning and improved student outcomes – What do we know? *Cambridge Journal of Education*, 33(2): 175-195.

Murphy, J., Smylie, M., Mayrowetz, D. & Louis, K.S. 2009. The role of the principal in fostering the development of distributed leadership. *School Leadership & Management: Formerly School Organisation,* 29(2): 181–214.

Naicker, S.R. & Mestry, R. 2013. Teachers' reflections on distributive leadership in public primary schools in Soweto. *South African Journal of Education* 33(2), Art. #715, 15 pages, http://www.sajournalofeducation.co.za.

Naicker, S.R. & Mestry, R. 2011. Distributive leadership in public schools: experiences and perceptions of teachers in the Soweto region. *Perspectives in Education* 29(4): 99–108.

Namukasa, I. & Buye, R. 2007. Decentralization and Education in Uganda. *Comparative and International Education / Éducation Comparée et Internationale,* . 36 (1): 93-116.

National Education Evaluation and Development Unit (NEEDU). 2013. *NEEDU National Report 2013: Teaching and Learning in Rural Primary Schools.* Pretoria: NEEDU.

National Education Evaluation and Development Unit (NEEDU). 2012. *NEEDU National Report 2012: The State of Literacy Teaching and Learning in the Foundation Phase.* Pretoria*:* NEEDU.

Ndegwa, S.N & Levy, B. 2004. The Politics of decentralization in Africa: A Comparative analysis. In: Levy, B. & Kpundeh, S. (eds.) *Building State Capacity in Africa: New Approaches, Emerging Lessons.* Washington DC: World Bank Institute.

Nordstrum, L.E. 2012. Incentives to exclude: the political economy constraining school fee abolition in South Africa. *Journal of Education Policy,* 27(1): 67-88.

O'Brien, P. & Down, B. 2002. What are teachers saying about new managerialism? *Journal of Educational Enquiry*, 3(1): 111-133.

Oosthuizen, I.J. 1992. The in loco parentis role of the teacher: a relationship perspective. *Koers*, 57(1): 121-134.

Oosthuizen, I.J. & Van der Walt, J.L. 1998. A legal and philosophical perspective on the *in loco parentis* position of teachers. *Koers*, 63 (1&2): 89-99.

Pearce, C.L. 2004. The future of leadership: Combining vertical and shared leadership to transform knowledge work. *Academy of Management Executive*, 18(1): 47-59.

Prinsloo, I.J. 2005. How safe are South African schools? South African Journal of Education, 25(1): 5-10.

Prinsloo, S. 2006. State interference in the governance of public schools. *South African Journal of Education,* 26 (3): 355-368.

Rautenbach, J.M. 2012. *Rautenbach-Malherbe Constitutional Law 6th Edition*. Johannesburg: Lexus Nexus.

Republic of South Africa (RSA). 2017a. Invitation to comment on the draft Basic Education Laws Amendment Bill. *Government Gazette No. 41178*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2017b. National Norms and Standards for School Funding: Amendment. *Government Gazette No. 40818*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2016a. Personnel Administrative Measures. *Government Gazette No. 39684*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2016b. Policy on the South African Standard for Principals. *Government Gazette No. 39827*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2012. *National Development Plan 2030: Our Future-make it work*. Pretoria: National Planning Commision.

Republic of South Africa (RSA). 2011. *Basic Education Laws Amendment Act 15 of 2011*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2008. *The Child Justice Act 75 of 2008*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2007. *Education Laws Amendment Act 31 of 2007*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2006a. Amended National Norms and Standards for School Funding*, General Notice 869.* Pretoria: Government Printer.

Republic of South Africa (RSA). 2006b. Regulations for the Exemption of Parents from the Payment of School Fees. *Government Gazette No. 29311*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2005a. *Children's Act 38 of 2005.* Pretoria: Government Printer.

Republic of South Africa (RSA). 2005b. *Intergovernmental Relations Framework Act 13 of 2005*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2003. National Policy on Religion and Education. *Government Notice 1307 of 2003.* Pretoria: Government Printer.

Republic of South Africa (RSA). 2002. Regulations to prohibit initiation practices in schools. *Government Notice 1589 of 2002*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2001. Regulations for safety measures at public schools. *Government Notice 1040 of 2001*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2000a. South African Council for Educators *Act 31 of 2000*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2000b. *Promotion of Access to Information Act 2 of 2000*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2000c. *Promotion of Administrative Justice Act 3 of 2000*. Pretoria: Government Printer.

Republic of South Africa (RSA). 2000d. *Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.* Pretoria: Government Printer.

Republic of South Africa (RSA). 1999. *The Public Finance Management Act 1 of 1999*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1998a. *The Employment of Educators Act 76 of 1998*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1998b. Admission Policy for Ordinary Public Schools. *General Notice 2432 of 1998*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1998c. Guidelines for the consideration of governing bodies in adopting a code of conduct for learners. *Government Notice 776 of 1998*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1998a. *The Skills Development Act 97 of 1998.* Pretoria: Government Printer.

Republic of South Africa (RSA). 1997. Norms and Standards for Language Policy in Public Schools. *Government Gazette No. 18546*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1996a. *The South African Schools Act 84 of 1996*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1996b. *National Education Policy Act 27 of 1996*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1996c. *The Constitution of the Republic of South Africa, Act 108 of 1996.* Pretoria: Government Printer.

Republic of South Africa (RSA). 1995. *Labour Relations Act 66 of 1995*. Pretoria: Government Printer.

Republic of South Africa (RSA). 1995. *The Occupational Health and Safety Act 85 of 1993.* Pretoria: Government Printer.

Robbins, S.P., Judge, T.A., Odendaal, A. & Roodt, G. 2009. *Organisational behaviour. Global and South African perspectives, 2nd ed*. Pinelands, Cape Town: Pearson Education.

Robinson, S. 2015. Decentralisation, managerialism and accountability: professional loss in an Australian education bureaucracy. *Journal of Education Policy*, 30(4): 468-482.

Robinson, J.A., Horsten, D.A, Human, S. & Coetzee, E. 2008. *Inleiding tot die Suid-Afikaanse Personereg*. Tweede uitgawe. Potchefstroom: Printing Things Pty Ltd.

Rose, P. 2005. Privatisation and decentralisation of schooling in Malawi: default or design?, *Compare: A Journal of Comparative and International Education*, 35(2): 153-165.

Rosenfield, M. 1995. Law as discourse: bridging the gap between democracy and rights. *Harvard Law Review,* 1163.

.

Russo, C.J. 2006. Legal research: The “traditional method”. In: Permuth, S. & Mawdsley, R. (eds.). *Research Methods for Studying Legal Issues in Education*. Dayton, Ohio: Education Law Association.

Sager, F. & Rosser, C. 2009. Weber, Wilson, and Hegel: Theories of modern bureaucracy. *Public Administration Review*, 69(6): 1136-1147.

Sasaoka, Y. & Nishimura, M. 2010. Does universal primary education policy weaken decentralisation? Participation and accountability frameworks in East Africa. *Compare*, 40(1): 79-95.

Sayed, Y. 2002. Democratising education in a decentralised system: South African policy and practice. *Compare: A journal of Comparative and International Education*, 32(1): 35-46.

Sayed, Y. 1997. Democratising educational governance in South Africa: policy problems and prospects*. Economic and Political Weekly*, 32(14): 722-731.

Sayed, Y. & Soudien, C. 2005. Decentralisation and the construction of inclusion education policy in South Africa. *Compare: A Journal of Comparative and International Education*, 35(2): 115-125.

Serfontein, E. 2010. Liability of school governing bodies: a legislative and case law analysis. *The Journal for Transdisciplinary Research in Southern Africa*, 6(1): 93-112.

Serfontein, E.M. & De Waal, W. 2013. The effectiveness of legal remedies in education: A school governing body perspective. *De Jure*, 45-62.

Singh, P. 2005. Use of the collegial leadership model of emancipation to transform traditional management practices in secondary schools. *South African Journal of Education* 25(1): 11-18.

Smit, M. 2008. Balancing rights in education: applying the proportionality test. *Acta Academica*, 19(4):49-54.

Smit, M.H. & Oosthuizen, I.J. 2011. Improving school governance through participative democracy and the law. *South African Journal of Education*, 31: 55-73.

Spillane, J.P. 2009. Managing to lead: reframing school leadership and management. *Phi Delta Kappan,* 91(3): 70–73.

Spillane, J.P., Camburn, E.M., Pustejovsky, J., Stitziel Pareja, A. & Lewis, G. 2008. Taking a distributed perspective: Epistemological and methodological trade-offs in operationalising the leader-plus aspect. *Journal of Educational Administration* 46(2): 189-213.

Stark, D. 2001. Heterarchy: Exploiting ambiguity and organisational diversity. *Brazilian Journal of Political Economy,* 21(1): 21-39.

Starks, H. & Trinidad, S.B. 2007. Choose your method: A comparison of phenomenology, discourse analysis, and grounded theory. *Qualitative Health Research*, 17(10): 1372-1380.

Stephenson, K. 2009. Neither hierarchy nor network: an argument for heterarchy. *People & Strategy,* 32(1): 4-7.

Steyn, G.M. 2005. Implementing professional development in invitational education. *Africa Education Review,* 2(2): 258-278.

Storey, A. 2004. The problem of distributed leadership in schools. *School Leadership & Management: Formerly School Organisation,* 24(3): 249-265.

Strandler, O. 2015. Policy, practice and practical reason: Understanding teaching in times of outcome regulation. *Policy Futures in Education,* 13(7): 887- 899.

Swanepoel, C. 2008. The perceptions of teachers and school principals of each other's disposition towards teacher involvement in school reform. *South African Journal of Education,* 28: 39–51.

Taylor, N. 2011. *The National School Effectiveness Study (NSES): Summary for the Synthesis Report*, Johannesburg: JET Education Services.

Taylor, N. 2008. What's wrong with South African schools? *Presentation to the Conference: What's Working in School Development?* Johannesburg: JET Education Services, 28-29 February, 2008.

The World Bank. 2018. *World Development Report: Learning to Realise Education's Promise.* Washington: The World Bank.

Tikly, L. 1997. Changing South African schools? An analysis and critique of post-election government policy. *Journal of Education Policy,* 12(3): 177-118.

Tyler, T.R. 2006. Psychological perspectives on legitimacy and legitimation. *Annual Review of Psychology*, 57: 375-400.

Van Den Berg, S., Burger, C., Burger, R., De Vos, M., Du Rand, G., Gustafsson, M., Moses, E., Shepherd, D., Spaull, N., Taylor, S., Van Broekhuizen, H. & Von Fintel, D. 2011. Low quality education as a poverty trap. *Stellenbosch Economic Working Papers: 25/11*. Stellenbosch University: Bureau for Economic Research.

Van Wyk, N. 2007. The rights and roles of parents on School Governing Bodies in South Africa. *International Journal about Parents in Education, 1* (0): 132-139.

Van Wyk, N. 2004. School governing bodies: the experience of South African educators. *South African Journal of Education, 24* (1): 49-54.

Vincent, L. 2017. *Introduction to discourse analysis*. Presentation to the Faculty of Education at the University of Pretoria, 1 June 2017.

Vos, D., Van der Westhuizen, P.C., Mentz, P.J. & Ellis, S.M. 2012. Educators and the quality of their work environment: an analysis of the organisational climate in primary schools. *South African Journal of Education,* 32: 56-68.

Wahlstrom, K.L. & Louis, K.S. 2008. How teachers experience principal leadership: The roles of professional community, trust, efficacy, and shared responsibility. *Educational Administration Quarterly,* 44(4): 458-495.

Walby, S. 2003. *Complexity Theory, Globalisation and Diversity*. Paper presented to conference of the British sociological Association, University of New York, April 2003.

Wallender, L. & Molander, A. 2014. Disentangling professional discretion: a conceptual and methodological approach. *Professions and Professionalism*, 4(3): 1-19.

Walker, K. 1998. Jurisprudential and ethical perspectives on “the best interests of children”. *Interchange*, 29 (3): 283-304.

Weiler, H.N. 1990. Comparative perspectives on educational decentralisation: An exercise in contradiction? *Educational Evaluation and Policy Analysis*, 12(4): 433-448.

Wilkens, C. 2011. Professionalism and the post-performative teacher: new teachers reflect on autonomy and accountability in the English school system. *Professional Development in Education,* 37(3): 389-409.

Williams, C.G. 2011. Distributed leadership in South African schools: possibilities and constraints. *South African Journal of Education,* 31(2): 190–200.

Wöbmann, L., Lüdemann, E., Schütz, G. & West, M.R. School accountability, autonomy, choice, and the level of student achievement: international evidence from PISA 2003. *OECD Education Working Papers, No. 13.* Paris: OECD Publishing.

Woolman, S. & Fleisch, B. 2008. Democracy, social capital and SGBs in South Africa. *Education and the Law,* 20(1): 47-80.

Yimaz, K. 2013. Comparison of Quauntitativeand Qualitative Research Traditions: epistemological, theoretical, and methodological differences. Eurpean Journal of Education, 48(2): 311-325.

Court cases:

Danielle Antonie v Governing Body, The Settlers High School and Head of Western Cape Education Department 2002 (4) SA 738.

Destinata School and another v The Head of Department: Gauteng Department of Education and others 23675/2003 [Unreported].

Diphetoho School Governing Body and Others v Department of Education and Others (4218/2010) [2012] ZAFSHC 3

Federation of governing bodies for South African schools v Member of the Executive Council for Education, Gauteng and others [2015] CCT 209 (CC).

Francois Xander van Biljon v Neil R. Crawford and Others 2007 SA 475 (SE)

Governing Body Hoërskool Overvaal and Another v Head of Department of Education and Others 86367/2017 (Unreported)

Governing Body of Bopasetjhaba and Others v Premier of the Free State Province and Others (2238/2003) [2005] ZAFSHC 5 (17 March 2005)

Governing Body of Mikro Primary School and Another v Western Cape Minister of Education and Others (332/05) [2005] ZAWCHC 14; 2005 (3) SA 504 (C) [2005] 2 All SA 37 (C)

Harmony High School and another v Head of Department: Free State Province and another, unreported case 5715/2010 (FB)

Head of Department, Department of Education, Free State Province v Welkom High School and others and Head of Department, Department of Education, Free State Province v Harmony High School and others [2013] ZACC 25 (CC)

Kimberley Girls' High School and another v Head of Department of Education, Northern Cape Province and others [2005] 1 All SA 360 (NC)

Kimberley Junior School v The Head of the Northern Cape Education Department (278/08) [2009] ZASCA 58 (28 May 2009)

Kimberley Junior School and Another vs The Head of the Northern Cape Education Department and Others 1356/ 2007 SANCHC

Maritzburg College v C.R. Dlamini N.O. 2004 SA 2089 (KZN)

MEC for Education, Kwazulu-Natal & Others v Pillay 2008 (1) SA 474 (CC)

Megan Tania Jacobs v The Chairman of the Governing Body of Rhodes High School and Others, unreported case, 7953:2004 (WCC)

Member of the Executive Council, Eastern Cape Province and Others v Queenstown Girls High School 1041/07: 2007 ZAECHC 100

Member of Executive Council for Education in Gauteng Province and Others v Governing Body of the Rivonia Primary School and Others [2013] ZACC 34 (CC)

Michiel Josias de Kock v Head of Department of Education and Others. Province of the Western Cape 1998 (3) SA 12533 (C)

Premier, Mpumalanga and Another v Executive Committee, Association of Governing Bodies of state-aided Schools, Eastern Transvaal 1999 (2) SA 91 (CC)

Principal of Mbilwi High School v RM (633/2016) [2017] ZASCA 72 (1 June 2017)

Schoonbee & Others v MEC for Education, and Another 2002 (4) SA 877 (T)

State v Makwanyane 1995 (6) BCLR 665 (CC)

S v De Blom 1977(3) SA 513 (A)

The Point High School and Others v The Head of Department of the Western Cape Department of Education (2007) SCA 14188/06

Welkom High School and another v Head of Department: Free State Province and Another, unreported case, 5714/2010 (FB)

Western Cape Minister of Education v The Governing Body of Mikro Primary School 2005 (3) SA 436 (SCA)

ADDENDUM A: PROOF OF SUBMISSION TO *JOURNAL OF SOUTHERN AFRICAN STUDIES (JSAS)* – ARTICLE 1

Editorial Assistant <jsas.editorial@gmail.com> 14 May

to duplessis.andre

Dear Mr Du Plessis,

Thank you very much for sending us your paper **"The Emergence of Decentralised-centralism in the South African Education Governance System" for consideration for publication in the Journal of Southern African Studies.**

The editor for your paper will be: Dr Colin Bundy

Email: colin.bundy@gtc.ox.ac.uk

I am about to send it out to our readers and the above-named editor will let you know as soon as we have made a decision. The editorial board normally meets in January, April, July and October to consider reports from readers received in the previous three months.

Given the problems that can be experienced with some email providers (and over-zealous spam screeners), please do contact the above editor or the coordinating editor if you do not receive a reply by the month following our quarterly meetings.

Please note that you should address future correspondence concerning this paper to this editor but do not hesitate to contact me should any problem arise at any stage.

In either case, could we ask that you put your surname as the first word in the subject line of emails? This will greatly aid our filing systems!

Please note that in the Notes for Contributors in the Journal and on the website we state that 'By submission of a manuscript an author certifies that the work is original and is not being considered simultaneously by another publisher'.

Yours sincerely,

Maurice Hutton

ADDENDUM B: PROOF OF ACCEPTANCE BY *JOURNAL OF SOUTHERN AFRICAN STUDIES (JASAS)* – ARTICLE 1

Colin Bundy Sun, 3 Feb, 11:17

to Duplessis

Dear Andre,

Thanks very much for this - an exemplary indication of your responses to readers' reports, and a revised article. I shall read it closely and get back to you with any minor editorial issues - within a week, I hope.

Best wishes,

Colin

Colin Bundy Mon, 18 Feb, 13:57 (10 days ago)

to Duplessis

Dear Andre,

Thanks very much for your prompt response - I'm happy now to sign off on this as a final version - and it will be placed in the pool as available for selection for future general issues of the journal.

Best wishes,

Colin

Duplessis Andre <duplessis.andre@up.ac.za> 13:19 (1 hour ago)

to **Colin**

Dear Dr Bundy,

Does this mean that the article is accepted by JSAS? I am in the process of submitting a PhD by publication and this article forms part of a series of articles I wrote on centralisation/decentralisation of South African education and would like to add it to my submission.

Kind regards

Andre

Reply Forward

Colin Bundy 13:40 (1 hour ago)

DEar Andre, Yes, the article has now been accepted for publication. Best wishes for a successful PhD submission. Colin From: Duplessis Andre <duplessis.andre@up

DEar Andre, Yes, the article has now been accepted for publication. Best wishes for a successful PhD submission. Colin

ADDENDUM C: PROOF OF SUBMISSION TO *LAW, DEMOCRACY AND DEVELOPMENT (LDD)* – ARTICLE 2

Law, Democracy & Development <info@firebreakstudios.com> 30 May

to duplessis.andre

Dear Andre du Plessis

Thank you for submitting your article to us. We will get back to you as soon as possible.

Kind regards,

The *LDD* team.

Attachments area
Preview attachment 5b0e698e605b4-South_African_school_governing_bodies_and_co-operative_government_De lege ferenda.docx

ADDENDUM D: PROOF OF SUBMISSION TO *KOERS* – ARTICLE 3

Annette Combrink <editor@koers.co.za> 12 Apr

to Mr

Dear Mr Andre Du Plessis

Ref. No.: 2384
Title: Professional discretion of South African public school principals: where does it begin and end?
Journal: Koers - Bulletin for Christian Scholarship

We confirm and thank you for submitting your manuscript. Please use the manuscript reference number given above in all future correspondence.

With the online journal management system that we are using, you will be able to track the progress of the manuscript through the editorial process by logging into Koers' website:

Manuscript URL:
https://www.koersjournal.org.za/index.php/koers/author/submission/2384
Username: duplessisandre

Your article will now undergo a preliminary review by the editor to assess whether it is within the focus of the journal.

Thank you for considering this journal to publish your work. If you have any questions, please do not hesitate to contact me.

Kind regards
Annette Combrink
Koers - Bulletin for Christian Scholarship

KOERS - Bulletin for Christian Scholarship
http//:www.koersjournal.org.za

If you require immediate assistance, please contact Koers Journal:

Support email: support@koers.co.za

ADDENDUM E: PROOF OF SUBMISSION TO *EDUCATION MANAGEMENT, ADMINISTRATION AND LEADERSHIP (EMAL)* – ARTICLE 4

Educational Management Administration & Leadership <onbehalfof@manuscriptcentral.com>

Fri, 3 Aug 2018, 13:38

to duplessis.andre, jan.heystek

03-Aug-2018

Dear Mr. Du Plessis:

Your manuscript entitled "Possibilities for distributed leadership in South African policy documents: fact or fiction?" has been successfully submitted online and is presently being given full consideration for publication in Educational Management Administration & Leadership.

Your manuscript ID is EMAL-2018-233.

Please mention the above manuscript ID in all future correspondence or when calling the office for questions. If there are any changes in your street address or e-mail address, please log in to ScholarOne Manuscripts at https://mc.manuscriptcentral.com/emal and edit your user information as appropriate.

You can also view the status of your manuscript at any time by checking your Author Center after logging in to https://mc.manuscriptcentral.com/emal.

As part of our commitment to ensuring an ethical, transparent and fair peer review process SAGE is a supporting member of ORCID, the Open Researcher and Contributor ID (https://orcid.org/). We encourage all authors and co-authors to use ORCID iDs during the peer review process. If you already have an ORCID iD you can link this to your account in ScholarOne just by logging in and editing your account information. If you do not already have an ORCID iD you may login to your ScholarOne account to create your unique identifier and automatically add it to your profile.

Thank you for submitting your manuscript to Educational Management Administration & Leadership.

Sincerely,
Louise England

ADDENDUM F: PROOF OF SUBMISSION OF FIRST REVISION TO *EDUCATION MANAGEMENT, ADMINISTRATION AND LEADERSHIP (EMAL)* – ARTICLE 4

Educational Management Administration & Leadership
<onbehalfof@manuscriptcentral.com>

Wed, 31 Oct 2018, 12:55

to
duplessis.andre,
jan.heystek

31-Oct-2018

Dear Mr. Du Plessis:

Your revised manuscript entitled "Possibilities for distributed leadership in South African schools: policy ambiguities and blind spots." has been successfully submitted online and is presently being given full consideration for publication in Educational Management Administration & Leadership.

Your manuscript ID is EMAL-2018-233.R1.

Please mention the above manuscript ID in all future correspondence or when calling the office for questions. If there are any changes in your street address or e-mail address, please log in to ScholarOne Manuscripts at https://mc.manuscriptcentral.com/emal and edit your user information as appropriate.

You can also view the status of your manuscript at any time by checking your Author Center after logging in to https://mc.manuscriptcentral.com/emal.

As part of our commitment to ensuring an ethical, transparent and fair peer review process SAGE is a supporting member of ORCID, the Open Researcher and Contributor ID (https://orcid.org/). We encourage all authors and co-authors to use ORCID iDs during the peer review process. If you already have an ORCID iD you can link this to your account in ScholarOne just by logging in and editing your account information. If you do not already have an ORCID iD you may login to your ScholarOne account to create your unique identifier and automatically add it to your profile.

Thank you for submitting your manuscript to Educational Management Administration & Leadership.

Sincerely,
Louise England

ADDENDUM G: PROOF OF ACCEPTANCE BY *EDUCATION MANAGEMENT, ADMINISTRATION AND LEADERSHIP (EMAL)* – ARTICLE 4

Educational Management Administration & Leadership
<onbehalfof@manuscriptcentral.com>

2 Apr 2019, 08:50 (1 day ago)

to
duplessis.andre

02-Apr-2019

Dear Andre and Jan

It is a pleasure to accept your manuscript entitled "Possibilities for distributed leadership in South African schools: policy ambiguities and blind spots" in its current form for publication in EMAL.

Your paper will be prepared for online publication shortly and you should receive proofs within six weeks. Print publication will follow at a later date.

Thank you for your paper. I look forward to your continued contributions to the Journal.

With congratulations and best wishes

Tony

Prof. Tony Bush
Editor, Educational Management Administration & Leadership
tony.bush@ntlworld.com