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Imibuzo: ICandelo lezoBudlelwane eMsebenzini

ISetyhula: 0012/2019

Umhla wokuphelelwa: Awukho

Iya: KumaSekela Balawuli-Jikelele, kuBalawuli abaziiNtloko, kuBalawuli (kwaNdlunkulu nakwii-ofisi zezithili), kumaSekela-Balawuli, kuBaphathi beeSekethe, kwiiNtloko zoQuquzelelo neeNgcebiso ngezeSLES, kuMagosa eZithili, kwiiNqununu, kooSihlalo bamabhunga olawulo, nakubo bonke aBaqeshwa bezikolo zikarhulumente eziqhelekileyo

Isishwankathelo esifutshane: *Ukufakelwa kwezilungiso kumgaqo-nkqubo ongokohlwaya ngokubetha (corporal punishment) nenkqubo emayilandelwe xa kunikwe ingxelo ngezehlo ezilolu hlobo. Le setyhula isebenza kubo bonke abaqeshwa kubandakanywa nootitshala nabasebenzi benkonzo karhulumente nakubaqeshwa abaqeshwe libhunga lolawulo.*

Isihloko: Ukuthintelwa kokohlwaya ngokubetha

1. Le Setyhula ihlaziyiwe yaye iyitshitshisa ngokupheleleyo iSetyhula 0024/2016.
2. Intshayelelo

UMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996) (South African Schools Act, 1996 (Act 84 of 1996), noMthetho woMgaqo-nkqubo weMfundo kaZwelonke, 1996 (uMthetho 27 ka1996) (National Education Policy Act, 1996 (Act 27 of 1996), iyakuphelisa ukohlwaya ngokubetha ezikolweni. ISebe leMfundo leNtshona Koloni (ISebe iWCED) lirekhode iqondo elinyukileyo/elingamkelekanga lamatyala nezehlo zokohlwaya ngokubetha kule minyaka mibini idlulileyo yaye ke ngenxa yoko liyanyanzeleka ukuba liwujongisise kwakhona umba wokuba nolwazi ngalo mgaqo-nkqubo ungokuthintelwa kokohlwaya ngokubetha. Ngokungqinelana nomgaqo-nkqubo, kuya kuthathwa inyathelo elingqongqo loluleko ngakwabo baqeshwa bohlaywa abafundi ngokubabetha kunye/okanye ngokubetha abafundi kumaziko emfundo eSebe i-WCED.

Ngenxa yoku, kubonelelwe ngale ingcaciso nangesi sikhokelo silandelayo.

3. Injongo

Injongo yale setyhula kukuqinisekisa ukuba kwaziswa bonke abaqeshwa beSebe iWCED kwakunye nabaqeshwa abaqeshwe ngamabhunga olawulo, ngokuthintelwa kokohlwaya ngokubetha nezilungiso ezifakelweyo.

4. Isikhokelo semithetho esetyenzisiweyo

Kubhengezwe imithetho emininzi ukucacisa, ukunika inkxaso nokunika iingcebiso abaqeshwa ngokuba bohluwane nokohlwaya ngokubetha abafundi:

- UMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996;
- UMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996) *South African Schools Act, 1996 (Act 84 of 1996)* ofakelwe izilungiso
- UMthetho wezeNgqesho yooTitshala (uMthetho 76 ka-1998) (*Employment of Educators Act, 1998 (Act 76 of 1998)*),
- UMthetho weBhunga looTitshala laseMzantsi Afrika, 2000 (uMthetho 31 ka-2000) *South African Council for Educators Act, 1996 (Act 31 of 2000)* ofakelwe izilungiso
- UMthetho weNkonzo kaRhulumente, 1994 (ISibhengezo 103 sika-1994), (*Public Service Act, 1994 (Proclamation 103 of 1994)*), ofakelwe izilungiso
- UMthetho woMgaqo-nkqubo weMfundo kaZwelonke, 1996 (uMthetho ka-27 1996) (*National Education Policy Act, 1996 (Act 27 of 1996)*)
- Uxwebhu loMgaqo-nkqubo lweSebe iWCED oluthi *Phantsi ngeMpatho-gadalala yaBantwana (Abuse No More Protocol of the WCED, 2014)*
- *I-Children's Act, 2005 (Act 38 of 2005)*, njengoko ifakelwe izilungiso.
- *I-Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007)*, ofakelwe izilungiso
- *I-South African Police Service (SAPS) National Instruction 3 of 2008 (Part 4)*
- *I- Code for Professional Ethics of the South African Council for Educators (SACE)*
- *I-Abolition of Corporal Punishment Act, 1997 (Act 33 of 1997)*

5. Iingcaciso-magama

5.1 Ukohlwaya ngokubetha

Ukohlwaya ngokubetha kuthetha "Nasiphi na isenzo sangabom esenziwa emntwaneni esimvisa iintlungu okanye ukuphatheka kakubi emzimbeni esisetyenziselwa ukumohlwaya okanye ukumlawula. Oku kubandakanya kodwa kungaphelelanga koku: ukumbetha (*spanking*), ukumqhwaba (*slapping*), ukumtsweba (*pinching*), ukumphaxula (*paddling*) okanye ukumbetha (*hitting*) umntwana ngesandla okanye nangantoni na; ukumalela okanye ukumqingqela amathuba okuya ethoyilethi, ukumvimba ukutya, into eselwayo, ubushushu nendawo yokufaka intloko, ukumtyhala okanye ukumtsala umntwana ngamandla, ukumnyanzela umntwana enze imithambo.

Ngoko ke ayikuko ukubetha nje ngoswazi (*caning*) kodwa kukwabhekiselele ekubethweni komntu (komfundi) nangayiphi na indlela enokwenzeka ngokomthetho.

5.2 Ukubetha (*assault*)

Ukubetha kukusebenzisa amandla emzimbeni womnye umntu ngokungekho mthethweni unenjongo okanye sisoyikiso (*threat*) somntu esinamandla komnye umntu kwiimeko apho umntu owoyikiswayo akholelwa ekubeni umntu omoyikisayo unenjongo namandla okumoyikisa. Ngoko ke nkqu nesoyikiso sokumbetha umntu, sithathwa njengesenzo sokumbetha ngokomthetho.

Ukubetha, ngokumalunga nomthetho kucaciswa njengesenzo sokusebenzisa ngenjongo amandla komnye umntu ngokungekho mthethweni, okanye njengesoyikiso esifana nokuba kuya kusetyenziswa amandla alolu hlobo. Kukulhasele okanye sisoyikiso sokuhlaselewa komnye umntu ngomnye esingekho mthethweni ngokumnkula (*blows*), ukumphatha kakubi emzimbeni/ukumdlakathelisa (*physical mishandling*) okanye ngokusebenzisa izixhobo okanye izinto ezithile (*weapons or objects*).

5.3 Ukohlwaya ngokubetha kuthelakiswa nokubetha

Njengoko kucacisiwe kwezi ngcaciso-magama zingentla kuyabonakala ukuba zonke iindidi zokohlwaya ngokubetha ziya kuthathwa njengezinentsingiselo yezenzo zokubetha. Makuqondakale ngokunjalo ukuba, ukuba iSebe iWCED lithatha inyathelo loluleko ngawo onke amatyala okohlwaya ngokubetha njengoko ethathwa njengezenzo zokubetha.

5.4 Iindidi zokubetha

Le mizekelo ilandelayo ziindidi zokohlwaya ngokubetha (ukubetha) oya kohlwaywa ngazo:

- *Nasiphi na isenzo kumalungu omzimba esinokubangela ukungaphatheki kakuhle okanye iintlungu kumfundi*
- Ukusebenzisa intonga/ibhanti/uswazi/ikheyini okanye nayiphi na into yokoyikisa abafundi
- Ukuba nenjongo yokonzakalisa umfundi emzimbeni
- Ukumoyikisa umfundi
- Ukumdlakathela umfundi
- Naluphi na udidi lokumngcungcuthekisa
- Ukumkhaba
- Ukumtsweba
- Ukumtsala ngeendlebe okanye nangawaphi na amalungu omzimba
- Ukumnyola/ukumxhokonxa ngomnwe
- Nawaphi na amazwi arhabaxa (*verbal onslaught*), ukusetyenziswa kolwimi olukrwada (*vulgar language*), ukuthuka nokumbeka ibala ngokumbiza omnye umntu ngamagama amabi (*name-calling*).
- Ukuthuka umfundi ngeentethwana ezinentsingiselo ezirheshayo ezimalunga nobuhlanga kunye/okanye ezibhekiselele kulwabelano ngesondo (*racial and/or sexual undertones*)

Makuqatshelwe ukuba iingcamango ngokwenza okuthile kwangaphambili, zenza isenzo solwaphulo-mthetho sibe sesixhomisa amehlo ngokungaphezulu yaye ukuzikhusela nokuxhokonxwa (*self-defence and provocation*) kunokudlala indima kwisohlwayo kuphela, kungekuko ukufunyaniswa unetyala, xa kuxoxwa ityala.

6. Ukuthintelwa kokohlwaya ngokubetha

Akukho mqeshwa unokohlwaya ngokubetha umfundi, njengoko kucaciswe apha ngentla, nakweliphi na iziko lemfundo. Umqeshwa owohlwaya ngokubetha ngokusebenzisa naluphi na udidi lokohlwaya ngokubetha unetyala lolwaphulo-mthetho yaye ufanele ukubanjwa yaye unokuwiselwa isigwebo ngenxa yokubetha umfundi. Umqeshwa akanakwenza okanye athathe inxaxheba kwizenzo zokukhwelwa kwabafundi esikolweni (*initiation practices*) kumfundi osesikolweni okanye okwihostele ehlala abafundi besikolo esithile. Kuya kuthathwa amanyathelo oluleko ngakuye nawuphi na umqeshwa onetyala lokwenza ezi zenzo, ukohlwaya ngokubetha kunye/okanye ukubetha.

Ukuthintelwa kwesenzo sokohlwaya ngokubetha kunenjongo yokukhuthaza umoya wokuphelisa ubundlobongela; wokusombulula iingxabano ngothetha-thethwano nangeengxoxo nokubethelela umoya wokuthwala uxanduva nendlela yokuziphatha phakathi kwabo bonke abathathi-nxaxheba ababandakanyekayo esikolweni.

7. Iziphumo zezenzo zokohlwaya ngokubetha okanye ukubetha

UMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996), uyakuthintela ukohlwaya ngokubetha yaye nawuphi na umntu owophula umthetho ufunyaniswa enetyala lolwaphulo-mthetho yaye efanele ukuwiselwa isigwebo ngesenzo sokubetha. Abaqeshwa ke ngoko mabaqwalasele ukuba ukuqaliswa kweengxoxo zoluleko (*disciplinary proceedings*) ngakwabo baqeshwa ngokoMthetho wezeNgqesho yooTitshala, 1998 (uMthetho 76 ka-1998) (*Employment of Educators Act, 1998 (Act 76 of 1998)*), akuthinteli ukuba iSebe iWCED okanye umntu othile ukuba athathe amanyathelo okuqalisa ukuxoxwa kwetyala lolwaphulo-mthetho (*instituting criminal proceedings*) ngakwabo baqeshwa njengoko oko kuyimfuneko yomthetho. Kwimeko yootitshala, nabo baya kuqwalaselwa ngokwenkqubo yamanyathelo oluleko yi-SACE.

8. Umsebenzi oluxanduva lwenqununu

8.1 Kucelwa iinqununu zazise abasebenzi bazo ngokuthintelwa kokohlwaya ngokubetha nangeziphumo eziya kulandela emva koko. Xa inqununu yesikolo inikwe ingxelo ngetyala elithile, inyanzelekile yazise ngokukhawuleza iCandelo lezoBudlelwane eMsebenzini, i-ofisi yesithili nonontlalontle wesithili ngezi zityholo zezenzo solwaphulo-mthetho.

- 8.2 Makungaze naphantsi kwazo naziphi na iimeko kuxoxwe ngamatyala okohlwaya ngokubetha ngokwenkqubo engamiselwanga yeengxoxo zoluleko (*informal disciplinary hearing procedure*). Onke amatyala afana nala amele ukuqwalaselwa kwiingxoxo zoluleko ezimiselweyo (*formal disciplinary hearing*).
- 8.3 Ngumsebenzi oluxanduva lweCandelo lezoBudlelwane eMsebenzini ukuphanda nokumisela ukuxhalabisa kwesenzo/kwetyala nokuba umoni (*transgressor*) uya kubekwa ityala na okanye akunjalo.
- 8.4 Ziyakhunjuzwa ke ngoko iinqununu ukuba akuyomfuneko ukuba ziziphande naziphi na izityholo kodwa endaweni yoko zinokuwugqithisela lo mbandela kwiCandelo lezoBudlelwane eMsebenzini ngokufanelekileyo nakunontlalontle wesithili ukuqinisekisa ukufumaneka kwenkxaso. Nakuba kunjalo kuya kufuneka inqununu yazise abazali/abagcini bomfundi ngeshlo ekurhanelwa ukuba senzekile.
- 8.5 Iinqununu ezingawathobeliyo la manyathelo ale nkqubo acaciswe ngentla, ziya kuba zenze ngokwazo ukuba zibekwe ityala lokungawenzi umsebenzi wazo (*guilty of dereliction of duty*) yaye kunokwenzeka ukuba oko kukhokelele ekuthathweni kwenyathelo loluleko.
9. Abaqeshwa abaqeshwe libhunga lolawulo
- 9.1 ISebe iWCED laziswe ukuba akukho ngxelo inikwayo ngezeshlo zokohlwaya ngokubetha ezichaphazela abaqeshwa abaqeshwe libhunga lolawulo.
- 9.2 Yinto eyaziwayo ukuba iSebe iWCED alinalo igunya lolawulo ekwenzeni isigqibo ngokomthetho malunga nabaqeshwa abaqeshwe libhunga lolawulo. Nakuba kunjalo, izeshlo ezichaphazela abaqeshwa abaqeshwe libhunga lolawulo lesikolo, makunikwe ingxelo ngazo kunontlalontle wesithili (ngokumalunga nomhlathi 3.5(d)(i) woXwebhu loMgaqo-nkqubo othi: Phantsi ngeMpatho-gadalala yaBantwana (*Abuse No More Protocol*) weSebe leMfundo leNtshona Koloni, 2014) kunye/okanye liCandelo lezoBudlelwane eMsebenzini. Izizathu zoku zezi:
- a) kukuqinisekisa ukuba bonke abafundi bafumana iingcebiso, inkxaso nokubuzwa ngokwenzekileyo okuyimfuneko; kunye
 - b) nangokuxhomekeke kwiimeko ezingqonge ityala, ukwenzela ukuba unontlalontle wesithili abe nako ukunika ingxelo ngalo mba kwi-SAPS.
- 9.3 Kubalulekile ukuqaphela ukuba wonke umntu oqeshwe liSebe iWCED nalibhunga lolawulo makahlolwe – yaye oku kuquka namavolontiya nabantu abangasebenzi ngokuthe ngqo nabantwana umzekelo abaqeshwa bezolawulo, abezokhuseleko nabajongene nokulondolozwa kwezakhiwo. Ibhunga lolawulo malitshekishe ukuba ngaba umenzi-sicelo ubhalisiwe na kuluhlu lwe-*National Child Protection Register*

(NCPR), kolwe-National Register for Sex Offenders (NRSO), okanye kwiRejista yeSACE ukwenzela ukukhusela amalungelo abafundi.

10. Isiphelo

Ukushwankathela, iSebe iWCED liyayivuma imingeni abaqeshwa abajongene nayo yonke imihla ngokumalunga nendlela abaziphethe ngayo abafundi. ISebe iWCED ngako oko liyabakhuthaza ngamandla abaqeshwa ukuba bazithathele ingqalelo ezinye iindlela ezinokwenziwa yaye bayeke ukohlwaya ngokubetha njengoko oko kuchasene nomgaqo-nkqubo, kungekho mthethweni yaye kungenasidima.

11. Ziyacelwa iintloko zamaziko ukuba zazise bonke abasebenzi ngokuqulethwe yile setyhula nangokubaluleka kwayo. Bonke abaqeshwa abatsha kufanele baziswe ngokukhawuleza ngale setyhula bakuba beqeshiwe kumaziko emfundo eSebe iWCED.

ISAYINWE: NGU-BK SCHREUDER

INTLOKO: YESEBE LEMFUNDO

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