

Understanding Professional Discretion by Principals in Managing Drugs in Gauteng Province schools in South Africa

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Abstract

Principals are faced with some frustrating situations from time to time in their line of duty in which they must make a variety of decisions affecting their students. This study argues that principals need to understand how to apply professional discretion in their practice and be accountable for their judgements and decisions to avoid the notion of negligence when managing drugs in schools. Educational institutions are viewed as places where stakeholders, especially principals and teachers are recognized for their work as knowledge producers and key figures in educational and social transformation. Appropriate exercise of professional discretion in the management of drugs in schools can play a role towards social transformation and sustainable development. Target 4.8 of the Sustainable Development Goal 4 envisages to build and upgrade inclusive and safe schools. School principals are responsible for maintaining a safe, secure and orderly school environment. A qualitative research design was employed to collect data from secondary school principals in quintiles 1 to 3 (disadvantaged schools) in the Gauteng Province of South Africa. The study adopted an interpretivist paradigm. Data collection was done by the means of qualitative data collection techniques, in which semi-structured interviews supported by document analysis were employed. This study revealed that some principals make professional discretions that are influenced by emotions and violate the rights of learners in the process while managing drugs in schools.

Keywords: Decision making, drugs, professional discretion, negligence, duty of care, *in loco parentis*

Introduction

The scourge of drug abuse in South African schools has presented principals with a challenge of managing the problem. The South African government introduced the National strategy for the prevention and management of alcohol and drug use amongst learners in schools (Department of Education, 2013). This strategy and the National policy of Drug Abuse Management in schools in South Africa (2002) serve as instruments to assist in the management of school safety and substance abuse in public schools. In managing drugs in schools, principals are expected to make decisions and

judgements. Therefore, there is a high likelihood that every judgement call made by the principal will be questioned (Beyers & DuPlessis, 2022). The understanding and conceptualisation of the notion of professional discretion is important for all principals as it equips them to make the best possible decisions in the best interest of their learners (Beyers, 2020). This study focused on professional discretion as the ability by principals to make suitable decisions on behalf the learners in their care (Wallender & Molander, 2014). Beyers (2020) states that principals have freedom to make decisions that safeguard their learners and are linked directly to principals as being professionals in their decision making and the prevention of negligence. DuPlessis (2019) asserts, professional discretion is associated with some form of freedom to act according to one's own choices and judgement. Furthermore, Boote (2006), defined professional discretion as the capacity and obligation to decide what decisions are appropriate, and the ability to take actions in certain situations. In the light of this, Kravale-Pauliņa, et al. (2023), Heasley et al. (2024) emphasise that, to achieve sustainable development in education, principals require appropriate knowledge, skills and support in their leadership practice to build a better future.

Molander (2016) emphasises that discretion entails accountability in which school leaders and educators should account for their judgments and decisions. Furthermore, Nieuwenhuis (2007), posits that, accountability imposes a duty or responsibility on a person, the principal, to behave according to norms and expectations set for his or her actions. The Department of Education views a principal as being in loco parentis, which is a responsibility that allows the use of professional discretion when executing this role (DOE, 2002, p.6). Professional discretion needs to be applied within the context of contextual intelligence. According to Byers and DuPlessis (2022), contextual intelligence refers to a principal's ability to identify contextual factors in each situation and adjust his or her discretion to influence or act in a situation for the best interests of a learner. Marishane (2016) emphasises that, principals with contextual intelligence are in a good position to apply professional discretion more appropriately.

Schools as learning organisations are governed through rules and regulations. Stakeholders within the schools especially principals, are expected to be accountable and adhere to the rules and regulations in managing their schools. Principals should be able to operate within the legislative framework and respect the learners' rights. However, discretionary space is narrowed with predefined procedures and legal standards, then the profession holds little discretionary power (Larsen, 2021). Karseth and Møller (2018) argue that, although there are numerous rules that regulate professional discretion, principals and educators must know and understand how the legislative framework operates because, the interpretation of legal standards is often highly situational. The problem for this study is that professional discretion can be regarded as an "opportunity-concept" as it designates a space where the agent has the autonomy to judge, decide, and act according to his or her own judgment (Molander, Grimen, & Eriksen, 2012, p.2). Principals are operating within a regulated environment wherein they are expected to adhere to the legislative framework and regulations. Furthermore, Beyers and DuPlessis (2023) highlight that, principals are exposed to both internal and external factors that influence or limit their discretion. The problem for this study is that some principals lack the understanding of applying professional discretion in their practice, especially when managing drugs in schools. The national strategy for the prevention and management of alcohol and drug use amongst learners in schools, aimed "to retain learners in schools and to create a safe learning

environment that contributes towards quality education” (Department of Basic Education, 2013, p.6). The objectives were to ensure that schools are alcohol and drug free zones, increasing knowledge, life skills, and confidence amongst learners in order to minimise the likelihood of engaging in alcohol and drug use, and managing alcohol and drug use related challenges amongst learners (Department of Basic Education, 2013).

The gap that this study sought to close was to assist school principals in understanding and interpreting the legislative framework, and how to apply professional discretion in managing drugs in schools. Managing drugs, especially in schools requires skills and sound understanding of procedures. There are many instances where principals will be expected to make professional discretions. Karseth and Møller (2016) emphasise that, it is important to provide a fair adjudication process when handling drug related matters.

This study was guided by the following question: How do principals practice professional discretion in managing drugs to avoid negligence?

Definition of Professional Discretion

According to (Freidson, 2001; Miller, 2010), the concept of discretion is seen as laying at the core of professional work. Limpsky (1980, p. 215) emphasizes that, “the defining characteristic of professionalism is simply the discretion to make decisions about clients”. Consequently, principals are expected to make discretion especially when managing drugs in schools. Wallander and Molander (2014) view the concept of discretion as having two dimensions, namely, structural dimension (discretionary space), and an epistemic dimension (discretionary reasoning). According to Wallander et al. (2014), discretionary reasoning is the cognitive activity that may occur within the discretionary space of professional judgement. In addition, Wallander et al. (2014) assert that the discretionary space of professionals is based on acts of entrustment, and therefore requires accountability. According to Du Plessis (2019), professional discretion is to some degree associated with the freedom to act according to one’s choices and judgement. Boote (2006), defines professional discretion as, “the capacity and obligation to decide what actions are appropriate and the ability to take action in certain situations” (p.465). In the context of this study, school principals make decisions on behalf of the learners in their care. So when managing the challenge of drugs in schools, they are expected to apply professional discretion.

The Limitations of Professional Discretion

According to Martin (1995), there are four essential principles that regulate the application of professional discretion; they are as follows: 1. The principal’s decision should be within the confines of the law; 2. Principals should not avoid to exercise the right to professional discretion given to them; 3. discretion must not be used for other purposes other than the ones dictated by law; and 4. Principals should not abuse or use their discretionary powers excessively, (Beyers, & DuPlessis, 2022). These four principles are in line with the South African Constitution which has a general limitation clause (Section 36) that says that rights may be limited by a law of general application that is ‘reasonable and justifiable in an open and democratic society based on dignity, freedom, and equality’.

Principals at Crossroad in Applying Professional Discretion

Most school principals is not trained in law, and this raises questions about how principals apply the law in schools and justify professional discretion especially when managing drugs in schools (Fjørtoft, Vatn, & Eriksen, 2017; Møller & Karseth, 2016; Novak, 2018; Ottesen & Møller, 2016). There are instances wherein principals are expected to make decisions within the prescripts of law. Boote (2006) holds the view that, that principals' values often guide them in their decision-making to come to what they would believe is the best possible decision. However, their judgements may also be influenced negatively by their values and such decisions may not necessarily be in the best interest of the learner. Furthermore, Beyers and DuPlessis (2023) posit that, several factors contribute towards principals' decision-making processes, for example, aspects like case facts, their personal values, the context of the school and individuals concerned play a significant role. Wallander and Molander, (2014) assert that discretion is not only dependent on professional discretionary space, but also on judgement and reasoning, as the entrustment of professional discretionary is based on a notion that principals as professionals could make sound judgments and decisions.

Legislative Framework on Managing Drugs in Schools

In South Africa, there is a legislative framework and regulations on safety in public schools and substance abuse. The South African Schools Act 84 of 1996 (RSA, 1996) states that:

- (1) All public schools are hereby declared drug free and dangerous object free zones.
- (2) No person may -
 - (a) allow any dangerous object in the public-school premises,
 - (b) carry any dangerous object in the public-school premises,
 - (c) store any dangerous object in the public-school premises except in officially designated places identified by the principal,
 - (d) possess illegal drugs on public school premises,
 - (e) enter public school premises while under the influence of an illegal drugs or alcohol.

Principals are expected to adhere to the legislative prescripts in managing the drug related cases in schools. Principals need to be knowledgeable about how different aspects of law work especially when managing drugs in schools. Andenæs (2006), Bergh & Arneback, (2016), Jakhelln & Møller (2016), Østerud, Engelstad & Selle (2003) assert that, processes of juridification in education have been highlighted, demonstrating more detailed legal regulation and a tendency to frame emerging problems or conflicts in legal terms (Andenæs, 2006; Bergh & Arneback, 2016; Jakhelln & Møller, 2016; Østerud, Engelstad & Selle, 2003). The Constitution of South Africa further ensure the rights of individuals. This means that principals need to be aware of the right learners have when managing the scourge of drugs in their schools. The following rights are enshrined in the bill of Rights (RSA,1996):

10. *Human dignity*

Everyone has inherent dignity and the right to have their dignity respected and protected.

This implies that principals have an obligation to respect the dignity of learners when handling any drug related matters in their decision making.

14. Privacy

Everyone has the right to privacy, which includes the right not to have:

- ✓ their person or home searched,
- ✓ their property searched,
- ✓ their possessions seized, or
- ✓ the privacy of their communications infringed.

In the process of managing drugs in schools, principals might find themselves in a position where they must apply professional discretion and apply what is mentioned above. These rights are subjected to limitations; however, it is easy for principals to have these rights infringed and fall under the negligence zone.

29. Education

1. Everyone has the right

- ✓ to a basic education, including adult basic education; and
- ✓ to further education, which the state, through reasonable measures, must make progressively available and accessible.

While applying their professional discretion, principals may find themselves violating learners' rights, for example through the suspension of learners that may to some degree violate learners' right to education.

36. Limitation of rights

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, considering all relevant factors, including:

- ✓ the nature of the right,
- ✓ the importance of the purpose of the limitation,
- ✓ the nature and extent of the limitation,
- ✓ the relation between the limitation and its purpose; and
- ✓ less restrictive means to achieve the purpose.

What Constitutes Professional Discretion Discretionary?

This study focuses on principals' application of professional discretion in managing drugs in schools. To understand the concept of professional discretion, the researcher consulted literature to find out how scholars in the field define it. Lidstrom (1991) defines discretion as the scope for choice available to actors, in formally subordinate positions, vis-à-vis their superiors, therefore, it is conceived of as a room containing potential alternatives for action or inaction.

Ronald Dworkin (in Dworkin, 1978), provides a metaphoric definition of discretion as a "hole in a doughnut," where the circle of the doughnut comprises the "belt of restriction" (comprising standards set by various authorities), and where the hole in the middle may be large or small. This metaphor illustrates the common definition of discretion as an area where one can choose between permitted alternatives of action on the basis of one's own judgments (Davis, 1969, p.9; Barak, 1989, p.7).

Beyers and DuPlessis (2022) describe professional discretion as the ability and obligation of a principal to determine what actions are suitable, and the capacity to take certain actions in the best interest of the learners. In support of this, Jeffries (2013, p. 76) considers professional discretion as a process that enables principals to "flexibly adapt their practices to the diverse circumstances they face each day". In the light of the

above, the discretionary space of professionals is constituted by acts of entrustment, and there is a huge demand for accountability. Consequently, professionals are expected to follow their best judgments (Wallander & Molander, 2014) when applying professional discretion especially when managing drugs in schools.

Principals and Discretionary Powers in South Africa

Beyers and DuPlessis (2022, p. 199) indicate that, the High Court in South Africa supports discretionary powers of principals in dealing with disciplinary issues and the promotion or retention of learners. The principal has a moral responsibility to manage discipline in school, despite the restricted administrative or legal framework within the educational system at school level, (Belle, 2016). The court will not interfere with the outcome when matters are left to the discretion of the principal, and the discretion was *bona fide*, (Clarke, 2008).

To this effect, Du Plessis (2019, p.159) reiterates that, not only do principals have discretionary power, but they are often compelled to exercise this power, especially in a context where the safety of learners or educators is at risk. In support of this, Molander, Grimen, and Eriksen (2012, p. 221) clarify that accountability measures are strategies to ensure accountability by principals with discretionary power. While principals are given the discretionary power, Ingersoll (2003) advocates principal empowerment which he is convinced will arguably be a solution to most challenges in public schools. Ingersoll (2003) believes that most school challenges like drug abuse may be addressed through the decentralisation of schools, and that will lead to an increased discretionary power and autonomy to principals.

The Parameters of Professional Discretion

Professional discretion cannot be applied anyhow. So there are specific parameters within which it can be applied by principals. Beyers and DuPlessis (2022), outline four principles that can be employed in applying professional discretion. The first principle is that principals' decisions must be in accordance with the dictates of the law. The second one is that principals must not fail to exercise the power of discretion bestowed upon them. Thirdly, principals should not abuse the power of discretion or use it excessively. The fourth, and last principle is that discretion must not be used for other purposes than the ones dictated by law. So, principals should not act in bad faith or abuse their discretionary power (De Waal, 2000). It should also be noted that, professional discretion allows a principal some freedom to act or judge independently and that it sometimes even stretches beyond the scope of their legal power (Du Plessis (2019). Furthermore, DuPlessis (2019) emphasises that, that creating a space for professional discretion "will allow for more creativity and autonomy by principals as compared to strict impersonal compliance to elaborate rules and regulations".

Discretion as a Way of Reasoning

While laws regulate actions, in many cases they do not specify in detail what subjects must be done. Thus, the regulative impact of legal standards on practice depends on professional interpretation and appropriation of rules as well as how and to what extent professional actions are specified and controlled within the organisations (Ottesen & Moller, 2016). In addition to this, Davies (1969) suggests that

"(a) public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction". This study is guided by the conceptual framework of discretion as a way of reasoning. According to Wallander and Molander (2014, p. 1), the entrustment of discretionary power to professionals, for example, professionals being given a space for making decisions in line with their own judgment, assumes that discretionary judgments and decisions are not mere oddities but are justifiable, and that the professionals involved can make reasoned judgments and appropriate decisions. The expectations from the professionals making judgements and decisions are that they act in line with their best judgment, which means that what they do is supported by good arguments (Wallander, et al., 2014). So it is expected that principals must make reasoned judgements and decisions when carrying out professional discretion, especially when managing drugs in schools.

Research Methodology and Design

Qualitative research design was adopted to explore how principals practice professional discretion in managing drugs in the Gauteng Province. Qualitative research seeks to excavate meaning by looking at all the aspects of the same phenomenon to see the relationship of the people involved and to establish how they come together to form a whole (Gall, Gall, & Borg, 2007). The study adopted an interpretivist paradigm. To collect data, 12 principals from secondary schools in quintiles 1 to 3 (disadvantaged schools) in Gauteng Province of South Africa were purposively sampled. Semi-structured interviews were used to collect data from the participants. The identities of the participants and their sites are protected by pseudonyms, for example, P1 etc. The participants were individually interviewed in times and at places convenient to them. The interviews lasted up to 45 minutes long. Covid-19 pandemic protocols were observed during the interviews. The data were analyzed thematically. Trustworthiness of the study was endorsed by sharing the transcribed data with the participants for authentication (Creswell, 2014). Consent for participation was sourced from the relevant circuit office, schools and the Tshwane North district office. Participants were explained that they could withdraw from the study at any time and that no personal information would be divulged to any person without their consent (Vanderstoep & Johnston, 2009).

Ethical Consideration

The researchers applied for permission to conduct research at the Gauteng Department of Education. Permission to conduct research at schools was sought from the selected schools. The participants were requested to complete a consent form before the commencement of the study and were informed about the objectives of the study. The privacy of the participants was protected through pseudonyms. The interviews took place under safe conditions, and COVID-19 protocols were followed.

Profiles of Participants

Table 1

The Table Below Presents the Profiles of the Selected Principals.

Principal	Qualifications	Number of years in position	Quintile of the school
Principal 1 = P1	BA, H.E.D, B.Ed. (Hons)	8	3
Principal 2 = P2	B.Sc, H.E.D, B.Ed. (Hons)	6	2
Principal 3 = P3	BA, H.E.D, B.Ed. (Hons), M.Ed.	10	3
Principal 4 = P4	B.Com, B.Ed. (Hons), H.E.D, M.Ed.	7	1
Principal 5 = P5	B.Sc, H.E.D, B.Ed. (Hons)	8	3
Principal 6 = P6	B.Ed, B.Ed. (Hons), M.Ed.	6	2
Principal 7 = P7	BA, H.E.D, B.Ed.	9	3
Principal 8 = P8	B.Ed, B.Ed (Hons)	5	1
Principal 9 =P9	BA, B.Paed, M.Ed	7	2
Principal 10 =P10	B.Ed, B.Ed. (Hons)	11	1
Principal 11 = P11	B.A, B.Ed, H.E.D	8	2
Principal 12 =P12	B.Com, H.E.D, B.Ed. (Hons)	7	1

Findings and Discussions

This study was guided by the research question: How do principals practice professional discretion in managing drugs to avoid negligence? Themes discussed below emerged from the analysis of the data obtained from the interviews with the selected principals in response to the research question. The presentation is followed by the inductive analysis. Twelve principals participated in this study. The participants come from quintiles 1 to 3 secondary schools in the Gauteng Province. The participants have varied experiences ranging from 5 to 11 years as principals. The biographical data presented in table 1 demonstrate that the participants have adequate qualifications, and some have master's degrees. The main themes that emerged from the interviews were: 1. Understanding the process of professional discretion in managing drugs, 2. The practice of professional discretion in managing drugs, and 3. The limitations of professional discretion in managing drugs. The findings of this study derive from the responses of the participants as guided by the themes that emerged. The researcher presents the findings below and discusses them according to the themes that emerged.

How do Principals Practice Professional Discretion in Drugs to Avoid Negligence?

The participants were asked how they arrive at professional discretion in managing drugs. The question led to the emergence of the theme of the process of professional discretion in managing drugs. The study reveals that, principals are aware that they have the right to make professional discretions in some situations. However, they are not sure how to exercise it. Therefore, principals end up adhering to regulations to protect themselves. It is further revealed that, over reliance on circumstantial evidence put principals at risk of making decisions that may potentially lead to negligence.

According to Heilmann (2006), principals base their decisions on a few aspects like, personal values, contextual aspects, case merits, and school and legislation. Heilmann (2006) further argues that despite the level of discretion being limited by external factors, the principal has a space to go beyond those factors if they choose to do so. The participants shared their experiences regarding the process of professional discretion as follows: P7 *"It Is important to deal with drug related cases based on their merits. In some cases, circumstantial evidence may lead to poor judgement and that's where we need to be careful as principal. Therefore, when we make professional discretion, we need to have a 360-degree view of the case before we act to protect ourselves"*.

Furthermore, the study revealed that, in the interest of protecting the reputation and values of the school. Some principals sometimes make emotional decisions in exercising professional discretion which open them up to negligence.

Beyers and DuPlessis (2022) argue that principals' values encourage them to make the best possible decisions, but sometimes those values may negatively influence their judgement and not necessarily be in the best interest of the learners. In line with this, P10 states that:

"Our role as principals is to make sure that we protect the values and customs of our schools. Anything that is contrary to that, we tend to act in a manner that we believe will send a strong message out there. In doing so, at times we go to the extreme and that has a potential to lend us in hot water". Furthermore, P8, reiterate that:

"I personally faced a situation where I had to suspend a learner on the spot following repeated cases of drug peddling at the school. The aim was to scare him and send a strong message with the view of protecting the reputation of the school and safety of stakeholders. That learner left school for good and now he is worst case scenario in the community. Deep down I knew that certain rights of the learner were violated, but I wanted the best for the learner and the stakeholders within the school".

All the participants demonstrated that they face the challenge how to maintain a balance between professional discretion and accountability with the legislative and policy framework in which they must perform their duties, which is in line with the observation by Beyers and DuPlessis (2022). The participants shared their experiences in practising professional discretion in managing drugs as follows:

P2 state the following in line with the theme of the practice of professional discretion in managing drugs in schools: *"There are no shortcuts when dealing with matters that lean towards legality, especially when handling a sensitive matter like drugs. Therefore, it is important to make sure that all the boxes are ticked. By this I mean that you need to make sure that you have all the legislative aspects covered, otherwise you will find yourself in trouble. As principals we need to strike a balance and make sure that we*

respect the constitutional rights of the learners and follow the due process before making a professional discretion when managing drugs in our schools."

The practice of professional discretion is accompanied by accountability. Nieuwenhuis (2007, p. 104), states that accountability imposes a duty or responsibility on a person, the principal, to behave according to norms and expectations set for his or her actions. In line with this statement, P1 said:

"There is a lot of responsibility on our shoulders as principals. We need to ensure that our schools are safe from anything that will jeopardise the safety of all stakeholders. Therefore, when managing drug related matters, we are expected to be follow all the steps as prescribed by the legislation. When we make professional discretion, we also need to make sure that we have covered all the bases and the discretion made is justified."

The High Court of South Africa supports discretionary powers of principals when dealing with disciplinary matters (Clarke, 2008). This means that when principals make professional discretion that is within the prescripts of the law and are justified, the courts will back them up. In support of this, P6 stated that:

"We read about schools that face litigations regarding the mishandling of drug related cases. Some principals make ill-informed professional discretions when handling sensitive matters like drugs. Therefore, it calls for principals to be well versed with law governing the management of drugs in schools. The principal as the accounting officer needs to make sure that they have their ducks in a row when making any professional discretion." The study reveals that some principals make impulsive professional discretions without fully understanding the scope within which they maneuver to avoid negligence while managing drugs. This is supported by Boote (2006) who argues that some principals find it challenging to exercise adequate professional discretion due to lack of independence, lack of self-control, and lack of knowledge and skills.

Conclusion

The research question that this study asked was: How do principals practice professional discretion in managing drugs to avoid negligence? In order to strengthen the principal's role in promoting education for sustainable development, the principal should be empowered in knowledge and skills on how to make professional discretion in their schools, building a better future. The application of professional discretion in managing drugs in schools requires principals to have a good understanding of law, and guidelines set by the Department of Education. Principals are expected to make informed and rational decisions on a daily basis in their practice. The participants indicated that their training in relation to professional discretion is weak. The prevalence of drugs in schools presents a number of challenges including disciplinary issues in schools.

The High Court in South Africa allows principals to make professional discretion. Principals are expected to make professional discretion as another tool to use in dealing with situations in schools. However, there are factors that principals need to consider when applying professional discretion. Principals need to ensure that the discretions that they make have merit, are justifiable, just and fair. It was revealed in this study that some principals make professional discretions that are against the law and get away with murder in most cases. Some principals underuse their right to use professional discretion when faced with situations that require them to apply their right to professional discretion. It has emerged in the data that some principals do not

understand the limitations in the application of professional discretion. So principals need to be trained on how to apply professional discretion, especially when managing drugs in their schools.

This study recommends that: school principals must get training on how to apply professional discretion especially on managing drugs in their practice, and the department of education needs to develop guidelines to assist principals in the application of professional discretion in their practice.

This study suggests that further research should be conducted employing qualitative research methods to measure the impact of professional discretion in managing drugs in schools, and

comparative studies should be conducted to measure the extend of the application of professional discretion in managing drugs in schools per province in South Africa

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