

PROVINCE OF WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

**Provincial Gazette  
Extraordinary**

**Buitengewone  
Provinsiale Koerant**

**Isongezelelo  
kwiGazethi yePhondo**

6926

6926

6926

*Friday, 18 November 2011*

*Vrydag, 18 November 2011*

*ulwesi Hlanu, 18 uNovemba 2011*

*Registered at the Post Office as a Newspaper*

**CONTENTS**

*(\*Reprints are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)*

**Provincial Notice**

324 Draft Regulations Relating to Serious Misconduct of Learners at Public School ... 2

*As 'n Nuusblad by die Poskantoor Geregistreer*

**INHOUD**

*(\*Afskrifte is verkrygbaar by Kamer M21, Provinsiale Wetgewer-gebou, Waalstraat 7, Kaapstad 8001.)*

**Provinsiale Kennisgewing**

324 Konsep-regulasies Bereffende die Ernstige Wangedrag van Leerders by Openbare Skole ..... 7

*Ibhaliswe ePosini njengePhephandaba*

**IZIQULATHO**

*(\*Ushicilelo oLutsha lufumaneka kwigumbi M21, kwiSakhiwo sePhondo seNdlu yoWiso Mthetho, 7 Wale Street, eKapa 8001.)*

**Provincial Notice**

324 Draft Regulations Relating to Serious Misconduct of Learners at a Public School. 12

**PROVINCIAL NOTICES**

The following Provincial Notices are published for general information.

ADV. B. GERBER,  
DIRECTOR-GENERAL

Provincial Building,  
Wale Street,  
Cape Town.

**PROVINSIALE KENNISGEWINGS**

Die volgende Provinsiale Kennisgewings word vir algemene inligting gepubliseer.

ADV. B. GERBER,  
DIREKTEUR-GENERAAL

Provinsiale-gebou,  
Waalstraat,  
Kaapstad.

**PROVINCIAL NOTICE**

The following draft Regulations is hereby published for general information:

**DRAFT REGULATIONS RELATING TO**

- (a) SERIOUS MISCONDUCT OF LEARNERS AT A PUBLIC SCHOOL (EXCLUDING PUBLIC SCHOOLS FOR LEARNERS SENT OR TRANSFERRED THERETO IN TERMS OF THE CHILDRENS ACT 2005 (ACT 38 OF 2005), AND/OR THE CRIMINAL PROCEDURE ACT, 1997 (ACT 51 OF 1997) READ WITH THE CHILD JUSTICE ACT, 2008 (ACT 75 OF 2008) IN THE PROVINCE OF THE WESTERN CAPE
- (b) DISCIPLINARY PROCEDURES TO BE FOLLOWED IN SUCH CASES; AND
- (c) PROVISIONS OF DUE PROCESS SAFEGUARDING THE INTERESTS OF LEARNERS AND ANY OTHER PARTY INVOLVED IN DISCIPLINARY PROCEEDINGS.

P.N. 324/2011

18 November 2011

Any person or organization wishing to comment on the said draft regulations is requested to lodge such comment in writing before or on 2 December 2011:

- (a) By posting it to:  
Adv. Lynn Coleridge  
Director: Policy Co-ordination  
Western Cape Education Department  
Private Bag X9114  
CAPE TOWN 8000
- (b) By e-mailing it to: [Lynn.Coleridge@pgwc.gov.za](mailto:Lynn.Coleridge@pgwc.gov.za)
- (c) Faxing it to: 021-467 2900  
Tel: 021-467 2055
- (d) By delivering it to:  
Adv. Lynn Coleridge  
Director: Policy Co-ordination  
Western Cape Education Department  
Private Bag X9114  
CAPE TOWN 8000

**In terms of sections 9(3) of the South African Schools Act, 1996 (Act 84 of 1996), read with 63(1)(cE) of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), the Provincial Minister responsible for education in the Western Cape hereby intends to promulgate the regulations set out in the Schedule.**

**SCHEDULE****ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Serious Misconduct
3. Preliminary Investigation
4. The Power of the Governing Body to Suspend a Learner
5. Notice to the Parent and Learner of the Disciplinary Hearing
6. Appointment and Composition of the Disciplinary Committee
7. The Disciplinary Hearing
8. Recommendation of Expulsion by the Governing Body
9. Appeal

## 10. Access to Education

## 11. Repeal

## 12. Short Title

**1. Definitions**

In these regulations any word or expression to which a meaning has been assigned in the Act bears the meaning assigned to it and, unless the context otherwise indicates—

“**disciplinary committee**” means a committee established by the governing body of a public school in terms of sections 30(1)(a) and (b) of the Act;

“**expulsion**” means the permanent prohibition of a learner by the Head of Department, from attending the school at which he or she was enrolled, after following the process in terms of the Act, and these regulations;

“**parent**” means—

- (a) the parent or guardian of a learner;
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner’s education at school.

“**Provincial Minister**” means the Provincial Minister responsible for education in the province of the Western Cape;

“**suspension**” means the temporary prohibition of a learner from attending a school; and

“**the Act**” means the South African Schools Act, 1996 (Act 84 of 1996).

**2. Serious Misconduct**

(1) Subject to the provisions of *the Act*, a learner at a school who—

- (a) has been convicted by a court of a criminal offence and sentenced to imprisonment without the option of a fine;
- (b) used or had in his or her possession and/ or sells and/ or distributes a dangerous object, alcoholic liquor or illegal drugs;
- (c) commits an act of bullying, assault, theft, arson or malicious damage to property;
- (d) commits an act of gross insubordination or engages in immoral conduct;
- (e) is in possession of or uses any unauthorised copy of a test or examination question paper, or cheats, distributes, trades, bribes or attempts to bribe any person in respect of any test or examination, with the intention of enabling himself or herself, or any other person, to gain an unfair advantage;
- (f) uses hate speech, makes himself or herself guilty of racism, sexism, sexual harassment, possession of or distributes pornographic material or engages in any act of public indecency;
- (g) endangers the safety or threatens fellow learners or educators, disrupts the school programme and/ or violates the rights of others;
- (h) has repeatedly been found guilty of transgressing the learner’s code of conduct; or
- (i) conducts himself or herself, in the opinion of the governing body, in a disgraceful, improper or unbecoming manner,

shall be guilty of serious misconduct.

(2) Subject to the provisions of *the Act*, a learner at a school may be suspended by the governing body or expelled by the Head of Department if, after a fair hearing, he or she is found guilty of serious misconduct as contemplated in sub-regulation (1).

**3. Preliminary Investigation**

(1) Where it is alleged that the conduct of a learner may constitute serious misconduct in terms of regulation 2(1), it must be brought to the attention of the principal who must—

- (a) investigate or cause an investigation to be carried out to determine whether there are grounds for a disciplinary hearing;
- (b) decide whether there is sufficient evidence to institute disciplinary action against the learner in respect of the serious misconduct;
- (c) inform the governing body of the outcome of the investigation; and
- (d) advise the governing body that it may, on reasonable grounds, and as a precautionary measure, suspend the learner suspected of serious misconduct from attending school for a period not longer than seven (7) school days, provided that the governing body—
  - (i) informs the learner and the *parent(s)* of the learner of the intention to suspend and the reasons therefore
  - (ii) affords the learner and the *parent(s)* of the learner a reasonable opportunity to make representations to the governing body in relation to such *suspension*, and

(iii) report the decision of the *suspension* of the learner to the District Director, who shall keep a register of all such *suspensions*.

- (2) The governing body must conduct disciplinary proceedings in the manner contemplated in section 8 of *the Act* against the learner within seven (7) school days after the *suspension* of such learner.
- (3) If disciplinary proceedings are not conducted within seven (7) school days after the *suspension* of the learner, the governing body must obtain the approval of the Head of Department for the continuation of the *suspension* of such learner.

#### 4. The Power of the Governing Body to Suspend a Learner

- (1) The governing body can only suspend a learner—
  - (a) as a precautionary measure and in the manner contemplated in regulation 3(d) for a period of up to seven (7) school days;
  - (b) as a correctional measure, after the learner has been found guilty of serious misconduct as contemplated in regulation 7(4)(e)(i), for a period not longer than seven (7) school days; or
  - (c) pending the decision of the Head of Department as contemplated in regulation 8(2), for a period not longer than fourteen (14) school days.
- (2) The total period of *suspension* of a learner from school shall not be longer than twenty one (21) school days.
- (3) The governing body must report all the decisions to suspend and the nature of *suspension* of the learners to the District Director, who shall keep a register of all such suspensions.

#### 5. Notice to the Parent and Learner of the Disciplinary Hearing

- (1) The governing body must notify the learner as well as the *parent(s)*, in writing, that disciplinary proceedings will be instituted against the learner. Notice of five (5) school days must be given for this purpose. The notice must—
  - (a) inform the learner and the *parent(s)* of the learner that disciplinary proceedings will be instituted against the learner;
  - (b) contain sufficient particulars of the date, time, place and the nature of the alleged serious misconduct to enable the learner to identify the incident and to respond thereto;
  - (c) contain the date, time and venue of the disciplinary hearing;
  - (d) advise the learner of his or her right to—
    - (i) be accompanied and represented at the hearing, by his or her *parent(s)*, or by a representative of his or her choice
    - (ii) request access to documents or information produced in evidence, and
    - (iii) ask questions, cross-examine, lead evidence, call witnesses and produce documentary evidence to clarify issues pertaining to the allegation.
  - (e) inform the learner, where applicable, of the precautionary *suspension* and the nature of academic support to be provided by the school before the disciplinary hearing and during the period of *suspension* contemplated in regulation 3(1)(d).
- (2) The principal must give the notice contemplated in sub-regulation (1) to the learner, and deliver a copy thereof to the *parent(s)* of the learner at the address of the learner indicated in the school admission's register and/ or the learner profile.

#### 6. Appointment and Composition of the Disciplinary Committee

- (1) The governing body must preside over the disciplinary proceedings or must appoint a *disciplinary committee* to do so.
- (2) The *disciplinary committee* must comprise of at least three persons, at least two of whom must be governing body members.
- (3) The *disciplinary committee* must be chaired by a member of the governing body, designated by the governing body, who is not an employee or member of staff of the *school*.
- (4) The *disciplinary committee* must be impartial, fair and act without favour or prejudice.
- (5) The principal, learners at the school or persons having a conflict of interest are not eligible to be members of the *disciplinary committee* and may not be present when the governing body discusses the report or recommendations of the *disciplinary committee*.
- (6) A decision of the *disciplinary committee* must be ratified by the governing body.

#### 7. The Disciplinary Hearing

- (1) At the disciplinary hearing the learner shall have the right to be present, to be represented, to give evidence and either personally or through a representative, to—
  - (a) be heard;
  - (b) call witnesses;
  - (c) put questions to any person called as a witness in support of a charge; and
  - (d) inspect documents submitted in evidence.

- (2) If the learner or his or her *parent(s)* fail to attend the disciplinary hearing without just cause, and after due notice contemplated in regulation 5(1), and after such hearing has been convened for the second time, the hearing may be conducted in their absence.
- (3) The chairperson must upon the commencement of the disciplinary hearing explain the reasons for the disciplinary hearing, request the charge or charges to be read, and ask the learner to plead to the charge(s).
- (4) If the learner pleads guilty, the chairperson must—
  - (a) ensure that the learner knows and understands what he or she is pleading guilty to;
  - (b) ask the learner or through his or her representative whether they wish to make representations before a suitable sanction is imposed;
  - (c) ask the learner and his or her representative and any other parties, except the members of the *disciplinary committee*, to leave the room while the committee deliberates on a suitable sanction;
  - (d) ensure that the *disciplinary committee* decides on an appropriate sanction;
  - (e) ensure that the *disciplinary committee*, after finding the learner guilty of serious misconduct, decide if—
    - (i) the learner should be suspended for a period up to seven (7) school days
    - (ii) any other sanction contemplated for serious misconduct in the code of conduct of that school should be imposed on the learner, or
    - (iii) the *expulsion* of the learner should be recommended to the Head of Department; and
  - (f) recall the learner, representative and/or *parent(s)* and inform them of the outcome of the recommendations to be submitted to the governing body.
- (5) If the learner pleads not guilty, the chairperson must—
  - (a) request the investigation report to be read and evidence adduced in support of the charge, including the calling of the complainant(s) and/or witnesses;
  - (b) give the learner, representative and or *parent(s)* of the learner the opportunity to put questions to witnesses with the purpose of refuting evidence;
  - (c) afford the committee members an opportunity to ask questions of clarity, where applicable;
  - (d) afford the learner an opportunity to state his or her case and to call witnesses;
  - (e) allow committee members to ask questions of clarity;
  - (f) excuse the learner, representative and or *parent(s)* while the committee reviews evidence and decides on the verdict; and
  - (g) recall the learner, representative and or *parent(s)* and inform them of the *disciplinary committee's* decision.
- (6) If the *disciplinary committee* finds the learner guilty, ask him or her, or his or her representative or *parent(s)*, if they wish to make representations before a decision is made on the appropriate sanction.
- (7) The *disciplinary committee* must then decide on an appropriate sanction taking all the evidence and representations into account.
- (8) The learner must be informed, in writing, of the decision of the governing body on whether or not he or she is guilty of serious misconduct, and the sanction imposed.

#### 8. Recommendation of Expulsion by the Governing Body

- (1) (a) Where the governing body recommends to the Head of Department that a learner be expelled, the *parent(s)* of the learner must be notified, in writing, of the decision of the governing body, with good cause shown.
- (b) Where a governing body suspends a learner from attending school, with the recommendation of *expulsion* to the Head of Department, the governing body must direct the principal to submit to the Head of Department, within three (3) school days—
  - (i) the minutes of meetings at which the decision was taken,
  - (ii) any written representations submitted by the learner or *parent(s)* or representative, and
  - (iii) the full record of the proceedings by the *disciplinary committee* and/or governing body.
- (2) Pending a decision by the Head of Department the governing body may suspend or extend the *suspension* of a learner for a period not longer than fourteen (14) days.
- (3) The Head of Department must consider the recommendation by the governing body and must decide whether or not to expel a learner within fourteen (14) days of receiving such recommendation.
- (4) If the Head of Department decides not to expel the learner, the Head of Department may, after consultation with the governing body, impose a suitable sanction on the learner, which must be implemented by the governing body.
- (5) If the Head of Department decides not to impose a sanction on the learner, the Head of Department must refer the matter back to the governing body, for an alternative sanction in terms of the school's code of conduct contemplated in section 8 of *the Act*.

- (6) The governing body and the *parent(s)* of the learner must be notified immediately, in writing, of the decision of the Head of Department, with good cause shown.
- (7) If the Head of Department expels a learner, the notice contemplated in sub-regulation (6) must include a reference to the right of appeal to the *Provincial Minister*.

#### 9. Appeal

- (1) A learner who has been expelled from a school, or the *parent* of such learner, may appeal against the decision of the Head of Department to the *Provincial Minister* within fourteen (14) days of receiving the notice of *expulsion*.
- (2) A copy of the notice of appeal contemplated in sub-regulation (1) must also be served on the office of the Head of Department.
- (3) If an appeal in terms of sub-regulation (1) by a learner who has been expelled from a school is upheld by the *Provincial Minister*, the *Provincial Minister* must ensure that a suitable sanction is imposed on the learner within fourteen (14) days of the date on which the appeal was upheld.
- (4) For the purposes of the imposition of a suitable sanction contemplated in sub-regulation (3), the provisions of regulations 8(4) and (5) apply, with the changes required by the context.

#### 10. Access to Education

- (1) If a learner who is subject to compulsory attendance in terms of section (3) of *the Act* is expelled from a school, the Head of Department must make an alternative arrangement for his or her placement at a school.
- (2) If a learner who is not subject to compulsory attendance, the parents of the learner must make alternative arrangements for his/or her placement at a school and may request the assistance of the District Director.
- (3) If a learner has appealed in the manner contemplated in regulation 9(1), such learner must, pending the outcome of the appeal, be given access to education in the manner determined by the Head of Department.
- (4) In determining an alternative arrangement for placement contemplated in sub-regulation (1), or the manner of attendance contemplated in sub-regulation (3), the Head of Department—
  - (a) must take reasonable measures to protect the rights of other learners at the school; and
  - (b) may consider an alternative method of providing education to the learner contemplated in sub-regulations (1) and (3), which may include—
    - (i) ensuring that the learner is admitted to another school within the province
    - (ii) requiring the learner to attend counselling at district level with Specialised Learner and Educator Support or School Psychological Support or School Social Work Support, and
    - (iii) requesting regular progress reports in respect of the counselling contemplated in sub-paragraph (ii) from the relevant support component.
- (5) Any learner who is expelled from a school, during the last term of that year, must be afforded the opportunity to write the final examinations of the year in which he or she was expelled, provided that such learner writes the examination in a venue separate from the learners of the school which he or she attended at the time of his or her *expulsion*.

#### 11. Repeal

The Regulations relating to serious misconduct of learners at public schools (excluding public schools for learners sent or transferred thereto in terms of the Child Care Act, 1983 (Act 74 of 1983), and or the Criminal Procedure Act, 1997 (Act 51 of 1997) in the Province of the Western Cape, and the disciplinary procedures that must be followed in such cases that was published in Provincial Notice 372 of 1997 in Provincial Gazette Extraordinary No. 5190, dated 31 October 1997, are hereby repealed.

#### 12. Short title

These Regulations are called the Regulations relating to Serious Misconduct of Learners at Public Schools in the Province of the Western Cape.

---

## PROVINSIALE KENNISGEWING

Die volgende konsep-regulasies word hierby vir algemene inligting gepubliseer:

### KONSEP-REGULASIES BETREFFENDE

- (a) DIE ERNSTIGE WANGEDRAG VAN LEERDERS BY OPENBARE SKOLE (UITGESLUIT OPENBARE SKOLE VIR LEERDERS WAT DAARHEEN GESTUUR OF OORGEPLAAS IS INGEVOLGE DIE KINDERWET, 2005 (WET 38 VAN 2005) EN/OF DIE STRAFPROSESWET, 1997 (WET 51 VAN 1997) GELEES MET DIE WET OP KINDERGEREGTIGHEID, 2008 (WET 75 VAN 2008) IN DIE PROVINSIE VAN DIE WES-KAAP;
- (b) DISSIPLINÊRE PROSEDURES WAT IN SULKE GEVALLE GEVOLG MOET WORD; EN
- (c) BEPALINGS VAN REGSPROEDURE TER BESKERMING VAN DIE BELANGE VAN LEERDERS EN ENIGE ANDER PARTY BETROKKE BY DISSIPLINÊRE AKSIES.

P.N. 324/2011

18 November 2011

Enige persoon of organisasie wat kommentaar oor die genoemde Regulasies wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 2 Desember 2011:

- (a) deur dit te pos aan:  
Adv. Lynn Coleridge  
Direkteur: Beleidskoördinerings  
Wes-Kaap Onderwysdepartement  
Privaatsak X9114  
KAAPSTAD 8000
- (b) deur dit te e-pos aan:  
Lynn.Coleridge@pgwc.gov.za
- (c) deur dit te faks na:  
021-467 2900  
Tel: 021-467 2055
- (d) deur dit af te lewer by:  
Adv. Lynn Coleridge  
Direkteur: Beleidskoördinerings  
Wes-Kaap Onderwysdepartement  
Grand Central Towers  
Laer Pleinstraat  
KAAPSTAD 8000

**Die Provinsiale Minister verantwoordelik vir onderwys in die Wes-Kaap, ingevolge artikel 9(3) van die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996) saamgelees met artikel 63(1)(cE) van die Wes-Kaapse Provinsiale Wet op Skoolonderwys, 1997 (Wet 12 van 1997), is hiermee van voorneme om die regulasies soos uiteengesit in die Bylae te promulgeer.**

### BYLAE

#### VOLGORDE VAN REGULASIES

1. Definisies
2. Ernstige Wangedrag
3. Voorlopige Ondersoek
4. Die Mag van die Beheerliggaam om 'n Leerder te Skors
5. Kennisgewing aan die Ouer en die Leerder aangaande die Dissiplinêre Verhoor
6. Aanstelling en Samestelling van die Dissiplinêre Komitee
7. Die Dissiplinêre Verhoor
8. Aanbeveling van Uitsetting deur die Beheerliggaam
9. Appèl
10. Toegang tot Onderwys
11. Herroeping
12. Kort Titel

#### 1. Definisies

In hierdie regulasies het enige woord of uitdrukking waaraan 'n betekenis in die Wet geheg is, die betekenis aldus daaraan geheg en, tensy uit die samehang anders blyk, beteken—

“die Wet” die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996);

“**dissiplinêre komitee**” ’n komitee saamgestel deur die beheerliggaam van ’n openbare skool ingevolge artikel 30(1)(a) en (b) van die Wet; “**ouer**”—

- (a) die ouer of voog van ’n leerder;
- (b) die persoon met wettige aanspraak op sorg vir ’n leerder; of
- (c) die persoon wat onderneem om die verpligtinge van ’n persoon waarna verwys word in paragraaf (a) en (b) ten opsigte van die leerder se opvoeding op skool na te kom;

“**Provinsiale Minister**” die provinsiale minister verantwoordelik vir onderwys in die Provinsie Wes-Kaap;

“**skorsing**” die tydelike verbod op ’n leerder se bywoning van ’n skool; en

“**uitsetting**” die permanente verbod op ’n leerder se bywoning van die skool waarby hy of sy ingeskryf was, deur die Departementshoof, nadat die proses in terme van die Wet en hierdie regulasies gevolg is.

## 2. Ernstige wangedrag

- (1) Onderhewig aan die bepalings van *die Wet*, sal ’n leerder by ’n skool wat—
  - (a) deur ’n hof skuldig bevind is aan ’n kriminele oortreding en gevonnissen is tot tronkstraf sonder die opsie van ’n boete;
  - (b) ’n gevaarlike voorwerp, alkoholiese drank of onwettige dwelms gebruik het en/ of in sy of haar besit gehad het en/of verkoop het en/of versprei het;
  - (c) ’n daad van afknouery, aanranding, diefstal, brandstigting of kwaadwillige beskadiging van eiendom pleeg;
  - (d) ’n daad van gruwelike ongehoorsaamheid pleeg of immorele gedrag openbaar;
  - (e) in besit is of gebruik maak van enige ongemagtigde afskrif van ’n toets- of eksamenvraestel, of kul, versprei, uitruil of poog om enige persoon om te koop ten opsigte van enige toets of eksamen, en sodoende sigself of enige ander persoon in die posisie plaas om ’n onbillike voordeel te verkry;
  - (f) haatspraak gebruik, homself/haarself skuldig maak aan rasisme, seksisme, seksuele teistering, in besit is van of pornografiese materiaal versprei of deelneem aan enige daad van openbare onsedelikheid;
  - (g) die veiligheid van medeleerders of opvoeders in gevaar stel of bedreig, die skoolprogram ontwig en / of die regte van ander skend;
  - (h) herhaaldelik skuldig bevind is aan oortredings van die leerdergedragskode; of
  - (i) homself/haarself, volgens die mening van die beheerliggaam, op ’n skandelige, onvanpaste of onbetaamlike wyse gedra, skuldig sal wees aan ernstige wangedrag.
- (2) Onderhewig aan die bepalings van *die Wet*, kan ’n leerder by ’n skool geskors word deur die beheerliggaam of uitgesit word deur die Departementshoof, indien, na ’n billike verhoor, hy of sy skuldig bevind is aan ernstige wangedrag soos bedoel in subregulasie (1).

## 3. Voorlopige Onderzoek

- (1) Waar daar bewerings is dat die optrede van ’n leerder beskou kan word as ernstige wangedrag ingevolge regulasie 2(1), moet dit onder die aandag van die prinsipaal gebring word, wat—
  - (a) ondersoek moet instel of moet sorg dat ondersoek ingestel word om te bepaal of daar gronde bestaan vir ’n dissiplinêre verhoor;
  - (b) moet besluit of daar genoegsame getuigenis is om dissiplinêre prosedures teen die leerder ten opsigte van die ernstige misdryf in te stel;
  - (c) die beheerliggaam moet inlig van die uitkoms van die ondersoek;
  - (d) die beheerliggaam moet adviseer dat dit, op redelike gronde en as voorsorgmaatreël, die leerder wat van ernstige wangedrag verdink word, kan skors van skoolbywoning vir ’n periode van hoogstens sewe (7) skooldae, op voorwaarde dat die beheerliggaam—
    - (i) die leerder en die *ouer(s)* van die leerder in kennis stel van die voorneme om te skors en die redes daarvoor;
    - (ii) die leerder en die *ouer(s)* van die leerder ’n redelike geleentheid bied om verhoër te rig aan die beheerliggaam insake sodanige skorsings; en
    - (iii) die besluit om die leerder te skors aan die distriksdirekteur rapporteer, wie ’n register van alle sodanige *skorsings* sal hou.
- (2) Die beheerliggaam moet dissiplinêre prosedures instel teen die leerder op die wyse soos bedoel in artikel 8 van *die Wet* binne sewe (7) skooldae na die *skorsing* van sodanige leerder.
- (3) Indien dissiplinêre prosedures nie uitgevoer is binne sewe (7) skooldae na die *skorsing* van die leerder nie, moet die beheerliggaam die goedkeuring van die Departementshoof verkry vir die voortgesette *skorsing* van sodanige leerder.

## 4. Die Mag van die Beheerliggaam om ’n Leerder te Skors

- (1) ’n Beheerliggaam mag ’n leerder slegs uit die skool skors—
  - (a) as voorsorgmaatreël op die wyse soos bepaal in regulasie 3(d) vir ’n tydperk van hoogstens sewe (7) skooldae;

- (b) as korrektiewe maatreël soos bepaal in regulasie 7(4)(e)(i) vir 'n tydperk van hoogstens sewe (7) skooldae nadat die leerder skuldig bevind is aan ernstige wangedrag; of
  - (c) in afwagting op die besluit van die Departementshoof op die wyse soos bepaal in regulasie 8(2) vir 'n tydperk hoogstens veertien (14) skooldae.
- (2) Die totale tydperk van *skorsing* uit die skool van 'n leerder moet nie langer as een-en-twintig (21) wees nie.
- (3) Die beheerliggaam moet die besluit om die leerder te skors, asook die aard van die *skorsing*, aan die distriksdirekteur rapporteer wat dit sal aanteken in 'n register van alle *skorsings*.

#### 5. Kennisgewing aan die Ouer en die Leerder aangaande die Dissiplinêre Verhoor

- (1) Die beheerliggaam moet die leerder sowel as die *ouer(s)* skriftelik in kennis stel dat dissiplinêre prosedures teen sodanige leerder ingestel gaan word. 'n Kennisgewing van vyf (5) skooldae moet vir hierdie doel gegee word. Die kennisgewing moet—
- (a) die leerder en die *ouer(s)* van die leerder in kennis stel dat dissiplinêre prosedures ingestel sal word teen die leerder;
  - (b) voldoende gegewens van die datum, tyd, plek en aard van die beweerde ernstige wangedrag bevat om die leerder in staat te stel om die insident te identifiseer en daarop te reageer;
  - (c) die datum, tyd en plek van die dissiplinêre verhoor bevat;
  - (d) die leerder adviseer aangaande sy of haar reg om—
    - (i) vergesel te wees en by die verhoor verteenwoordig te word deur sy of haar *ouer(s)* of deur 'n verteenwoordiger van sy of haar keuse;
    - (ii) toegang te vra tot dokumente of inligting wat as getuienis voorgelê is, en
    - (iii) vrae te stel, kruisondervraging te doen, getuienis te lei, getuies te roep en dokumentêre bewys te lewer om kwessies aangaande die bewerings uit te klaar; en
  - (e) die leerder van die voorkomende *skorsing* as voorsorg, waar van toepassing, en die aard van die akademiese ondersteuning wat deur die skool verskaf moet word, inlig, voor die dissiplinêre verhoor en tydens die periode van *skorsing* soos bedoel in regulasie 3(1)(d).
- (2) Die prinsipaal moet die leerder in kennis stel soos bedoel in subregulasie (1) en 'n afskrif daarvan aan die *ouer(s)* van die leerder verskaf by die adres van die leerder aangedui in die skool se toelatingsregister en/of die leerderprofiel.

#### 6. Aanstelling en Samestelling van die Dissiplinêre Komitee

- (1) Die beheerliggaam moet voorsit tydens die dissiplinêre prosedures of 'n *dissiplinêre komitee* aanstel vir hierdie doel.
- (2) Die *dissiplinêre komitee* moet bestaan uit ten minste drie persone waarvan ten minste twee persone beheerliggaamlede moet wees.
- (3) Die *dissiplinêre komitee* moet 'n lid van die beheerliggaam, aangewys deur die beheerliggaam, wat nie 'n werknemer of lid van die skoolpersoneel is nie, as voorsitter hê.
- (4) Die *dissiplinêre komitee* moet onpartydig en billik wees en optree sonder gunsbetoning of vooroordeel.
- (5) Die prinsipaal, *leerders* by die skool of persone wat 'n botsing van belange het, is nie geregtig om as lede van die *dissiplinêre komitee* te dien nie en mag nie teenwoordig wees wanneer die beheerliggaam die verslag of aanbevelings van die *dissiplinêre komitee* bespreek nie.
- (6) 'n Besluit van die *dissiplinêre komitee* moet deur die beheerliggaam bekragtig word.

#### 7. Die Dissiplinêre Verhoor

- (1) By die dissiplinêre verhoor sal die leerder die reg hê om teenwoordig te wees, om verteenwoordig te word, om getuienis te lewer en óf persoonlik óf deur 'n verteenwoordiger—
- (a) sy of haar saak te stel;
  - (b) getuies op te roep;
  - (c) vrae te stel aan enige persoon wat as getuie opgeroep is ter ondersteuning van 'n aanklag; en
  - (d) dokumente te inspekteer wat as getuienis voorgelê is.
- (2) Indien 'n leerder of sy of haar *ouer(s)* versuim om die dissiplinêre verhoor by te woon sonder 'n geldige rede, en na behoorlike kennisgewing soos bedoel in regulasie 5(1), kan die verhoor, nadat dit 'n tweede keer saamgeroep is, in hulle afwesigheid gehou word.
- (3) Die voorsitter moet aan die begin van die dissiplinêre verhoor die redes vir die dissiplinêre verhoor verduidelik, versoek dat die aanklag of aanklagte gelees word en die leerder versoek om op die aanklag(te) te pleit.
- (4) Indien die leerder skuldig pleit, moet die voorsitter—
- (a) seker maak dat die leerder weet en verstaan waarop hy of sy skuldig pleit;
  - (b) die leerder of aan sy of haar verteenwoordiger vra of hy of sy graag verdoë wil rig voor 'n gepaste strafbepaling opgelê word;

- (c) die leerder en sy of haar verteenwoordiger en enige ander partye, behalwe die lede van die *dissiplinêre komitee*, versoek om die kamer te verlaat terwyl die komitee oor 'n gepaste strafbepaling oorleg pleeg;
  - (d) seker maak dat die *dissiplinêre komitee* op 'n gepaste strafbepaling besluit;
  - (e) verseker dat die *dissiplinêre komitee*, na die skuldigbevinding van die leerder aan ernstige wangedrag, besluit of—
    - (i) die leerder geskors behoort te word vir 'n tydperk van tot sewe (7) skooldae;
    - (ii) enige ander strafmaatreël bedoel in die gedragskode vir leerders van daardie skool vir ernstige wangedrag aan die leerder opgelê moet word; of
    - (iii) 'n aanbeveling aan die Departementshoof gedoen moet word om die leerder uit te sit; en
  - (f) die leerder, verteenwoordiger en/of *ouer(s)* terugroep en in kennis stel van die aanbevelings wat aan die beheerliggaam voorgelê sal word.
- (5) Indien die leerder skuldig pleit, moet die voorsitter—
- (a) versoek dat die ondersoekverslag voorgelees word en getuienis aangebied word ter ondersteuning van die aanklag, wat insluit die oproep van 'n klaer(s) en/of getuies;
  - (b) aan die leerder, verteenwoordiger en/of *ouer(s)* van die leerder die geleentheid bied om vrae te stel aan die getuies met die doel om getuienis te weerlê;
  - (c) komitee lede toelaat om vrae te stel om onduidelikhede op te klaar, waar van toepassing;
  - (d) die leerder 'n geleentheid bied om sy of haar saak te stel en getuies te roep;
  - (e) komitee lede toelaat om vrae stel vir duidelikheid;
  - (f) die leerder, verteenwoordiger en/of *ouer(s)* verskoon terwyl die komitee getuienis in oorweging neem en op die uitspraak besluit; en
  - (g) die leerder, verteenwoordiger en/of *ouer(s)* terugroep en hulle inlig aangaande die besluit van die *dissiplinêre komitee*.
- (6) Indien die *dissiplinêre komitee* die leerder skuldig bevind, hom of haar of sy of haar verteenwoordiger en/of *ouer(s)* vra of hulle vertoë wil rig voordat 'n besluit geneem word oor die gepaste strafbepaling.
- (7) Die *dissiplinêre komitee* moet dan besluit op 'n gepaste strafbepaling na inagneming van al die getuienis en vertoë.
- (8) Die leerder moet verder skriftelik ingelig word van die besluit van die beheerliggaam of hy of sy skuldig is aan ernstige wangedrag, al dan nie, en die strafbepaling ingestel.

#### 8. Aanbeveling van Uitsetting deur die Beheerliggaam

- (1) (a) Waar die beheerliggaam by die Departementshoof aanbeveel dat 'n leerder uitgesit moet word, moet die *ouer(s)* van die leerder skriftelik in kennis gestel word van die besluit van die beheerliggaam, met goeie gronde aangevoer.
- (b) Waar 'n beheerliggaam 'n leerder skors van skoolbywoning, met die aanbeveling van uitsetting aan die Departementshoof, moet die beheerliggaam die prinsipaal opdrag gee om die volgende binne drie (3) skooldae aan die Departementshoof voor te lê—
  - (i) die notules van vergaderings waarop die besluit geneem is;
  - (ii) enige geskrewe vertoë wat deur die leerder of *ouer(s)* of verteenwoordiger gerig is; en
  - (iii) die volledige rekord van die prosedures deur die *dissiplinêre komitee* en/of beheerliggaam.
- (2) Die beheerliggaam mag die uitsetting van 'n leerder opskort of verleng vir 'n periode van hoogstens veertien (14) dae, hangende van die besluit deur die Departementshoof.
- (3) Die Departementshoof moet die aanbeveling van die beheerliggaam oorweeg en besluit of 'n leerder binne veertien (14) dae vanaf ontvangs van sodanige aanbeveling uitgesit moet word.
- (4) Indien die Departementshoof besluit om nie die leerder uit te sit nie, mag die Departementshoof, na konsultasie met die beheerliggaam, 'n gepaste strafbepaling vir die leerder op lê wat deur die beheerliggaam geïmplementeer moet word.
- (5) Indien die Departementshoof besluit om nie 'n strafbepaling vir die leerder op te lê nie, moet die Departementshoof die saak terugverwys na die beheerliggaam, vir 'n alternatiewe strafbepaling, ingevolge die gedragskode vir leerders soos bedoel in artikel 8 van *die Wet*.
- (6) Die beheerliggaam en die *ouer(s)* van die leerder moet onmiddellik skriftelik in kennis gestel word van die besluit van die Departementshoof, met goeie gronde aangevoer.
- (7) Die kennisgewing soos bedoel in subregulasie (6), moet insluit 'n verwysing na die reg tot appèl by die Provinsiale Minister, indien die Departementshoof 'n leerder uitsit.

#### 9. Appèl

- (1) 'n Leerder of *ouer* van 'n leerder wat uit 'n skool gesit is, mag appèl aanteken teen die besluit van die Departementshoof by die *Provinsiale Minister*, binne veertien (14) dae van ontvangs van die kennisgewing van uitsetting.

- (2) 'n Afskrif van die dokumentasie om appèl aan te teken soos bepaal in subregulasie (1) moet ook by die kantoor van die Departementshoof ingedien word.
- (3) Indien 'n appèl ingevolge subregulasie (1) van 'n leerder wat uit 'n skool gesit is deur die *Provinsiale Minister* gehandhaaf word, moet die *Provinsiale Minister* verseker dat 'n geskikte strafbepaling ingestel word op die leerder binne veertien (14) dae van die datum waarop die appèl gehandhaaf is.
- (4) Vir doeleindes van die oplegging van 'n geskikte strafbepaling soos bedoel in subregulasie (3), is die bepalings van regulasie 8(4) en (5) van toepassing met die veranderinge soos vereis deur die konteks.

#### 10. Toegang tot Onderwys

- (1) Indien 'n leerder wat onderhewig is aan skoolplig ingevolge artikel 3(1) van *die Wet*, uit 'n skool gesit word, moet die Departementshoof 'n alternatiewe reëling vir sy of haar plasing by 'n skool tref.
- (2) In die geval van 'n leerder wat uit die skool gesit word wat nie skoolplig is nie, moet die *ouers* die alternatiewe reëlings tref vir sy of haar plasing by 'n ander skool. *Ouers* mag die distriksdirekteur versoek om hulle hierin by te staan.
- (3) Indien 'n leerder wat onderhewig is aan subregulasie (1) appèl aangeteken het op die wyse soos bedoel in regulasie 9(1), moet hy of sy, hangende die uitkoms van die appèl, toegang tot onderwys gegee word op die wyse soos bepaal deur die Departementshoof.
- (4) By die bepaling van 'n alternatiewe reëling vir plasing soos bedoel in subregulasie (1), of die wyse van bywoning soos bedoel in subregulasie (3), moet die Departementshoof—
  - (a) redelike maatreëls tref om die regte van ander leerders by die skool te beskerm; en
  - (b) mag die Departementshoof 'n alternatiewe manier waarop onderwys aan die leerder verskaf kan word, soos bedoel in subregulasie (1) en (3) oorweeg, wat mag insluit—
    - (i) die waarborg dat die leerder toegelaat word tot 'n ander skool in die provinsie;
    - (ii) dat van die leerder verwag word om berading op distriksvlak te ontvang by Gespesialiseerde Leerder- en Opvoederondersteuning of Skoolsielkundige Ondersteuning of Skool Sosiale Werk-ondersteuning; en
    - (iii) die aanvraag van gereelde vorderingsverslae ten opsigte van die berading bedoel in subparagraaf (ii) of van die betrokke ondersteuningskomponent.
- (5) Enige leerder wat uit 'n skool uitgesit word tydens die laaste kwartaal van 'n jaar, moet die geleentheid gegun word om die finale eksamen te skryf van die jaar waarin hy of sy uitgesit is, op voorwaarde dat sodanige leerder die eksamen in 'n lokaal afsonderlik van die leerders van die skool wat hy of sy bygewoon het tydens sy of haar uitsetting skryf.

#### 11. Herroeping

Die Regulasies betreffende ernstige wangedrag van leerders by openbare skole (uitgesonder openbare skole vir leerders wat daarheen gestuur is ingevolge *die Wet* op Kindersorg, 1983 (Wet 74 van 1983), en/of die Strafproseswet, 1997 (Wet 51 van 1997) in die Provinsie Wes-Kaap, en die dissiplinêre prosedures wat in sodanige gevalle gevolg moet word, wat gepubliseer is in die Provinsiale Kennisgewing 372/1997 in die Buitengewone Provinsiale Gazette No. 5190, gedateer 31 Oktober 1997, word hiermee in totaliteit herroep.

#### 12. Kort Titel

Hierdie regulasies word genoem die Regulasies betreffende Ernstige Wangedrag van Leerders in Openbare Skole in die Provinsie Wes-Kaap.

---

**ISAZISO SEPHONDO**

Lo mThetho usaYilwayo ulandelayo uyapapashwa ngokoke ukwenzela ukunika ulwazi ngokubanzi: Imimiselo Ephathelele Kwibhunga Lezemfundo Lephondo Lentshona Koloni

**IDRAFTI YEMIMISELO EMALUNGA**

- (a) NOKUZIPHATHA KAKUBI KAKHULU KWABAFUNDI KWIZIKOLO ZIKARHULUMENTE (KUNGABANDAKANYWA IZIKOLO ZIKARHULUMENTE EKUTHUNYELWE OKANYE EKUGQITHISELWE KUZO ABAFUNDI NGOKOMTHETHO WABANTWANA, 2005 (UMTHETHO 38 KA-2005) CHILDRENS' ACT, 2005 (ACT 38 OF 2005), KUNYE/OKANYE UMTHETHO I-CRIMINAL PROCEDURE ACT, 1997 (ACT 51 OF 1997), OFUNDWA KUNYE NOMTHETHO I-CHILD JUSTICE ACT, 2008 (ACT 75 OF 2008) KWIPHONDO LENTSHONA KOLONI
- (b) NEENKQUBO ZOLULEKO EMAZILANDELWE KWIIMEKO EZILOLU HLOBO; KUNYE
- (c) NEMIGAQO YENKQUBO YOKUMANGALA ESEMTHETHWENI EKUKHUSELA AMALUNGELO NEZONA ZINTO ZILUNGISELELA ABAFUNDI KUNYE NALIPHI NA ELINYE IQELA ELICHAPHAZELEKAYO KWIINGXOXO ZOLULEKO.

P.N. 324/2011

18 uNovemba 2011

Nabani na okanye nawuphi na umbutho onqwenela ukuphawula ngalo mThetho uYilwayo uxeliweyo, uyacelwa ukuba makabhale amagqabantshintshi phambi okanye ngomhla we-2 Decembar-2011.

- (a) Ngokuposela umbhalo apha:  
Adv. Lynn Coleridge  
Director: Policy Co-Ordination  
Western Cape Education Department  
Private Bag X9114  
CAPE TOWN 8000
- (b) Ngokuthumela kule imeyile:  
Lynn.Coleridge@pgwc.gov.za
- (c) Ifowuni: 021-467-2055  
Ifeksi: 021-467-2900
- (d) Ngokuzisa ileta apha:  
Adv. Lynn Coleridge Director: Policy Co-Ordination  
Western Cape Education Department  
Private Bag X9114  
CAPE TOWN 8000

**NgokweSiquendu 9(3) soMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996), neSiquendu 63(1)(cE) soMthetho weMfundo weZikolo zePhondo leNtshona Koloni, 1997 (uMthetho 12 ka-1997) (Western Cape Provincial Education Schools' Act, 1997 (Act 12 of 1997)), uMphathiswa wePhondo ophathiswe ezemfundo eNtshona Koloni ngokwenjenje ufuna ukubhengeza imimiselo ecaciswe kule Shedyuli.**

**ISHEDYULI****ULANDELELWANO LWEMIMISELO**

1. Iingcaciso-magama
2. Ukuziphatha kakubi kakhulu
3. Uphando olwandulelayo
4. Amagunya eBhunga loLawulo okuNqumamisa uMfundi
5. ISaziso seeNgxoxo zoLuleko esiya kuMzali nakuMfundi
6. UkuTyunjwa noKwaxhiwa kweKomiti yoLuleko
7. IiNgxoxo zoLuleko
8. INGcebiso yokuGxothwa eYenziwa liBhunga loLawulo
9. Isibheni
10. UkuFikelela kwiMfundo
11. UkuTshitshiswa
12. IGama eliFutshane

**1. Iingcaciso-magama**

Kule mimiselo naliphi na igama okanye ibinzana-magama elinikwe intsingiselo kulo Mthetho, lihlala linaloo ntsingiselo liyiniweyo, ngaphandle kokuba umxholo ophethweyo walatha okunye—

“**ikomiti yoluleko**” kuthetha ikomiti esekwe libhunga lolawulo lesikolo sikarhulumente ngokweziqendu 30(1)(a) no(b) zalo *Mthetho*;

“**ukugxothwa**” kuthetha ukuthintelwa komfundi ngokupheleleyo yiNtloko yeSebe, ekuhambeni isikolo abhalise kuso, emva kokulandela inkqubo ngokwalo *Mthetho* nangokwale mimiselo;

“**umzali**” kuthetha—

- (a) umzali womfundi okanye umgcini womfundi;
- (b) umntu onelungelo ngokwasemthethweni lokugcina umfundi; okanye
- (c) umntu ovumayo ukuphumeza iimfanelo zomntu okhankanywe kwimihlathi (a) no (b) malunga nemfundo yomfundi osesikolweni;

“**uMphathiswa wePhondo**” kuthetha uMphathiswa wePhondo ophathiswe ezemfundo kwiphondo leNtshona Koloni;

“**ukunqunyanyiswa**” kuthetha ukuthintelwa okwexeshana komfundi ekuhambeni isikolo; yaye

“**uMthetho**” kuthetha uMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996).

## 2. Ukuziphatha kakubi kakhulu

(1) Phantsi kwemigaqo yalo *Mthetho*, umfundi osesikolweni othe—

- (a) wafunyanwa enetyala yinkundla ngesenzo solwaphulo-mthetho waza wawiselwa isigwebo sokuvalwa entolongweni engenako ukukhetha ukuhlawula imali;
- (b) wasebenzisa, okanye wanesixhobo kuye kwaye/okanye wathengisa kwaye/okanye wahambisa isixhobo esiyingozi, utywala obunxiliso, okanye iziyobisi ezingekho mthethweni;
- (c) wenza isenzo sokubhulisha (*bullying*), sokubetha, sokuba, sokutshisa ipropathi okanye sokonakalisa ipropathi ngolunya;
- (d) wenza isenzo sokungathobeli ngokugqithisilayo amagunya apheleleyo okanye sokungabi nasimilo;
- (e) wanayo kuye okanye wasebenzisa nayiphi na ikopi engagunyaziswanga yephepha lemibuzo yovavanyo okanye yoviwo, okanye wakopa (*cheats*), wahambisa (*distributes*), washishina, wanyoba okanye wazama ukunyoba nabani na ngokumalunga novavanyo okanye noviwo, ngenjongo yokwenza yena, okanye nabani na ongomye, eme kakuhle ngokuthi alungelwe ngokungafanellekanga (*to gain an unfair advantage*);
- (f) wasebenzisa intetho ebonisa intiyo, wenza isenzo esenza abenetyala localucalulo ngokobuhlanga, ngokwesini, wenza isenzo songcungcuthekiso ngokwezondo (*sexual harassment*), wanayo kuye okanye wasasaza imifanekiso yamanyala (*pornographic material*) okanye wenza nasiphi na isenzo esililikizi esidlalaleni (*any act of public indecency*);
- (g) wabeka engozini ukhuseleko lwabanye *abafundi* okanye wasongela ngokubetha/ ngokwenzakalisa *abafundi* afunda nabo okanye ootitshala, waphazamisa iprogram yesikolo kunye/okanye wanyasha amalungelo abanye;
- (h) wafunyaniswa enetyala amaxesha amaninzi lokwaphula umgaqo wokuziphatha kwabafundi (*learner code of conduct*); okanye
- (i) waziphatha, ngokoluvo lwebhunga lolawulo lesikolo, kakubi kakhulu ngendlela elihlazo, engafanelekanga okanye yobundlavini, uya kubanetyala lokuziphatha kakubi kakhulu.

(2) Phantsi kwemigaqo yalo *Mthetho*, umfundi osesikolweni unokunqunyanyiswa libhunga lolawulo lesikolo okanye unokugxothwa yiNtloko yeSebe ukuba, emva kokuxoxwa kwetyala ngobulungisa, ufunyenwe enetyala lokuziphatha kakubi kakhulu (*guilty of serious misconduct*) njengoko kuchatshazelwe kummiselwana (1).

## 3. Uphando olwandulelayo

(1) Apho kukho isityholo sokuba ukuziphatha komfundi kungaba kukuziphatha kakubi kakhulu ngokommiselo 2(1), oko makwaziswe inqununu ekufuneka—

- (a) iphande okanye yenze ukuba kuqhutywe uphando lokufumanisa ukuba ngaba kukho izizathu ezivakalayo zokuba kubanjwe iingxoxo zoluleko;
- (b) yenze isigqibo ngokuba ngaba bukho na ubungqina obaneleyo bokuba kuqaliswe inyathelo loluleko ngakumfundi ngokumalunga nokuziphatha kakubi kakhulu;
- (c) yazise ibhunga lolawulo ngesiphumo sophando; yaye
- (d) icebise ibhunga lolawulo ukuba linako ukuthi, ngenxa yezizathu ezivakalayo, yaye nanjengenyathelo lokumlumkisa (*precautionary measure*), limnqumamisa umfundi orhanelwa ngokuziphatha kakubi kakhulu ekuyeni esikolweni ithuba elingekho ngaphezu kwentsuku ezisixhenxe (7) zokuhamba isikolo, ngokuxhomekeka ekubeni ibhunga lolawulo—

- (i) lazisa umfundi *nomzali* womfundi (*nabazali* bomfundi) ngenjongo yokumnqumamisa umfundi nezizathu zoko
- (ii) linika umfundi *nomzali* womfundi (*nabazali* bomfundi) ithuba elifanelekileyo lokuba bavakalise izimvo zabo kwibhunga lolawulo malunga noko kunqunyanyiswa kulolu hlobo, yaye
- (iii) lazisa isigqibo soko *kunqunyanyiswa* komfundi kuMlawuli weSithili seMfundo noya kuthi agcine irejista yazo zonke iziganeko *zokunqunyanyiswa* okulolu hlobo.

(2) Ibhunga lolawulo maliqhube iingxoxo zetyala loluleko ngendlela echatshazelwe kwisizqendu 8 salo *Mthetho* ekutyholwa kuzo loo mfundi kwiintsuku ezisixhenxe (7) zokuhamba isikolo emva kokunqunyanyiswa komfundi ololu hlobo.

- (3) Ukuba iingxoxo zetyala loluleko aziqhutywa kwiintsuku ezisixhenxe (7) zokuhamba *isikolo* emva *kokunqunyanyiswa* komfundi, ibhunga lolawulo malifumane imvume kwiNtloko yeSebe yokuqhubeka *kokunqunyanyiswa* komfundi ololu hlobo.

#### 4. Amagunya eBhunga loLawulo okuNqumamisa uMfundi

- (1) IBhunga lolawulo lesikolo linokumnqumamisa umfundi—
- njengenyathelo lokumlumkisa (*precautionary suspension*) ngendlela echatshazelwe kummiselo 3(d) ithuba eliye kufikelela kwiintsuku ezisixhenxe (7) zokuhamba isikolo;
  - njengenyathelo loluleko, emva kokuba umfundi efunyenwe enetyala lokuziphatha kakubi kakhulu okuchatshazelwe kummiselo 7(4)(i), okwethuba elingekho ngaphezu kweentsuku ezisixhenxe (7) zokuhamba isikolo; okanye
  - ngokuxhomekeka kwisigqibo seNtloko yeSebe esichatshazelwe kummiselo 8(2), okwethuba elingekho ngaphezu kweentsuku ezilishumi elinesine (14) zokuhamba isikolo.
- (2) Ithuba lokunqunyanyiswa komfundi esikolweni lilonke aliye kuba ngaphezu kweentsuku ezingamashumi amabini ananye (21) zokuhamba isikolo.
- (3) Ibhunga lolawulo malinike ingxelo ngazo zonke izigqibo zokunqumamisa kunye nohlobo *lokunqunyanyiswa* kwabafundi kuMlawuli weSithili seMfundo, noya kuthi agcine irejista yazo zonke iziganeko zokunqunyanyiswa okulolu hlobo.

#### 5. ISaziso seeNgxoxo zoLuleko esiya kuMzali nakuMfundi

- (1) Ibhunga lolawulo malazise umfundi kwakunye *nomzali (nabazali)*, ngencwadi ebhaliweyo, ukuba kuya kuqaliswa iingxoxo zoluleko ngakuloo mfundi kwiintsuku ezintlanu (5) zokuhamba isikolo. Isaziso—
- masazise umfundi *nomzali (nabazali)* womfundi ukuba iingxoxo zetyala loluleko ziya kuqaliswa ngakuloo mfundi,
  - masibe neenkukacha ezaneleyo zomhla, ixesha, indawo nohlobo lokuziphatha kakubi kakhulu atyholwa ngako ukwenzela ukuba umfundi abe nako ukuba nolwazi ngesiganeko nokuba aphenjule malunga naso;
  - masibe nomhla, ixesha nendawo yeengxoxo zoluleko;
  - masazise umfundi ngelungelo lakhe—
    - lokuba ahambe nomzali yaye amelwe kwiingxoxo zoluleko *ngumzali wakhe (ngabazali bakhe)* okanye ngummeli okhethwe nguye.
    - lokucela ukuba akwazi ukufikelela kumaxwebhu okanye kwingcaciso eveliswe njengobungqina, yaye
    - lokubiza imibuzo, lokupheka ngemibuzo egoca-gocayo (*cross-examine*), lokuncina ubungqina, lokubiza amangqina nelokuba avelise amaxwebhu abubungqina ukucacisa imiba emalunga nesityholo eso;
  - masazise umfundi, apho kunokwenzeka, *ngokunqunyanyiswa* okulinyathelo elisisilumkiso (*precautionary suspension*) nangohlobo lwenkxaso kwizifundo eya kubonelelwa sisikolo phambi kweengxoxo nangethuba *lokunqunyanyiswa* okuchatshazelweyo kummiselo 3(1)(d).
- (2) Inqununu mayinike umfundi isaziso esichatshazelwe kummiselwana (1) ize ise ikopi yaso *kumzali (kubazali)* womfundi kwidilesi yomfundi eboniswe kwiirejista yokwamkela abafundi yesikolo kunye/okanye kwiprofayili yomfundi.

#### 6. UkuTyunjwa noKwaxhiwa kweKomiti yoLuleko

- Ibhunga lolawulo malongamele iingxoxo zoluleko okanye malinyule *ikomiti yoluleko* yokwenjenjalo.
- Ikomiti yoluleko* mayenziwe ubuncinane ngabantu abathathu ukuze ababini kuyo, ubuncinane, babe ngamalungu ebhunga lolawulo.
- Ikomiti yoluleko* mayibe nosihlalo olilungu lebhunga lolawulo, otyunjwe libhunga lolawulo, ongenguye umqeshwa wesikolo okanye utitshala *wesikolo* eso.
- Ikomiti yoluleko* mayingakhethi cala, ibe nobulungisa kwaye yenze ngaphandle kokwenzelelelela okanye kokugweba kuqala.
- Inqununu, abafundi esikolweni eso okanye abantu abachatshazelwa kukungqubana kweemfuno (*conflict of interest*), abakufanele ukuba ngamalungu *ekomiti yoluleko* yaye mabangabikho xa ibhunga lolawulo lixoxa ngengxelo okanye ngeengecebiso *zekomiti yoluleko*.
- Isigqibo *sekomiti yoluleko* masivunywe (*ratified*) libhunga lolawulo.

#### 7. Iingxoxo zoLuleko

- (1) Kwiingxoxo zoluleko umfundi uya kubanelungelo lokubakho, lokumelwa, lokunika ubungqina nokuba nguye buqu okanye ngommeli wakhe, ukuba—
- amanyelwe;
  - abize amangqina;
  - abuze imibuzo kuye nabani na obizwe njengengqina ukuxhasa isityholo; yaye
  - ahlole amaxwebhu angeniswe njengobungqina.

- (2) Ukuba umfundi okanye *umzali (abazali)* womfundi akaphumeleli ukuya kwiingxoxo zoluleko kungekho zizathu zibambekayo, nasemva kwesaziso esifanelekileyo esichatshazelwe kummiselo 5(1), emva kokuba iingxoxo zoluleko ezilolu hlobo zibizwe ityeli lesibini, zinokuqhutywa bengekho.
- (3) Usihlalo makathi kwakuqaliswa iingxoxo zoluleko, acacise izizathu zeengxoxo zoluleko, acele kufundwe isityholo okanye izityholo abekwa zona, yaye acele umfundi ukuba avume ityala.
- (4) Ukuba umfundi uyalivuma ityala, usihlalo:
- (a) makaqinisekise ukuba umfundi unolwazi yaye uyakuqonda oko alivumela kona ityala;
  - (b) makabuze umfundi okanye ummeli wakhe ukuba ngaba abanqweneli kuvakalisa zimvo zabo na phambi kokuba kuwiswe isohlwayo esifanelekileyo;
  - (c) makacele umfundi okanye ummeli wakhe kunye nawo onke amanye amaqela akhoyo apho, ngaphandle kwamalungu ekomiti yoluleko, ukuba balishiye igumbi elo, lo gama *ikomiti ixoxa* ngesohlwayo esifanelekileyo ;
  - (d) makaqinisekise ukuba *ikomiti yoluleko* yenza isigqibo ngesohlwayo esifanelekileyo;
  - (e) makaqinisekise ukuba *ikomiti yoluleko*, emva kokumfumanisa komfundi enetyala *lokuziphatha kakubi* kakhulu, yenza isigqibo sokuba ngaba—
    - (i) umfundi makakunqunyanyiswe na okwethuba eliziintsuku ezisixhenxe (7) zokuhamba isikolo
    - (ii) nasiphi na esinye isohlwayo sokuziphatha kakubi kakhulu esichatshazelwe kumgaqo wokuziphatha kwabafundi weso sikolo masiwiselwe na umfundi, okanye
    - (iii) kungacetyiswa na ukugxothwa komfundi kwiNtloko yeSebe; yaye
  - (f) makababize kwakhona umfundi, ummeli kunye/okanye umzali/abazali ebekhutshelwe phandle aze kubaxelela ngesiphumo seengcebiso esiza kungeniswe kwibhunga lolawulo.
- (5) Ukuba umfundi akalivumi ityala, usihlalo—
- (a) makacele ukuba kufundwe ingxelo yophando ze kuncinwe ubungqina ukuxhasa isityholo, kubandakanywa nokubizwa kommangali kunye/okanye amangqina;
  - (b) makanike umfundi, ummeli womfundi kunye/okanye *umzali (abazali)* womfundi ithuba lokubuza imibuzo kumangqina ngenjongo yokuphikisa ubungqina.
  - (c) makanike amalungu ekomiti ithuba lokubuza imibuzo yokucaciselwa, apho kuyimfuneko;
  - (d) makanike umfundi ithuba lokuveza elakhe icala nelokuba abize amangqina;
  - (e) makavumele amalungu ekomiti ukubuza imibuzo yokucaciselwa;
  - (f) makacele aphume umfundi, ummeli womfundi kunye okanye umzali (abazali) lo gama *ikomiti* ijongisisa ubungqina kwaye isenza isigqibo ngesigwebo; yaye
  - (g) makabize kwakhona umfundi, ummeli womfundi kunye okanye *umzali (abazali)*, abazise ngesigqibo sekomiti yoluleko.
- (6) Ukuba *ikomiti yoluleko* imfumanisa umfundi enetyala, mayimbuze ukuba ngaba yena mfundi, ummeli womfundi okanye *umzali (abazali)* bayakunqwenela na ukuvakalisa izimvo zabo phambi kokwenziwa kwesigqibo ngesohlwayo esifanelekileyo.
- (7) *Ikomiti yoluleko* ke ngoko mayenze isigqibo ngesohlwayo esifanelekileyo ithathele ingqalelo bonke ubungqina nezimvo ezivakalisiweyo.
- (8) Makaziswe umfundi, ngencwadi ebhaliweyo, ngesigqibo sebhunga lolawulo ukuba ngaba unetyala lokuziphatha kakubi kakhulu okanye akunjalo kunye nesohlwayo aza kusiwiselwa.

## 8. INgeebiso yokuGxothwa eyeNziwa liBhunga loLawulo

- (1) (a) Apho ibhunga lolawulo licebisa iNtloko yeSebe ukuba umfundi makagxothwe, *umzali (abazali)* womfundi makaziswe, ngencwadi ebhaliweyo, ngesigqibo sebhunga lolawulo yaye kunikwe nezizathu ezivakalayo.
  - (b) Apho ibhunga lolawulo limnqumamisileyo umfundi ekuhambeni isikolo, libe lenze ingcebiso kwiNtloko yeSebe yokuba agxothwe, ibhunga lolawulo maliyalele inqununu ukuba ingenise kwiNtloko yeSebe, zingekapheli iintsuku zesikolo ezintathu (3)—
    - (i) imizuzu yentlanganiso ekuthathwe kuyo isigqibo eso;
    - (ii) nayiphi na imbalalwano yokuvakalisa izimvo engeniswe ngumfundi okanye ngumzali (ngabazali) okanye ngummeli womfundi; kunye
    - (iii) nrekhodi epholeleyo yeengxoxo zetyala zekomiti yoluleko kunye/okanye zebhunga lolawulo.
- (2) Lo gama kusalindwe isigqibo seNtloko yeSebe, ibhunga lolawulo linokumnqumamisa okanye lilandise ixesha lokumnqumamisa umfundi ithuba elingekho lide ngaphezu kweentsuku ezilishumi elinesine (14).
- (3) INtloko yeSebe mayithathele ingqalelo ingcebiso yebhunga lolawulo yaye mayenze isigqibo sokuba imgxothwe na okanye ingamgxothi umfundi kwiintsuku ezilishumi elinesine (14) zokufumana ingcebiso elolu hlobo.

- (4) Ukuba iNtloko yeSebe yenza isigqibo sokungamxothi umfundi, iNtloko yeSebe inokuthi emva kothetha-thethwano nebhunga lolawulo, iwise isohlwayo esifanelekileyo kumfundi nemasiphunyezwe libhunga lolawulo.
- (5) Ukuba iNtloko yeSebe yenza isigqibo sokungamwisela umfundi isohlwayo, iNtloko yeSebe mayiwubuyisele umba lowo kwibhunga lolawulo, ngenjongo yesohlwayo esisesinye ngokomgaqo wokuziphatha wesikolo ochatshazelweyo kwisiqendu 8 salo Mthetho.
- (6) Ibhunga lolawulo *nomzali (nabazali)* womfundi mabaziswe ngokukhawuleza, ngenzwadi cbhaliweyo, ngesigqibo seNtloko yeSebe, banikwe nezizathu ezivakalayo.
- (7) Ukuba iNtloko yeSebe iyamgxotha umfundi, isaziso esichatshazelweyo kummiselwana (6) masibandakanye ingcaciso eyazisa ngelungelo lokufaka isibheni (*right of appeal*) kuMphathiswa wePhondo.

#### 9. Isibheni

- (1) Umfundi ogxothiweyo *esikolweni*, okanye *umzali* womfundi ololu hlobo, angafaka isibheni kuMphathiswa wePhondo esichasa isigqibo seNtloko yeSebe kwiintsuku ezilishumi elinesine (14) akuba efumene isaziso *sokugxothwa*.
- (2) Ikopi yesaziso sesibheni esichatshazelwe kummiselwana (1) mayithunyelwe nayo kwi-ofisi yeNtloko yeSebe.
- (3) Ukuba isibheni ngokommiselwana (1) esifakwe ngumfundi *ogxothiweyo* esikolweni siyaxhaswa (*upheld*) nguMphathiswa wePhondo, uMphathiswa wePhondo makaqinisekise ukuba kuwiselwa umfundi isohlwayo esifanelekileyo kwiintsuku ezilishumi elinesine (14) ukususela ngomhla isibheni esixhaswe ngawo.
- (4) Ukulungiselela iinjongo zokuwisa umfundi isohlwayo esifanelekileyo esichatshazelwe kummiselwana (3), kusebenza imigaqo yemimiselo 8(4) no-(5) kuze kwenziwe utshintsho olufunekayo apha naphaya ngenxa yeemeko ezingqongileyo.

#### 10. Ukufikelela kwiMfundo

- (1) Ukuba umfundi ofanele ukuhamba isikolo ngokunyanzelekileyo ngokwesiqendu (3) salo *Mthetho*, uyagxothwa esikolweni, iNtloko yeSebe mayenze amalungiselelo angamanye okuba afakwe kwesinye isikolo.
- (2) Ukuba umfundi ongafanele ukuhamba isikolo ngokunyanzelekileyo, *abazali* bomfundi mabenze amalungiselelo angamanye okuba afakwe kwesinye isikolo yaye banokucela uncedo loMlawuli weSithili seMfundo.
- (3) Ukuba umfundi ufake isibheni ngendlela echatshazelwe kummiselo 9(1), loo mfundi, lo gama kusalindwe isiphumo sesibheni, makanikwe ufikelelo kwimfundo ngendlela eyenzelwe isigqibo yiNtloko yeSebe.
- (4) Ekwenzeni isigqibo ngamalungiselelo angamanye okufakwa komfundi kwesinye isikolo okuchatshazelwe kummiselwana (1) okanye ngendlela yokuhamba isikolo echatshazelwe kummiselwana (3), iNtloko yeSebe—
  - (a) mayithathe amanyathelo afanelekileyo okukhusela amalungelo abanye abafundi esikolweni; yaye
  - (b) inokuthathela ingqalelo enye indlela yokubonelela ngemfundo kumfundi ochatshazelweyo kwimimisela (1) no-(3), nenokubandakanya—
    - (i) ukuqinisekisa ukuba umfundi uyamkelwa kwesinye isikolo kwalapha kwiphondo
    - (ii) ukufuna umfundi ukuba aye kwiingcebiso zoluleko lwengqondo (*attend counselling*) kwisithili semfundo kwi-Specialised Learner and Educator Support (SLES) okanye kwi-School Psychological Support okanye kwi-School Social Work Support, kunye
    - (iii) nokucela iingxelo zokuqhuba komfundi ngokumalunga neengcebiso azinikwayo ezichatshazelwe kumhlathana (ii) kwelo candelwana linika inkxaso efanelekileyo.
- (5) Nawuphi na umfundi ogxothiweyo esikolweni, ngekota yokugqibela yaloo nyaka, makanikwe ithuba lokubhala iimviwo zokugqibela zaloo nyaka ebegxothwe ngawo, ngokuxhomekeke ekubeni umfundi ololu hlobo ubhala uviwo kwindawo eyahlukileyo kweyabafundi besikolo ebhamba kuso ngexesha *lokugxothwa* kwakhe.

#### 11. Ukutshitshiswa

IMimiselo emalunga nokuziphatha kakubi kakhulu kwabafundi kwizikolo zikarhulumente (kungabandakanywa izikolo zikarhulumente zabafundi abathunyelwe okanye abagqithiselwe kuzo ngokoMthetho wokuNyamekelwa kwaBantwana, 1983 (uMthetho 74 ka-1983), kunye/okanye noMthetho i-Criminal Procedure Act, 1997 (Act 51 of 1997)) kwiPhondo leNtshona Koloni, neenkqubo zoluleko emazilandelwe kwiimeko ezinjengezi, eyapapashwa kwiSaziso sePhondo 372 sika-1997 kwiGazethi yePhondo yeSikhawu No. 5190, yomhla we-31 Oktobha 1997, ngokwenjenje iyatshitshiswa.

#### 12. Igama elifutshane

Le Mimiselo ibizwa ngokuba yiMimiselo emalunga noKuziphatha kaKubi Kakhulu kwaBafundi kwiZikolo zikaRhulumente kwiPhondo leNtshona Koloni.