QUEERING SOUTH AFRICA'S PROTECTIVE SCHOOL POLICY FOR LGBT+ YOUTH: THE NARE MPHALE CASE

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Abstract

The transphobic abuse of the transgender youth, Nare Mphale, within the schooling environment has called into question protective school policy for South African lesbian, gay, bisexual, transgender, and other non-conforming (LGBT+) youth. Nare, who has since passed, was harassed after her school principal instructed her classmates to feel her crotch to "find out what is there". This violation called for the identification, analysing, and queering (disrupting compulsory heterosexuality) within South Africa's protective school polices for LGBT+ youth. This study also asked, which protective school policies recognize gender and sexuality diversity and teaching of inclusive curricula such as comprehensive sexuality education? What accommodations do these policies provide in terms of admission requirements, preferred pronouns, sex description change, dress code, and reporting procedures following instances of abuse? A critical analysis of 7 protective school policies using queer theory was conducted to establish how these policies protect LGBT+ youth. Results suggest that despite national policies (e.g., the country's Constitution and the Alteration of Sex Description Act) making provision for the protection and realisation of the listed accommodations for LGBT+ youth, schools may fail to implement such policy implications based on their own interpretation of policies as evidenced within each school's code of conduct.

Key words: Comprehensive Sexuality Education; Gender and Sexuality Diversity; Lgbt+ Youth; Protective School Policy; Queer Theory.

Introduction

Nare Mphale remains one of the first female transgendered youth to be personally compensated by the local education government for discrimination based on her gender identity (Botha, 2017). With the support of the South African Human Rights Commission, Mphale told the Seshego Magistrate's Court on November 14, 2016, of instances of harassment and gender discrimination solicited by her school principal. According to Nare, in 2014, her school principal, Kgabo Francis Manamela, forbade her friends from referring to Nare as a "sister" (Botha, 2017). This incident was followed in 2013 after her classmates were implored by Manamela to harass and provoke Nare in the school toilets by grabbing her crotch to ascertain if she had male or female genitalia (*Mphela v. Manamela and others,* 2016). It was alleged by Nare that in 2014, Manamela told her "You are gay, and I don't talk to people like you" in front of other learners, presumably following an occasion where Nare wore a skirt instead of a school trouser. It was Nare's claim that following the repeated name-calling of her as "gay", that other learners started treating her differently and taunted her about her sexual orientation (*Mphela v. Manamela and others,* 2016). Nare also accused Manamela of preventing her from singing hymns and resorted to using corporal punishment (illegal since 1997) to punish her (Botha, 2017).

However, Nare's case became a precedent for any lesbian, gay, bisexual, transgender, and other non-conforming (LGBT+) youth, as the Seshego Magistrate's Court ordered the Limpopo Department of Education to award Nare R60,000 for damages, R20,000 for psychological harm, and R20,000 for the completion of her studies (Botha, 2017).

It has been said that South Africa's Constitution stands as the most progressive and protective policy[7] in the world and to its neighbouring African countries when it comes to the rights of LGBT+ individuals (Andam & Epprecht, 2019; Palmberg, 1999; Ibrahim, 2015). De Vos (2000), for example stated that, South Africa remains one of the first countries in the world to make an equality provision (Section 9(3)), which prohibits discrimination based on gender, sex, and sexual orientation. This subsection, according to De Vos (2000), makes South Africa one of the leading countries in the world to explicitly protect its gender and sexuality minorities. Allowing for any person whose sexual characteristics have changed based on surgical or medical treatment (as in the case of transgendered individuals) or change through natural development (intersexed persons) to change their sex on their birth certificate is the Alteration of Sex Description and Sex Status Act 49 of 2003. Within the schooling environment, the South African Schools Act 84 of 1996 is a protective school policy which allows for compulsory education; the intolerance of unfair discrimination on whatsoever grounds; and promotion of gender equality in terms of access to educational opportunities (Section 3(1); 5(1-3); 8(1-5); 9). The Department of Basic Education's (DBE, 2018) National policy on the Prevention and Management of Learner Pregnancy in Schools is another key policy which caters for the teaching of gender and sexuality diversity in schools within its comprehensive sexuality education (CSE) curriculum. To ensure all learners have access to CSE, including learners living with disabilities, the Children's Act 38 of 2005, considering age, maturity, and stage of development, states that all children have the right to access age-appropriate CSE in an accessible format (Section 13 of Chapter 2). The Children's Act also remains an invaluable piece of legislature as it provides procedures for the reporting of psychosexual abuse within the home and school premises to the relevant authorities.

With such intensification of such policy-making intended to advance equity and protection of its citizens' rights, including those of LGBT+ individuals, South Africa's social climate and education system should be an exemplary state in its forging of nation-building and restorative justice based on the values enshrined within its constitutional democracy (Gloppen & Rakner, 2020; Prinsloo, 2008; Currier, 2012). However, the reality of homophobic and transphobic abuse not only within schooling environments (e.g., the prolonged victimisation by Nare's principal) (Botha, 2017) but broader society (Nare's body was found with multiple stab wounds with no arrests so far) (Maphanga, 2020), either indicates that (1) either existing protective school policies need to be identified (Francis, 2017a; Stone, 2017; Nel & Judge, 2008), analysed and revised (Ibrahim, 2015; Kumashiro, 2000; Johnson, 2014), or queered (Francis, 2019a; Miller, 2019; Richardson, 2008). Or that (2) such policy changes have not yet translated into action due to the lack of implementation at a school culture (Francis & Kuhl, 2020; Wilson & Reygan, 2015; Mayeza & Vincent, 2019) or management level (Bhana, 2012, 2014a, 2014b; Msibi, 2012; Brown & Diale, 2017).

As such, this problem called for much research to bring together a list of protective school policies that will (and would have) protected LGBT+ youth like Nare. In addition, it might also be necessary to analyse and queer (by naming, problematising, and destabilising) any school cultures or problems created by the school management system itself.

The study therefore broadly asks, what existing protective school policies need to be identified, analysed, and queered to protect LGBT+ youth? This study will then identify, analyse, and queer 7 protective school polices and guidelines (at national and provincial level) to investigate how these policies safeguard LGBT+ youth. This includes, among others, the South African Schools Act 84 of 1996, the Western Cape's Education Department Gender Identity and Sexual Orientation Guidelines (2020), and the South African Council for Educators' (SACE) Code of Professional Ethics (2000). To conduct the analysis, the study will also ask, which protective school policies recognize gender and sexuality diversity and the teaching of inclusive curricula such as CSE? What accommodations do these policies provide in terms of admission requirements, preferred usage of pronouns, sex description change, dress code, and reporting procedures following instances of abuse? This becomes paramount given that a school's culture (e.g., adapting a strict Christian view of sex, gender, and sexuality) and school management system (e.g., enforcing traditional religious morality when it comes to admission requirements, sex description changes, or dress code) may configure certain regulatory norms that eventually become rigid (Francis & Kuhl, 2020), unquestioned (Rothmann & Simmonds, 2015), and unproblematised (Ngabaza & Shefer, 2019). A theoretical framework that aims to de-stabilise, de-silence, and 'de-root' school cultures and management systems which perpetuate homophobia, transphobia, and heteronormative patriarchy conditioned through colonialist ideology is queer theory.

Theoretical Framework: Queer Theory

Queer theory arose from gay/lesbian studies, which in turn remain situated within gender studies, from the 1980s (Hunt & Holmes, 2015). Before the 1980s, the term "queer" implied a derogatory identity category of "odd", "peculiar", or "out of the ordinary." But queer and feminist theorists, such as Judith Butler (1993) claimed the term, "insisting that all sexual behaviors, all concepts linking sexual behaviors to sexual identities, and all categories of normative and deviant sexualities are social constructs, which create certain types of social meaning" (Butler, 1990. Butler (1990), and other queer theorists (de Lauretis, 1991; Sedgwick, 1990) sought to separate sex (which is biologically determined) from gender (as socially constructed), to disrupt the idea of a stable and essential self. Butler (1990) saw gendered subjectivity as multiple, contextually dependent, and in flux. In other words, gendered subjectivity should not be seen as "fixed" or "essential", but rather created and sustained by "a repetiti[ve] and ritual[ised]" set of acts informed by social, cultural, and political norms (ibid. From this point of view, gender becomes learned, imitated, and performed, that "what we take to be an internal essence of gender is manufactured through a sustained set of acts, posited through the gendered stylization of the body" (ibid). It is based on this notion that Butler (1990) uses the term performativity rather than "performance." This is because,

"Whereas the noun "performance" implies distinct, concrete, finished events, the term "performativity" reflects "culturally sustained temporal duration"" (ibid). In this study, I utilise 'queer' as an anti-essentialist identification category and umbrella term which includes among others, "sexualities and gender identities that are outside [the] heterosexual [identity] and [challenges] gender categories" (Renn, 2010). I also use 'queer' as a verb "[and] deconstructive practice focused on challenging normative knowledges, identities, behaviors, and spaces thereby unsettling power relations and taken-for-granted assumptions" (Hunt & Holmes, 2015).

Adapting a queer politic provides a lens to explicitly challenge normative gender norms and highlight their lack of "naturalness and inevitability", while at the same time ushering the ability to "celebrate transgressions from them" (Alsop et al. 2002). In short, I agree with Hunt and Holmes (2015) that, "Queerness is then less about a way of "being," and more about "doing," and offers the potential for radical social critique." As one of the critiques meted against queer theory, I acknowledge Kirsch (2000) and Msibi's (2013) concern of queer theory's over-reliance on individual action to subvert hegemony, despite oppression occurring at multiple, overlapping, and intersecting levels which limits an individual's agency to act. But instead of locating the individual as the only agent of change, the study queers oppression from a structural and institutional level, by asking which South African protective school polices need to be identified, revised (if needed), or queered to protect LGBT+ youth. In other words, in a country rife with hate crimes particularly in its schooling environment, despite Nare's personal determination to seek justice against a homophobic and transphobic school culture and management systems, her case would have never landed in court if the country's Constitution prohibited gender discrimination. At the same time, I believe it is also essential to queer (by naming, problematising, and destabilising) the Constitution and other protective school policies' vagueness and ambiguity when it comes to creating specific accommodations (e.g., usage of preferred pronouns in school registries) as suggested by LGBT+ youth. Next, I visit the available literature to demonstrate the abuse and victimisation of LGBT+ youth within the schooling environment. Later, I highlight the opportunities in offering CSE in schools for LGBT+ youth. Then, a perusal of local and international protective school policies for LGBT+ youth is further discussed.

Abuse and Victimisation Of LGBT+ Youth in the Schooling Environment

As it stands, the majority of reported LGBT+ youth's experiences within schooling environments have been marked by a culture of homophobic abuse and victimisation (Francis, 2017, 2019a, 2019b; Rothmann & Simmonds, 2015; Brown & Buthelezi, 2020), marginalisation and bullying (Ngabaza & Shefer, 2019; Wilson & Reygan, 2015; Mayeza & Vincent, 2019), as well as silencing and denial by teachers and school managers (Bhana, 2012, 2014a, 2014b; Msibi, 2012; Brown & Diale, 2017). For example, in his study, *'I'm used to it now': Experiences of homophobia among queer youth in South African township schools*, Msibi's (2012) suggested even when such bullying and victimisation occurs as reported above, teachers and school managers not only become part of the perpetrators who deny and silence

homophobic incidents in the classroom, but also become instigators of homophobic abuse in staffrooms in view of other supporting teachers:

"I am used to it now . . . like this week. Mr Mncube dragged me by my neck and told me to stop bothering them in the staffroom. He had done this to me before. He likes pushing me and shouting at me in front of other teachers whenever I go to the staffroom. He always says he doesn't like 'izitabane'. Other teachers just laugh and do nothing. [Bheki, a gay participant]".

Francis and Monakali's (2021) latest study on trans and gender diverse youth, and their schooling experiences, *'Lose the Act': pedagogical implications drawn from transgender and non-binary learners' experiences of schooling* showed that trans and non-binary youth face severe victimisation based on discriminatory and derogatory speech. As one of the students in Francis and Monakali's (2021) study shares about his experiences of being mis-gendered and his teacher's intolerance:

"He] insists on calling me by my dead name … will misgender me and then laugh. He will say loudly in front of the other learners when referring to me – "tell him, her or whatever" or "give this to him her or whatever they call themselves today". Today meaning that maybe tomorrow I will change back to being called her. [He] who will often say to me in a joking kind of way – so what are we today "he or her or it" and he will laugh. [Sam, a trans boy learner]".

Opportunities in Schools Offering Comprehensive Sexuality Education for LGBT+ Youth

Under the *National Policy on Prevention and Management of Learner Pregnancy in Schools*, the South African Department of Basic Education (DBE, 2018) makes provision for all learners to access comprehensive sexuality education (CSE). CSE is a broad curriculum based on a life-long, value-driven approach of teaching about the beliefs, values, agency, power, and consent around sexually-related activity as well as decision-making around gender and sexuality diversity, communication in relationship, and sexual reproductive health services (UNESCO 2018). Since its rollout in 2017, CSE promises opportunities for inclusion of LGBT+ youth within the curriculum and broader schooling environment (Francis 2019a). For example, in his study, *Queering the (Ab)Normalization of Gender, (Hetero)Sexuality and Schooling in South Africa*, Francis (2019a) found that the teaching of gender and sexuality diversity in class not only made LGBT+ learners to feel more accepted within the schooling environment, but also enabled teachers to combat homophobia at the same time:

"… and even some of the teachers they will stand up for you and they will fight, and I like that. They will stand up to homophobia, and that make me feel good that I am not alone and that it is just not my battle alone (Eben WMB17)".

However, local scholars have noted that the rolling out of CSE is not without its own problems (Francis, 2019a; Bhana et al., 2019; Mayeza & Vincent, 2019). For example, in a recent study I conducted about the hegemonic discourses surrounding

the rollout of CSE in South African schools, found CSE violates the right of children to sexual innocence (Ubisi, 2021). Even within the language used in the school subject Life Orientation's textbooks, CSE has been portrayed based on themes of compulsory heterosexuality (Wilmot & Naidoo, 2014; Shefer & Macleod, 2015; Wilmot & Naidoo, 2018). Compulsory heterosexuality refers to the over-reliance and preferred use of heteronormative ideology, such as the predominant use of language and images portraying sex and relationships between a hetero-masculine and hetero-feminine couple in most sexuality education (Francis 2017, 2019a, 2019b; Wilmot & Naidoo, 2018; Shefer & Macleod 2015), which further marginalises (Potgieter & Reygan, 2012), creates spaces of being unwanted (Brown & Buthelezi, 2020), as well as engendering homophobic attitudes towards LGBT+ youth (Wilson & Reygan, 2015). For most comprehensive sexuality education (CSE) scholars (e.g., Bhana et al., 2019; Francis & Msibi, 2011; Shefer & Macleod, 2015), it is believed that for CSE to make a difference for LGBT+ youth within schooling environments, a social justice, human rights-based, and anti-oppressive approach needs to be integrated in content and pedagogy knowledge to ensure that the representation of all learners, including LGBT+ youth is realised.

Protective School Policies for LGBT+ Youth

Protective school policies not only for LGBT+ youth but the protection of all children against sexual abuse and harassment are prevalent both on the global and local context (Department of Basic Education & United Nations International Children's Emergency Fund, 2017). Internationally, this includes, among others, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, and the Convention on the Rights of the Child of 1989. In the African continent, the African Charter on Human and People's Rights of 1986 and the African Charter on the Rights and Welfare of the Child of 1990 are just some of the protective school policies to name few. Much like its international and African role-players, South Africa has intensified its commitment to the realisation of human rights, including those of its LGBT+ members (Andam & Epprecht, 2019; Palmberg, 1999; Ibrahim, 2015). As noted earlier, South Africa stands as a world leader in officially declaring its protection of gender and sexuality minorities (De Vos, 2000; Prinsloo, 2008; Currier, 2012). This is because South Africa has set up a range of protective school polices at a national and provincial level protecting and making various accommodations for LGBT+ youth. For example, at a national level, the country's Constitution prohibits discrimination based on gender and sexual orientation. While at provincial level, provinces such as the Western Cape have formulated their own school guidelines such as the Western Cape Education Department Gender Identity and Sexual Orientation Guidelines (2020) which prevent teachers and school managers from abusing and victimising LGBT+ youth in schooling environments.

However, protective school policies also have the potential to be violated by learners, teachers, and school managers without immediate or any ramifications (Bhana, 2012, 2014a, 2014b; Msibi, 2012; Brown & Diale, 2017). For example, in her study, *'Managing' the rights of gays and lesbians: Reflections from some South African*

secondary schools, Bhana (2014a) highlights how certain schools' code of conduct forbids same-sex relations:

"M2 (FIS): The school['s] laws will not allow any form of sexuality, between boys and girls or boys and boys … we don't allow that …".

This was because counter-normative sexuality becomes presented as a shameful and taboo topic, again reproduced through schools' guidelines as inappropriate childhood conduct (Bhana, 2014a):

"M2 (ATS): … I totally disagree with homosexuality. This is going teach our kids something which is very strange to us … I totally disagree".

Perhaps another reason that makes it easier to transgress protective school policies for LGBT+ youth, is teachers and school managers' ignorance, discomfort, and refusal to re-imagine a schooling environment free of compulsory heterosexuality (Bhana, 2014a):

"M2 (FIS): I think we got so much of heterosexuality here … we don't need homosexuality here really. I can't remember in this school, any incidences of homosexuality that were brought to the office … homosexuality is way above 18 years and over …".

Material and Methods

No ethical clearance was needed to conduct this study. A desktop search was conducted on governmental department websites like the DBE's website on Google's search engine to search for protective school polices for LGBT+ youth. The search utilized broad key terms, including terms such as 'policy(ies)', 'protect(ion)/safeguard(ing)', 'LGBT+ youth', 'gender/sexual orientation', 'gender/sexual orientation discrimination', 'gender and sexuality diversity', 'gender and sexual(ity) minority(ies)', 'comprehensive sexuality education', 'schools' as well as 'South Africa'. A further snowballing techniques of other protective school policies from a document's reference lists was also utilized. A total of 14 policies relating to the broad key terms were retrieved based on an initial search. After perusing and sorting these policies according to the relevant focus of this study (see Table 1), the search for more policies continued until data saturation was reached. In the end, 11 protective school polices for LGBT+ youth were selected for the final analysis.

Selection Criteria

The identified protective school polices for LGBT+ youth for final analysis must have discussed how they cater for and protect the human rights and wellbeing of LGBT+ youth. Preference was especially given to protective school polices which: (a) earmarked gender and sexual orientation discrimination, abuse, and harassment in the schooling environment; (b) policies which articulated various accommodations for LGBT+ youth in terms of for example, admission requirements, sex description changes, or dress code; and (c) policies gazetted following South Africa's democratic

dispensation (1994 and beyond). It should also be noted that certain policies were discarded from being analysed, especially where there was overlap or redundancy between two or more polices. For example, the Promotion of Equality and Prevention of Unfair Discrimination Act provides an expansion of Section 3 of the Constitution of the Republic of South Africa 108 of 1996. The Children's Act 38 of 2005 largely contains most of provisions within the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, the Southern African Development Community (SADC) Protocol on Gender and Development (2008), and Protection from Harassment Act 17 of 2011. The South African Schools Act 84 of 1996 builds on the National Education Policy Act 27 of 1996. In addition, the SACE's Code of Professional Ethics (2000) also covers most of the educator regulations and guidelines within the Employment of Educators Act 76 of 1998. However, because the terminology and specified contexts in which each policy applies, there might be a number of protective school polices which could have been overlooked. In addition, given the journal's scope and word count, only a certain number of protective school polices could be given a thorough discussion.

Results

Below, Table 1 presents the 7 identified protective school polices for LGBT+ youth within South Africa's schooling environments. The table firstly states the referred policies. Then, the table compares the respective policies based on its national or provincial level, followed by the policy's aim, recognition of gender and sexuality diversity, accommodations, as well as its reporting procedures for instances of abuse (e.g., gender and sexuality discrimination).

Table 1: Protective School Polices for LGBT+ Youth within South Africa's Schooling Environment (Adapted from Department of Basic Education & United Nations International Children's Emergency Fund, 2017)									
Protective school policy	National or provincial level:	Aim(s) for LGBT+ youth:	Recognises the teaching of gender and sexuality diversity education:	Accommodations in the schooling environment:					States reporting procedures for abuse and violation of rights (e.g., gender and sexual discrimination):
				Allows admission of LGBT+ youth in schools	Sex description change in school registry	Preferred pronoun usage	Change of dress code (e.g., for transgender learners)		
Constitution of the Republic of South Africa 108 of 1996 (Section 9(1-5); 16(2)(c); 27(1)(a); 28; 29(1)(a); 32(1)(a); 33)	National	✓ Prohibits gender and sexual discriminati on. ✓ Prevent and prohibit unfair discriminati on and harassment . ✓ Promote equality and eliminate unfair discriminati	x	x					x

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		on. ✓ Prevent and prohibit hate speech.						
Children's Act 38 of 2005 (Section 1; 2(f, g, i); 6-10; 13(1)(a); 15; 50; 55; 111; 116)	National	✓ Defines sexual abuse, offences, exploitation of children. ✓ List all state agencies have a role in protecting learners within schools and at home. ✓ States child below the age of 12 has no capacity to consent. ✓ States that sexual intercourse with a child below the age of 12 is						x

		always considered rape by the law, even if the child factually consented. ✓ States a child between the ages of 12 and 16 can consent, but with consequenc e for the other party if that person is 18 years or older. ✓ States that a learner may never consent when it is in reference to the prohibited conduct of					

		an educator.						
The Western Cape Education Department Gender Identity and Sexual Orientation Guidelines (2020) (Section 5; 6; 7; 14)	Provincial	✓ The purpose of this guideline is to— (a) Create an educational environment that does not discriminate directly or indirectly against anyone on one or more grounds, including gender, sex, sexual orientation, conscience, belief, culture and birth, among others. (b) Create an	x	x	x	x	x	x

		educational environment that is free from stigma and discrimination for all learners in all public schools; and (c) Promote gender identity and gender expression.						
Alteration of Sex Description and Sex Status Act 49 of 2003 (Section 2-4)	National	✓ Allows any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvement through natural developme			x			x

		nt resulting in gender reassignme nt, or any person who is intersexed to alter their sex description on his or her birth register.					
National Policy on Prevention and Management of Learner Pregnancy in Schools (2018)	National	✓ Commits the basic education system and other role players to provide comprehen sive sexuality education (CSE) crucial to optimal sexual and reproductiv e health. ❖ The aim of	x				

		CSE is to ensure that young people gain the knowledge and skills to make conscious, healthy, and respectful choices about relationships and sexuality. ❖ It provides an age-appropriate, culturally-relevant, and right-based approach to sexuality and relationships, which explicitly addresses issues of					

		gender and power, and provides scientifically accurate, practical information in a non-judgementaI way.						
South African Schools Act 84 of 1996 (Section 3(1); 5(1-3); 8(1-5); 9)	National	✓ Combat racism and sexism and all other forms of unfair discriminati on and Intolerance. ✓ Compulsory education and attendance of all learners, until the age of fifteen years or the ninth grade, or whichever	x	x				x

		occurs first. ✓ Admission of all learners to public schools without unfairly discriminating in any way. ✓ Provides School Governing Bodies (SGBs) a public school to adopt a Code of Conduct for learners, 'after consultation with learners, parents and educators of the School'. ✓ Act stipulates					

		that Code of Conduct must: (a) inform learners of conduct that is permissible and conduct that is prohibited; (b) advise learners on the grievance procedures, and (c) the code of conduct must contain provisions of due process safeguarding the interests of the learner and any other party involved in					

		disciplinary proceedings. ✓ States a learner may only be suspended or expelled based on any applicable provincial law and the governing body of a public school may, after a fair hearing. ✓ Act prohibits corporal punishment.						
SACE's Code of Professional Ethics (2000) (Section 3)	National	✓ States that educators should: a. Respect the dignity, beliefs and constitutional rights of learners and in particular						

		children, which includes the right to privacy and confidentiality. b. Acknowledge the uniqueness, individuality, and specific needs of each learner, guiding and encouraging each to realise his or her potential. c. Strive to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa. d. Avoid any form of humiliation, and refrains					

		from any form of abuse, physical or psychologi cal. e. Refrain from improper physical contact with learners. f. Promote gender equality. g. Refrain from courting learners from ANY school. h. Refrain from any form of sexual harassmen t (physical or otherwise) of learners i. Refrain from any form of sexual relationship with learners from any school. j. Refrain from exposing					

		and/or displaying pornographic material to learners and or keeping same in his/her possession. k. Use appropriate language and behaviour in his or her interaction with learners, and acts in such a way as to elicit respect from the learners. l. Take steps to ensure the safety of the learner. m. Does not abuse the position he or she holds for financial, political, or personal gain. n. Is not negligent					

		or indolent in the performance of his or her professional duties; and o. Recognises, where appropriate, learners as partners in education.					

Discussion

The following section discusses the findings of this study based on the aim, research questions, and theoretical framework proposed for this study. The aim of this study was to identify, analyse, and queer 7 protective school polices and guidelines to determine how they protect LGBT+ youth within South Africa's schooling environments. In other words, the study wished to find out, what existing protective school policies need to be identified, analysed, and queered to safeguard LGBT+ youth? This study in addition asked, which protective school policies recognize gender and sexuality diversity and teaching of inclusive curricula such as CSE? To further analyse these policies, the study inquired, what accommodations do these policies provide in terms of admission requirements, preferred pronouns, sex description change, dress code, and reporting procedures following instances of abuse? The study proposed a queer theoretical to analyse its study findings. Below, the study's findings are discussed under the following three sub-headings: (1) Progress of South Africa's protective school policies for LGBT+ youth; (2) Implications of uncertainty, omissions, and inconsistency within certain protective school policies for LGBT+ youth; as well as (3) Direct (dis)translation of protective school policies into each school's code of conduct.

Progress of South Africa's Protective School Policies for LGBT+ Youth

South Africa has made great strides compared to its African neighbouring countries when it comes to the recognition of LGBT+ rights (Andam & Epprecht, 2019; Palmberg, 1999; Ibrahim, 2015). Despite the widespread levels of homophobic abuse (Francis 2017, 2019a, 2019b), victimisation (Rothmann & Simmonds, 2015), and bullying (Brown & Buthelezi, 2020) of LGBT+ youth within most schooling environment, this study identified several mandatory protective school policies (e.g., SACE's Code of Professional Ethics) which prevents learners, teachers, and school mangers from committing these abuses against LGBT+ youth. Yet, upon closer inspection, the Constitution's Bill of Rights itself, the supreme legislature in the country, has not undergone much-needed revisions to incorporate diverse gender and sexuality identification. In other words, one wonders how we can accept a few policy changes here and there when it is apparent that South Africa and other developing country's legal and criminal justice system were created (Ibrahim, 2015), and in some policies remains intact (Bhana et al., 2019), with colonialist ideology which genders, sexes, as well as sexualises certain bodies (Butler, 1990). It is my assertion that such disparity in policy engagement with a changing gendered and sexualised landscape remains problematic for South African schooling environment attempting to combat school cultures and management systems which still operate on genderism, heterosexism, as well as the legacy of coloniality. Instead, the revised policy-making of the Constitution should set an example by allowing itself to be open to scrutiny, change, and improvement.

Despite these critiques, there has been some much holistic, progressive, and grassroot-level policy change found within this study. Notably, the provincial Western Cape Education Department Gender Identity and Sexual Orientation Guidelines (2020), forged by the province's schools coming together, presents as one of the

most comprehensive school policies for LGBT+ youth so far. In fact, it is my assertion that this policy presents an exemplary instance of what happens when policy-makers decide to purposefully queer policy for LGBT+ youth in schools. For example, Section 5-15 of this guideline document provides an exhaustive list of protections for LGBT+ youth in terms of the following accommodations: freedom to express one's gender identity, preferred dress code, and physical appearance such as in the case of transgendered learners choosing to wear skirts instead of school pants. The guidelines within this document specifically make provision for LGBT+ youth to be included in any school sports as well as gender-neutral bathrooms. This document remains one of the first in the country to task schools to make special arrangements for LGBT+ youth to be feel safe and included within changing room facilities, school excursions, hostels, school functions, and attendance to a matric dance. The guidelines are specific when it comes to non-discrimination within the admission of LGBT+ youth on the grounds of gender and sexuality, even within single sex schools. Furthermore, the guidelines encourage every school to create a safe space, inclusive curriculum, and further training of schools by the Western Cape Education Department to raise awareness of LGBT+ rights within the South African schooling environment.

Implications of Uncertainty, Omissions, and Inconsistency within certain Protective School Policies for LGBT+ Youth

Based on the findings of this study, it was found that there were uncertainties, omissions, and inconsistencies which were noted within some protective school policies. For example, while the South African Schools Act 84 of 1996, Section 5(1), the Act states, 'A public school must admit learners and serve their educational requirements without unfairly discriminating in any way' (line 35). In Section 46(3)(b) of the same policy, the Act states, 'the admission policy of [an independent] school [should] not discriminate on the grounds of race' - but remains silent regarding discrimination based on gender or sexual orientation (line 22-3). Based on this inconsistency, it is my contention that private/independent schools, like single sex, faith-based, or religiously-conservative schools, can independently interpret[viii] such protective school policies towards promotion of certain gender, sexuality, and religious school cultures (Francis, 2019b; Ubisi, 2020; Bhana et al., 2019). For example, in a recent study I conducted (Ubisi, 2021), comparing the implementation of religious education and CSE policy, I found that within some Islamic schools, the teaching of CSE was known to be replaced with religious studies. As Niehaus (2011) put it:

Islamic schools in South Africa are obliged to teach democratic citizenship education since it is part of the post-apartheid National Curriculum. It is mainly taught within the subject of Life Orientation and deals with, among others, diversity, religious beliefs, human rights, rights and responsibility of citizens, and any personal issues. Islamic schools teach these topics from an Islamic point of view, and remove what seems unacceptable to include, such as HIV-Aids education and sexual relationships between teenagers. In some schools, Life Orientation was combined with Islamic studies to ensure that the subject is taught from an Islamic perspective.

That is, the replacing, substitution, and eventual 'removal' of certain forms of knowledge (i.e., doing away with the 'unacceptable' themes within CSE and substituting them with religious education) shows how certain schools perpetuate a culture and practices that not only maintain normative knowledges, identities, and behaviours (Msibi, 2012), but also silence and deny counter-experiences (Bhana, 2014a) which might possibly disrupt hegemonic and intelligible ways of being (Francis, 2019a). Similar to previous studies (Francis, 2019b; Ubisi, 2020; Bhana et al., 2019), this study demonstrates the complex, multiple, and overlapping positioning of oppression which occurs at intersecting, structural, and institutional forms of identification (e.g., gender, sexuality, and religion) (Msibi, 2012). To subvert these compulsory, oppressive, and normative ways of being (Rothmann & Simmonds, 2015), I agree with Kirsch (2000), Msibi (2013), and Butler's (1993) claim that it is not sufficient to locate individual resistance, rebellion, and agency against hegemony. But for new insight, meaning, and social change to emerge, we have to name, problematise, and destabilise those relations of power within knowledge, systems, and forms of identification which are reproduced to make certain bodies non-normative, "out of the ordinary", and unintelligible (Renn, 2010; Butler, 1993; Hunt & Holmes, 2015). This is not to generalise or essentialise these bodies as experiencing the same domination and exclusion within the same time, space, and positioning (Msibi, 2012). But to be suspicious of where uncertainties, omissions, and inconsistencies exist, for any ambiguity within policy renders itself to various interpretations.

Direct (dis)translation of Protective School Policies into each School's Code of Conduct

Based on the findings above, this sub-section brings us to the importance of protective school policy translating into direct action and recognition within each school's code of conduct. For example, evidence from previous studies suggests that some schools' code of conduct prohibit same-sex relations amongst learners (Bhana, 2014a), others manage their own curriculum by removing and replacing unwanted themes (Ubisi, 2021), while others fail to regulate open homophobic abuse in the classroom and teacher staffrooms (Msibi, 2012). If schools, to use religiously conservative schools as an example, can violate policy such as the DBE's (2018) *National Policy on Prevention and Management of Learner Pregnancy in Schools*, which caters for the teaching of gender and sexuality diversity without any consequences, I am convinced (based on equivocality in existing school policy) that they can also enforce a code of conduct which prohibits other violations, such as the refusal of admission of LGBT+ youth into schools. In other words, the schooling environment has become a macrocosm of the hate (*Mphela v. Manamela and others*, 2016), hostility (Wilson & Reygan, 2015), and rejection (Brown & Diale, 2017) which has been normalised in society towards the LGBT+ community (Nel & Judge, 2008). But Bhana (2014a) reminds us that the school managers play a pivotal role in enacting school cultures and code of conducts which will emulate democratic citizenship free from any homophobia, genderism, and heterosexism:

"This country requires a new national system for schools which will redress past injustices … advance the democratic transformation of society, combat racism and

sexism and all other forms of unfair discrimination and intolerance, … uphold the rights of all learners, parents, and educators … (South African Schools Act No. 84, 1996)".

From the above legislature, it evident that teachers and school managers are trained and regulated by their own code of conduct (e.g., the SACE's Code of Professional Ethics). But teachers either have not been capacitated on how to embody these ethics (Johnson, 2014), or 'lose' their professional integrity to the school's code of conduct (Bhana, 2014a). In her paper about the future directions to combat homophobic abuse in schools, '*The need to prepare future teachers to understand and combat homophobia in schools'*, Johnson (2014) acknowledges that training programmes will "improve teachers' capacity and confidence to address homophobia in South African schools will engender non-homophobic school contexts." Francis and Msibi (2011) emphasis empowering teachers with critical pedagogical knowledge to teach about problematic school cultures such as heterosexism. Brown and Buthelezi (2020) suggest school-based support team responses to sexual diversity and homophobic bullying in a South African school. Wilson and Reygan (2015) add that teachers and school managers need to be advocates of social change within their schools. That is, teachers and school mangers become agents of hope, inclusion, and non-discrimination by developing awareness of what is just and ethical code of conduct. More importantly, learners and parents can take steps to challenge school policies and practices that are not in line with national legislation and policy, and which are unconstitutional. For example, learners and their parents can report such grievances to the SGB, complaints to the DBE, SACE, Human Rights Commission or the Equality Courts. Taking such steps could increase awareness and send a clear message that heterosexist, sexist, homophobic and transphobic discrimination and exclusion should not be tolerated and could serve to de-normalise it. But queer theorists would further ask, what happens when training and induction around such policies has taken place, but does not translated into practice? One such strategy would be to revisit how such policies are a product of time, fluidity, and situatedness over time (Ibrahim, 2015).

Conclusion

This study sought to identify, analyse, and queer 7 protective school polices for LGBT+ youth in South Africa's schooling environments. To address how these polices protect LGBT+ youth, the study investigated which accommodations do these policies provide in terms of admission requirements, preferred pronouns, sex description change, dress code, and reporting procedures following instances of abuse. Despite a clear sign that most protective school policies for LGBT+ youth do exist and make certain accommodations for LGBT+ youth, there is a still a disjuncture when it comes to direct translation based on each school's code of conduct. While common sense would lead us to believe that the power of policy-making can only be realised when there is 'buy-in' from school governing bodies and integration of policy implications within each school's code of conduct (a top-down approach), the findings of this suggest that a grassroot-level approach of schools coming together to create their own policies (a bottom-up approach), such as the Western Cape Education Department Gender Identity and Sexual Orientation

Guidelines (2020) should not be ignored. The major limitation of this includes the oversight of how gender and sexuality interacts with other forms of identification (e.g., race, class and culture). For such reason, future studies are advised to consider integrating queer theory with other post-structural, anti-essential, and anti-colonial theories like decoloniality (Hunt & Holmes, 2015).

Acknowledgements

Declaration of Interest Statement

The author declares no conflict of interest.

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Notes

In this study, I define a protective policy as created to safeguard the general wellbeing (emotional, psychological, socio-economical and legal status of an individual or groups of individuals such as LGBT+ youth).

The overarching aim of the Constitution is to protect and balance the rights of everyone. However, because South Africa is a multi-cultural and –religious state, there are bound to be conflicting rights. For example, the right to freedom of association and the right to freedom of religion allows people to exclude and differentiate based on their beliefs for example about gender, sexuality, and religion. But this cannot be allowed on a public sphere, but can take place within their within their communities (private schools only) as not allowing such exclusion or differentiation would essentially deny some people their right to freedom of religion, belief and opinion, as well as expression. Ultimately, the Constitution not only affords protection for trans-gendered individuals, but also for individuals with strict beliefs about gender and sex that are opposed to transgendered identities. This at times makes the interpretation of the Constitutional rights a sensitive and complicated matter.