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**PROVINCIAL NOTICE****PROVINSIALE KENNISGEWING**

The following Provincial Notice is published for general information.

ADV. B. GERBER,  
DIRECTOR-GENERAL

Provincial Building,  
Wale Street,  
Cape Town.

Die volgende Provinsiale Kennisgewing word vir algemene inligting gepubliseer.

ADV. B. GERBER,  
DIREKTEUR-GENERAAL

Provinsiale-gebou,  
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15 December 2011

**REGULATIONS RELATING TO DISCIPLINING, SUSPENSION AND EXPULSION OF LEARNERS AT PUBLIC SCHOOLS  
IN THE WESTERN CAPE**

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

**SCHEDULE**

**ARRANGEMENT OF REGULATIONS**

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7. Disciplinary hearing
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**1. Definitions and application**

- (1) In these regulations any word or expression to which a meaning has been assigned in the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), 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 section 30(1) of the Act;

“**District Director**” means the senior officer in a district of the Western Cape Education Department;

“**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;

“**suspension**” means the temporary prohibition of a learner from attending a school as in terms of regulation 4; and

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

- (2) These regulations do not apply to a child and youth care centre described in section 191 of the Children’s Act, 2005 (Act 38 of 2005).

**2. Investigation of possible serious misconduct**

- (1) Where it is alleged that the conduct of a learner may constitute serious misconduct in terms of regulation 3(1), the allegation 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 and whether or not to report the matter to the governing body.

- (2) The governing body 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 school days.
- (3) The governing body must—
  - (a) inform the learner and the parents of the learner of the intention to suspend and the reasons therefore;
  - (b) afford the learner and the parents of the learner a reasonable opportunity to make representations to the governing body in relation to such suspension; and
  - (c) report the decision of the suspension of the learner to the District Director, who must keep a register of all such suspensions.
- (4) The governing body must conduct disciplinary proceedings in the manner contemplated in section 8 of the Act against the learner within seven school days after the suspension of such learner.
- (5) If disciplinary proceedings are not conducted within seven 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.

### 3. Serious misconduct

- (1) Subject to the provisions of the Act, a learner at a school who—
  - (a) used or had in his or her possession or sells or distributes a dangerous object, alcoholic liquor or illegal drugs;
  - (b) commits an act of bullying, assault, theft, arson or malicious damage to property;
  - (c) commits an act of gross insubordination or engages in immoral conduct;
  - (d) 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;
  - (e) uses hate speech, makes himself or herself guilty of racism, sexism, sexual harassment, possesses or distributes pornographic material or engages in any act of public indecency;
  - (f) endangers the safety or threatens fellow learners or educators, disrupts the school programme or violates the rights of others;
  - (g) falsely identifies himself or herself, or knowingly and wilfully supplies false information or falsifies documentation to gain an unfair advantage at school;
  - (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,may 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).

### 4. Suspension of Learner

- (1) The governing body may only suspend a learner—
  - (a) as a precautionary measure and in the manner contemplated in regulation 2(2) for a period not longer than seven 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 school days; or
  - (c) pending the decision of the Head of Department as contemplated in regulation 8(2), for a period not longer than 14 school days.
- (2) The total period of suspension of a learner from school shall not be longer than 21 school days.
- (3) The governing body must report all the decisions to suspend and the nature of the suspension of the learners to the District Director, who shall keep a register of all such suspensions.

### 5. Notice to learner and parent of disciplinary hearing

- (1) The governing body must notify the learner as well as the parents of the learner, in writing, that disciplinary proceedings will be instituted against the learner. The notice must—
  - (a) provide at least five school days' notice of the disciplinary hearing;
  - (b) inform the learner and the parents of the learner that disciplinary proceedings will be instituted against the learner;
  - (c) 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 at the disciplinary hearing;
  - (d) contain the date, time and venue of the disciplinary hearing;
  - (e) advise the learner of his or her right to—

- (i) be accompanied and represented at the hearing, by his or her parents, or by a representative chosen by the parents;
  - (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.
- (f) 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 2(2).
- (2) The principal must give the notice contemplated in sub-regulation (1) to the learner, and deliver a copy thereof to the parents of the learner at the address of the learner indicated in the school admission register or the learner profile.

#### **6. Appointment and composition of 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 at least five persons, at least three 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.

#### **7. Disciplinary hearing**

- (1) At the disciplinary hearing the learner has the right to be present, to be represented, to give evidence and either personally or through a representative, to—
  - (a) state his or her case;
  - (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 parents fail to attend the disciplinary hearing without just cause, and after due notice contemplated in regulation 5, 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.
- (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, representative, or parents of the learner whether anybody wishes to make representations before a suitable sanction is imposed;
  - (c) ask the learner, representative and parents of the learner 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 not longer than seven 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 or parents of the learner 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 and witnesses;
  - (b) give the learner, representative or parents of the learner the opportunity to put questions to the complainant and 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 parents of the learner while the committee reviews evidence and decides on the verdict; and
  - (g) recall the learner, representative and parents of the learner and inform them of the disciplinary committee's decision.
- (6) If the disciplinary committee finds the learner guilty, the chairperson must—
- (a) ask him or her, or his or her representative or parents, if they wish to make representations before a decision is made on the appropriate sanction; and
  - (b) ask the learner, representative or parents of the learner and any other parties, except the members of the disciplinary committee, to leave the room while the committee deliberates on a suitable sanction.
- (7) The disciplinary committee must then decide on an appropriate sanction taking all the evidence and representations into account and decide if—
- (a) the learner should be suspended for a period not longer than seven school days;
  - (b) any other sanction contemplated for serious misconduct in the code of conduct of that school should be imposed on the learner; or
  - (c) the expulsion of the learner should be recommended to the Head of Department.
- (8) Recall the learner, representative or parents of the learner and inform them of the outcome of the recommendations to be submitted to the governing body.
- (9) The learner and his or her parents must be informed, in writing, of the decision of the governing body on whether or not the learner is guilty of serious misconduct, and the sanction imposed.

#### **8. Recommendation of expulsion by governing body**

- (1) (a) Where the governing body recommends to the Head of Department that a learner be expelled, the parents of the learner must be notified, in writing, of the decision of the governing body.
- (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 school days—
- (i) the minutes of meetings at which the decision was taken;
  - (ii) any written representations submitted by the learner or parents of the learner or representative; and
  - (iii) the full record of the proceedings by the disciplinary committee 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 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 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 parents 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 parents of such learner, may appeal against the decision of the Head of Department to the Provincial Minister within 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 and the chairperson of the governing body.
- (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 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, is expelled from a school the parents of the learner may 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 after consultation with the principal.
- (4) In determining an alternative arrangement for placement contemplated in sub-regulation (1), or the manner of access to education 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 may be requested by the principal of the school to write 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 and date of commencement**

These Regulations are called the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape, and comes into effect on 2 April 2012.

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**PROVINSIALE KENNISGEWING**

**REGULASIES BETREFFENDE DIE DISSIPLINERING, SKORSING EN UITSETTING VAN LEERDERS IN  
OPENBARE SKOLE IN DIE WES-KAAP**

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

**BYLAE**

**VOLGORDE VAN REGULASIES**

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**1. Definisies**

- (1) In hierdie regulasies het enige woord of uitdrukking waaraan 'n betekenis in die Wes-Kaap Provinsiale Wet of Skoolonderwys, 1997, (Wet 12 van 1997) 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) van die Wet;
  - “**Distriksdirekteur**” die senior beampte in ’n distrik van die Wes-Kaap Onderwysdepartement;
  - “**skorsing**” die tydelike verbod op ’n leerder se bywoning van ’n skool in terme van regulasie 4; 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) Hierdie regulasies is nie van toepassing op ’n kind en jeugsorgsentrum soos beskryf in artikel 191 van die Kinderwet, 2005 (Wet 38 van 2005) nie.

**2. Ondersoek na moontlike ernstige wangedrag**

- (1) Waar daar bewerings is dat die optrede van ’n leerder beskou kan word as ernstige wangedrag in terme van regulasie 3(1), moet die bewering 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 getuienis is om dissiplinêre prosedures teen die leerder ten opsigte van die ernstige misdryf in te stel en of dit nodig is om die saak by die beheerliggaam aan te meld.
- (2) Die beheerliggaam mag, op redelike gronde en as voorsorgmaatreël, die leerder wat van ernstige wangedrag verdink word, skors van skoolbywoning vir ’n periode van hoogstens sewe skooldae.
- (3) Die beheerliggaam moet—
  - (a) die leerder en die ouers van die leerder in kennis stel van die voorneme om te skors en die redes daarvoor;
  - (b) die leerder en die ouers van die leerder ’n redelike geleentheid bied om verhoor te word aan die beheerliggaam insake sodanige skorsing, en
  - (c) die besluit om die leerder te skors aan die Distriksdirekteur rapporteer, wie ’n register van alle sodanige skorsings moet hou.

- (4) Die beheerliggaam moet dissiplinêre prosedures instel teen die leerder op die wyse soos bedoel in artikel 8 van die Wet binne sewe skooldae na die skorsing van sodanige leerder.
- (5) Indien dissiplinêre prosedures nie uitgevoer is binne sewe skooldae na die skorsing van die leerder nie, moet die beheerliggaam die goedkeuring van die Departementshoof verkry vir die voortgesette skorsing van sodanige leerder.

### 3. Ernstige wangedrag

- (1) Onderhewig aan die bepalings van die Wet, sal 'n leerder by 'n skool wat—
  - (a) 'n gevaarlike voorwerp, alkoholiese drank of onwettige dwelms gebruik het of in sy of haar besit gehad het of verkoop het of versprei het;
  - (b) 'n daad van afknouery, aanranding, diefstal, brandstigting of kwaadwillige beskadiging van eiendom pleeg;
  - (c) 'n daad van gruwelike ongehoorsaamheid pleeg of immorele gedrag openbaar;
  - (d) in besit is of gebruik maak van enige ongemagtigde afskrif van 'n toets- of eksamenvraestel, of kul, versprei, uitruil, omkoop of poog om enige persoon om te koop ten opsigte van enige toets of eksamen, met die doel om sodoende sigself of enige ander persoon in die posisie plaas om 'n onbillike voordeel te verkry;
  - (e) haatspraak gebruik, homself of haarself skuldig maak aan rasisme, seksisme, seksuele teistering, in besit is van of pornografiese materiaal versprei of deelneem aan enige daad van openbare onsedelikheid;
  - (f) die veiligheid van medeleerders of opvoeders in gevaar stel of bedreig, die skoolprogram ontwig of die regte van ander skend;
  - (g) homself of haarself valslik identifiseer, bewustelik en opsetlik valse inligting verskaf of dokumentasie vervals om onbillike voordeel te verkry by 'n skool;
  - (h) herhaaldelik skuldig bevind is aan oortredings van die leerdergedragskode; of
  - (i) homself of haarself, volgens die mening van die beheerliggaam, op 'n skandelige, onvanpaste of onbetaamlike wyse gedra, skuldig mag 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).

### 4. Skorsing van leerder

- (1) 'n Beheerliggaam mag 'n leerder slegs uit die skool skors—
  - (a) as voorsorgmaatreël op die wyse soos bepaal in regulasie 2(2) vir 'n tydperk van hoogstens sewe skooldae;
  - (b) as korrektiewe maatreël soos bepaal in regulasie 7(4)(e)(i) vir 'n tydperk van hoogstens sewe 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 14 skooldae.
- (2) Die totale tydperk van skorsing uit die skool van 'n leerder moet nie langer as 21 skooldae 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 leerder en ouer van dissiplinêre verhoor

- (1) Die beheerliggaam moet die leerder sowel as die ouers van die leerder skriftelik in kennis stel dat dissiplinêre prosedures teen sodanige leerder ingestel gaan word. Die kennisgewing moet—
  - (a) ten minste vyf skooldae kennis gee voor die verhoor plaasvind;
  - (b) die leerder en die ouers van die leerder in kennis stel dat dissiplinêre prosedures ingestel sal word teen die leerder;
  - (c) 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 by die dissiplinêre verhoor;
  - (d) die datum, tyd en plek van die dissiplinêre verhoor bevat;
  - (e) 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 ouers se 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,
  - (f) 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 2(2).



- (2) Die prinsipaal moet die leerder in kennis stel soos bedoel in subregulasie (1) en 'n afskrif daarvan aan die ouers van die leerder aflewer by die adres van die leerder aangedui in die skool se toelatingsregister of die leerderprofiel.

#### 6. Aanstelling en samestelling van 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 vyf persone waarvan ten minste drie 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.

#### 7. Dissiplinêre verhoor

- (1) By die dissiplinêre verhoor het die leerder die reg 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 ouers versuim om die dissiplinêre verhoor by te woon sonder 'n geldige rede, en na behoorlike kennisgewing soos bedoel in regulasie 5, 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 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, die verteenwoordiger en die ouers van die leerder vra of enige een verhoë wil rig voor 'n gepaste strafbepaling opgelê word;
- (c) die leerder, die verteenwoordiger en die ouers van die leerder 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 hoogstens sewe 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 ouer(s) van die leerder terugroep en in kennis stel van die aanbevelings wat aan die beheerliggaam voorgelê sal word.
- (5) Indien die leerder onskuldig 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 en getuies;
- (b) aan die leerder, verteenwoordiger en ouers van die leerder die geleentheid bied om vrae te stel aan die klaer en die getuies met die doel om getuienis te weerlê;
- (c) komiteelede 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) komiteelede toelaat om vrae stel vir duidelikheid;
- (f) die leerder, verteenwoordiger en ouers van die leerder verskoon terwyl die komitee getuienis in oorweging neem en op die uitspraak besluit; en
- (g) die leerder, verteenwoordiger en ouer(s) van die leerder terugroep en hulle inlig aangaande die besluit van die dissiplinêre komitee.

- (6) Indien die dissiplinêre komitee die leerder skuldig bevind, moet die voorsitter:
- hom of haar, of sy of haar verteenwoordiger of ouers van die leerder, vra of hulle versoë wil rig voordat 'n besluit geneem word oor die gepaste strafbepaling; en
  - die leerder, die verteenwoordiger en die ouers van die leerder 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.
- (7) Die dissiplinêre komitee moet dan besluit op 'n gepaste strafbepaling na inagneming van al die getuienis en versoë en besluit of:
- die leerder geskors behoort te word vir 'n tydperk van hoogstens sewe skooldae;
  - enige ander strafmaatregel bedoel in die gedragskode vir leerders van daardie skool vir ernstige wangedrag aan die leerder opgelê word; of
  - 'n aanbeveling aan die Departementshoof gedoen moet word om die leerder uit te sit.
- (8) Die leerder, verteenwoordiger en ouers van die leerder terugroep en in kennis stel van die aanbevelings wat aan die beheerliggaam voorgelê sal word.
- (9) Die leerder of sy of haar ouers moet verder skriftelik ingelig word van die besluit van die beheerliggaam of hy of sy skuldig bevind is al dan nie aan ernstige wangedrag, en die strafbepaling ingestel.

### 8. Aanbeveling van uitsetting deur beheerliggaam

- Waar die beheerliggaam by die Departementshoof aanbeveel dat 'n leerder uitgesit moet word, moet die ouers van die leerder skriftelik in kennis gestel word van die besluit van die beheerliggaam.
  - Waar 'n beheerliggaam 'n leerder skors van skoolbywoning, met die aanbeveling van uitsetting aan die Departementshoof, moet die beheerliggaam die prinsipaal opdrag gee om volgende binne drie skooldae aan die Departementshoof voor te lê—
    - die notules van vergaderings waarop die besluit geneem is;
    - enige geskrewe versoë wat deur die leerder of ouers van die leerder of verteenwoordiger gerig is, en
    - die volledige rekord van die prosedures deur die dissiplinêre komitee of beheerliggaam.
- Die beheerliggaam mag die uitsetting van 'n leerder opskort of verleng vir 'n periode van hoogstens 14 dae, hangende van die besluit deur die Departementshoof.
- Die Departementshoof moet die aanbeveling van die beheerliggaam oorweeg en besluit of 'n leerder binne veertien dae vanaf ontvangs van sodanige aanbeveling uitgesit moet word.
- 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 oplê wat deur die beheerliggaam geïmplementeer moet word.
- 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.
- Die beheerliggaam en die ouers van die leerder moet onmiddellik skriftelik in kennis gestel word van die besluit van die Departementshoof, met goeie gronde aangevoer.
- 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

- 'n Leerder wat uit 'n skool gesit is of ouer van so 'n leerder, mag appèl aanteken teen die besluit van die Departementshoof by die Provinsiale Minister binne 14 dae van ontvangs van die kennisgewing van uitsetting.
- 'n Afskrif van die kennisgewing om appèl aan te teken soos bepaal in subregulasie (1), moet ook by die kantoor van die Departementshoof en die voorsitter van die beheerliggaam ingedien word.
- 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 14 dae van die datum waarop die appèl gehandhaaf is.
- 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

- Indien 'n leerder wat onderhewig is aan skoolplig ingevolge artikel 3 van die Wet, uit 'n skool gesit word, moet die Departementshoof 'n alternatiewe reëling vir sy of haar plasing by 'n skool tref.
- In die geval van 'n leerder wat uit die skool gesit word, wat nie skoolpligdig is nie, die ouers van die leerder alternatiewe reëlings tref vir sy of haar plasing by 'n ander skool en mag die Distriksdirekteur versoek om hulle hierin by te staan.
- Indien 'n leerder 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, na konsultasie met die prinsipaal van die skool.

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- (4) By die bepaling van 'n alternatiewe reëling vir plasing soos bedoel in subregulasie (1), of die wyse van toegang tot onderwys soos bedoel in subregulasie (3),—
- (a) moet die Departementshoof 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 versekering 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 gesit 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 deur die prinsipaal van die skool versoek mag word om die eksamen, in 'n lokaal afsonderlik van die leerders van die skool wat hy of sy bygewoon het tydens sy of haar uitsetting, te 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 en datum van inwerkingtreëding**

Hierdie regulasies word genoem die Regulasies betreffende Dissiplinerings, Skorsing en Uitsetting van Leerders in Openbare Skole in die Wes-Kaap, en tree met ingang van 2 April 2012 in werking.

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## ISAZISO SEPHONDO

## IMIMISELO EMALUNGA NOKULULEKA, UKUNQUMAMISA, NOKUGXOTHA ABAFUNDI KWIZIKOLO ZIKARHULUMENTE KWIPHONDO LENTSHONA KOLONI

NgokweSiquendu 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)*), esifundwa neSiquendu 9(3) soMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996), uMphathiswa wePhondo ophathiswe ezemfundo eNtshona Koloni ngokwenjenje ubhengeze imimisele ecaciswe kule Shedyuli.

## ISHEDYULI

## ULANDELELWANO LWEMIMISELO

1. Iingcaciso-magama nemiba ebandakanyiweyo
  2. Uphando lwendlela enokuziphatha kakubi kakhulu
  3. Ukuziphatha kakubi kakhulu
  4. Ukunqunyanyiswa komfundi
  5. ISaziso kumfundi nakumzali seeNgxoxo zoluleko
  6. UkuTyunjwa noKwakhiwa kwekomiti yoluleko
  7. Iingxoxo zoluleko
  8. INgcebiso yokugxothwa eyenziwa libhunga lolawulo
  9. Isibheni
  10. UkuFikelela kwimfundo
  11. UkuTshitshiswa
  12. Igama elifutshane nomhla wokuqalisa
- 1. Iingcaciso-magama nemiba ebandakanyiweyo**
- (1) Kule mimisele naliphi na igama okanye ibinzana-magama elinikwe intsingiselo kuMthetho weZikolo zePhondo leNtshona Koloni, 1997 (uMthetho 12 ka-1997), lihlala linalool ntsingiselo liyinikeweyo, ngaphandle kokuba umxholo ophethweyo walatha okanye—
    - “**ikomiti yoluleko**” kuthetha ikomiti esekwe libhunga lolawulo lesikolo sikarhulumente ngokweziqendu 30(1) zalo Mthetho;
    - “**ukugxothwa**” kuthetha ukuthintelwa komfundi ngokupheleleyo yiNtloko yeSebe, ekuhambeni isikolo abhalise kuso, emva kokulandela inkqubo ngokwalo Mthetho nangokwale mimisele;
    - “**uMlawuli weSithili seMfundo**” kuthetha igosa eliphezulu eliqeshwe kwiSithili seSebe leMfundo leNtshona Koloni;
    - “**ukunqunyanyiswa**” kuthetha ukuthintelwa okwexeshana komfundi ekuhambeni isikolo ngokommiselo 4; yaye
    - “**uMthetho**” kuthetha uMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996).
  - (2) Le mimisele ayibandakanyi umntwana okanye indawo yokunyamekela kwabantwana ngokuchatshazelweyo kwisiquendu 191 (section 191) soMthetho waBantwana (Children's Act), 2005 (uMthetho 38 ka-2005), Children's Act, 2005 (Act 38 of 2005).
- 2. Uphando lwendlela enokuziphatha kakubi kakhulu**
- (1) Apho kukho isityholo sokuba ukuziphatha komfundi kungaba kukuziphatha kakubi kakhulu ngokommiselo 3(1), eso sityholo masiziswe kwinqununu ekufuneka—
    - (a) iphande okanye yenze ukuba kuqutywe 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 kunye nokuba kuyimfuneko na ukuba lengxelo idluliselwe kwibhunga lolawulo.
  - (2) Ibhunga lolawulo linako ukuthi, ngenxa yezizathu ezivakalayo, yaye nanjengenyathelo lokumlumkisa (*precautionary measure*), limnqumamisa umfundi orhanelwa ngokuziphatha kakubi kakhulu ekuyeni esikolweni ithuba elingekho ngaphezu kweentsuku ezisixhenxe zokuhamba isikolo.
  - (3) Ibhunga lolawulo malithi—
    - (a) lazise umfundi nomzali womfundi (nabazali bomfundi) ngenjongo yokumnqumamisa umfundi nezizathu zoko;
    - (b) linike umfundi nomzali womfundi (nabazali bomfundi) ithuba elifanelekileyo lokuba bavakalise izimvo zabo kwibhunga lolawulo malunga noko kunqunyanyiswa kulolu hlobo; yaye

- (c) lazise isigqibo soko kunqunyanyiswa komfundi kuMlawuli weSithili seMfundo noya kuthi agcine irejista yazo zonke iziganeko zokunqunyanyiswa okulolu hlobo.
- (4) Ibhunga lolawulo maliqhube iingxoxo zetyala loluleko ngendlela echatshazelwe kwisiqendu 8 salo Mthetho ekutyholwa kuzo loo mfundi kwiintsuku ezisixhenxe zokuhamba isikolo emva kokunqunyanyiswa komfundi ololu hlobo.
- (5) Ukuba iingxoxo zetyala loluleko aziqhutywa kwiintsuku ezisixhenxe zokuhamba isikolo emva kokunqunyanyiswa komfundi, ibhunga lolawulo malifumane imvume kwiNtloko yeSebe yokuqhubeka kokunqunyanyiswa komfundi ololu hlobo.

### 3. Ukuziphatha kakubi kakhulu

- (1) Phantsi kwemigaqo yalo Mthetho, umfundi osesikolweni othe—
  - (a) wasebenzisa, okanye wanesixhobo kuye okanye wathengisa okanye wahambisa isixhobo esiyingozi, utywala obunxiliso, okanye iziyobisi ezingekho mthethweni;
  - (b) wenza isenzo sokubhulisha (*bullying*), sokubetha, sokuba, sokutshisa ipropathi okanye sokonakalisa ipropathi ngolunya,
  - (c) wenza isenzo sokungathobeli ngokugqithisileyo amagunya aphelelyo okanye sokungabi nasimilo;
  - (d) 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 ongomnye, eme kakuhle ngokuthi alungelwe ngokungafanelekanga (*to gain an unfair advantage*);
  - (e) wasebenzisa intetho ebonisa intiyo, wenza isenzo esenza abenetyala localucalulo ngokobuhlanga, ngokwesini, wenza isenzo songcungcuthekiso ngokwezesondo (*sexual harassment*), wanayo kuye okanye wasasaza imifanekiso yamanyala (*pornographic material*) okanye wenza nasiphi na isenzo esiliskizi esidlalaleni (*any act of public indecency*);
  - (f) wabeka engozini ukhuseleko lwabanye abafundi okanye wasongela ngokubetha/ ngokwenzakalisa abafundi afunda nabo okanye ootitshala, waphazamisa iprogram yesikolo kunye/okanye wanyasha amalungelo abanye;
  - (g) wazazisa (*identifies*) yena exoka, okanye wathi esazi yaye ngabom, wanikisa (*supplies*) ngengcaciso ebubuxoki okanye wenza amaxwebhu abubuxoki ukwenzela ukuba alungiselele yena (*to gain unfair advantage*) esikolweni;
  - (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, unokuba netyala lokuziphatha kakubi kakhulu.
- (2) Phantsi kwemigaqo yalo uMthetho, 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).

### 4. Ukunqunyanyiswa komfundi

- (1) Ibhunga lolawulo lesikolo linokumnqumamisa umfundi kuphela—
  - (a) njengenyathelo lokumlumkisa (*precautionary suspension*) ngendlela echatshazelwe kummiselo 2(2) ithuba eliye kufikelela kwiintsuku ezisixhenxe zokuhamba isikolo;
  - (b) njengenyathelo loluleko, emva kokuba umfundi efunyenwe enetyala lokuziphatha kakubi kakhulu okuchatshazelwe kummiselo 7(4)(i), okwethuba elingekho ngaphezu kweentsuku ezisixhenxe zokuhamba isikolo; okanye
  - (c) ngokuxhomekeka kwisigqibo seNtloko yeSebe esichatshazelwe kummiselo 8(2), okwethuba elingekho ngaphezu kweentsuku ezili-14 zokuhamba isikolo.
- (2) Ithuba lokunqunyanyiswa komfundi esikolweni lilonke aliye kuba ngaphezu kweentsuku ezi-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 kumfundi nakumzali seengxoxo zoluleko

- (1) Ibhunga lolawulo malazise umfundi kwakunye nomzali (nabazali), ngencwadi ebhaliweyo, ukuba kuya kuqaliswa iingxoxo zoluleko ngakuloo mfundi. Isaziso—
  - (a) masinike ubuncinane isaziso seentsuku ezintlanu zesikolo sengxoxo zetyala loluleko;
  - (b) masazise umfundi nomzali (nabazali) womfundi ukuba iingxoxo zetyala loluleko ziya kuqaliswa ngakuloo mfundi;
  - (c) masibe neenkukacha ezaneleyo zomhla, ixesha, indawo nohlobo lokuziphatha kakubi kakhulu atyholwa ngako ukwenzela ukuba umfundi abe nako ukuba nolwazi ngesiganeko nokuba aphenyule malunga naso kwiingxoxo zoluleko;
  - (d) masibe nomhla, ixesha nendawo yeengxoxo zoluleko;
  - (e) masazise umfundi ngelungelo lakhe—

- (i) lokuba ahambe nomzali yaye amelwe kwiingxoxo zoluleko ngumzali wakhe (ngabazali bakhe) okanye ngummeli okhethwe ngumzali (ngabazali).
  - (ii) lokucela ukuba akwazi ukufikelela kumaxwebhu okanye kwingcaciso eveliswe njengobungqina; yaye
  - (iii) lokubuza imibuzo, lokupheka ngemibuzo egoca-gocayo (*cross-examine*), lokuncina ubungqina, lokubiza amangqina nelokuba avelise amaxwebhu abubungqina ukucacisa imiba emalunga nesityholo eso;
- (f) masazise umfundi, apho kunokwenzeka, ngokunqunyanyiswa okulinyathelo elisisilumkiso (*precautionary suspension*) nangohlobo lwenkxaso kwizifundo eya kubonelelwa sisikolo phambi kweengxoxo nangethuba lokunqunyanyiswa okuchatshazelweyo kummiselo 2(2).
- (2) Inqununu mayinike umfundi isaziso esichatshazelwe kummiselwana (1) ize ise ikopi yaso kumzali (kubazali) womfundi kwidilesi yomfundi eboniswe kwirejista yokwamkela abafundi yesikolo okanye kwiprofayili yomfundi.

## 6. UkuTyunjwa nokwakhiwa kwekomiti yoluleko

- (1) Ibhunga lolawulo malongamele iingxoxo zoluleko okanye malinyule ikomiti yoluleko yokwenjenjalo.
- (2) Ikomiti yoluleko mayenziwe ubuncinane ngabantu abahlanu ukuze abathathu kuyo, ubuncinane, babe ngamalungu ebhunga lolawulo.
- (3) Ikomiti yoluleko mayibe nosihlalo olilungu lebhunga lolawulo, otyunjwe libhunga lolawulo, ongenguye umqeshwa wesikolo okanye utitshala wesikolo eso.
- (4) Ikomiti yoluleko mayingakhethi cala, ibe nobulungisa kwaye yenze ngaphandle kokwenzelelelela okanye kokugweba kuqala.
- (5) 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 ngeengcebiso zekomiti yoluleko.

## 7. Iingxoxo zoluleko

- (1) Kwiingxoxo zoluleko umfundi unelungelo lokubakho, lokumelwa, lokunika ubungqina nokuba nguye buqu okanye ngommeli wakhe, ukuba—
  - (a) abeke elakhe icala;
  - (b) abize amangqina;
  - (c) abuze imibuzo kuye nabani na obizwe njengengqina ukuxhasa isityholo; yaye
  - (d) ahlole amaxwebhu angeniswe njengobungqina.
- (2) Ukuba umfundi okanye umzali (abazali) womfundi akaphumeleli ukuya kwiingxoxo zoluleko kungekho zizathu zibambekayo, nasemva kwesaziso esifanelekileyo esichatshazelwe kummiselo 5, 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 okanye angalivumi ityala.
- (4) Ukuba umfundi uyalivuma ityala, usihlalo—
  - (a) makaqinisekise ukuba umfundi unolwazi yaye uyakuqonda oko alivumela kona ityala;
  - (b) makabuze umfundi, ummeli wakhe, okanye umzali (abazali) womfundi ukuba ngaba abanqweneli kuvakalisa zimvo zabo na phambi kokuba kuwiswe isohlwayo esifanelekileyo;
  - (c) makacele umfundi, ummeli wakhe, okanye umzali (abazali) womfundi 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 umfundi enetyala lokuziphatha kakubi kakhulu, yenza isigqibo sokuba ngaba—
    - (i) umfundi makakunqunyanyiswe na okwethuba elingekho ngaphezu kweentsuku ezisixhenxe 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 nomzali (abazali) ebekhutshelwe phandle aze kubaxelela ngesiphumo seengcebiso esizakungeniswa kwibhunga lolawulo.
- (5) Ukuba umfundi akalivumi ityala, usihlalo—
  - (a) makacele ukuba kufundwe ingxelo yophando ze kuncinwe ubungqina ukuxhasa isityholo, kubandakanywa nokubizwa kummangali (kwabamangali) kunye namangqina;

- (b) makanike umfundi, ummeli womfundi 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 nomzali (abazali) lo gama ikomiti ijongisisa ubungqina kwaye isenza isigqibo ngesigwebo; yaye
- (g) makabize kwakhona umfundi, ummeli womfundi kunye nomzali (abazali), abazise ngesigqibo sekomiti yoluleko;
- (6) Ukuba ikomiti yoluleko imfumanisa umfundi engenatyala, usihlalo—
  - (a) makambuze ukuba ngaba yena mfundi, ummeli womfundi okanye umzali (abazali) bayakunqwenela na ukuvakalisa izimvo zabo phambi kokwenziwa kwesigqibo ngesohlwayo esifanelekileyo; yaye
  - (b) makecele umfundi, ummeli wakhe, okanye umzali (abazali) womfundi kunye nawo onke amanye amaqela akhoyo apho, ngaphandle kwamalungu ekomiti yoluleko, ukuba balishiye igumbi elo, lo gama ikomiti ixoxa ngesohlwayo esifanelekileyo.
- (7) Ikomiti yoluleko ke ngoko mayenze isigqibo esifanelekileyo ithathele ingqalelo bonke ubungqina nezimvo ezivakalisiweyo, yaye esosigqibo sisenokuba ngaba—
  - (a) umfundi makanqunyanyiswe na okwethuba elingekho ngaphezu kweentsuku ezisixhenxe zokuhamba isikolo;
  - (b) nasiphi na esinye isohlwayo sokuziphatha kakubi kakhulu esichatshazelwe kumgaqo wokuziphatha kwabafundi weso sikolo masiwiselwe na umfundi; okanye
  - (c) kungacetyiswa na ukugxothwa komfundi kwiNtloko yeSebe.
- (8) Usihlalo makabize kwakhona umfundi, ummeli kunye nomzali (abazali) ebekhutshelwe phandle aze kubaxelela ngesiphumo seengcebiso esiza kungeniswa kwibhunga lolawulo.
- (9) Umfundi kunye nomzali (nabazali bakhe) mabaziswe, ngencwadi ebhaliweyo, ngesigqibo sebhunga lolawulo ukuba ngaba unetyala lokuziphatha kakubi kakhulu okanye akunjalo kunye nesohlwayo aza kusiwiselwa.

## 8. INgcebiso yokugxothwa eyenziwa libhunga lolawulo

- (1) (a) Apho ibhunga lolawulo licebisa iNtloko yeSebe ukuba umfundi makagxothwe, umzali (abazali) womfundi makaziswe, ngencwadi ebhaliweyo, ngesigqibo sebhunga lolawulo.
- (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—
  - (i) imizuzu yentlanganiso ekuthathwe kuyo isigqibo eso;
  - (ii) nayiphi na imbalelwano yokuvakalisa izimvo engeniswe ngumfundi okanye ngumzali (ngabazali) okanye ngummeli; kunye
  - (iii) nerekhodi epheleleyo yeengxoxo zetyala zekomiti yoluleko okanye zebhunga lolawulo.
- (2) Lo gama kusalindwe isigqibo seNtloko yeSebe, ibhunga lolawulo linokumnqumamisa okanye lilandise ixesha lokumnqumamisa umfundi ithuba elingekho lide ngaphezu kweentsuku ezi—14.
- (3) INtloko yeSebe mayithathele ingqalelo ingcebiso yebhunga lolawulo yaye mayenze isigqibo sokuba imgxothwe na okanye ingamgxothe umfundi kwiintsuku ezi- 14 zokufumana ingcebiso elolu hlobo.
- (4) Ukuba iNtloko yeSebe yenza isigqibo sokungamgxothe umfundi, iNtloko yeSebe inokuthi emva kothetha-thethwano nebhunga lolawulo, iwise isohlwayo esifanelekileyo kumfundi nemasiphunyezwe libhunga lolawulo.
- (5) Ukuba iNtloko yeSebe yenza isigqibo sokungamwiseli umfundi isohlwayo, iNtloko yeSebe mayiwubulisele umba lowo kwibhunga lolawulo, ngenjongo zokuba ibhunga lolawulo liwise isohlwayo esisesinye ngokomgaqo wokuziphatha wesikolo ochatshazelweyo kwisiqendu 8 salo Mthetho.
- (6) Ibhunga lolawulo nomzali (nabazali) womfundi mabaziswe ngokukhawuleza, ngencwadi ebhaliweyo, ngesigqibo seNtloko yeSebe, banikwe nezizathu ezivakalayo.
- (7) Ukuba iNtloko yeSebe iyamgxothe umfundi, isaziso esichatshazelwe 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 ezi-14 akuba efumene isaziso sokugxothwa.
- (2) Ikopi yesaziso sesibheni esichatshazelwe kummiselwana (1) mayithunyelwe nayo kwi-ofisi yeNtloko yeSebe nakusihlalo webhunga lolawulo.
- (3) Ukuba isibheni ngokummiselwana (1) esifakwe ngumfundi ogxothiweyo esikolweni siyaxhaswa (*upheld*) nguMphathiswa wePhondo,

uMphathiswa wePhondo makaqinisekise ukuba kuwiselwa umfundi isohlwayo esifanelekileyo kwiintsuku ezi-14 ukususela ngomhla isibheni esixhaswe ngawo.

- (4) Ukulungiselela iinjongo zokuwisela 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, ugxothiwe esikolweni, umzali (abazali) womfundi unokwenza 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 ekugqitwe ngayo yeNtloko yeSebe emva kokuthethana nenqununu.
- (4) Ekwenzeni isigqibo ngamalungiselelo angamanye okufakwa komfundi kwesinye isikolo okuchatshazelwe kummiselwana (1) okanye ngendlela yokufikelela kwimfundo echatshazelwe kummiselwana (3), iNtloko yeSebe—
- (a) mayithathe amanyathelo afanelekileyo okukhusela amalungelo abanye abafundi esikolweni; yaye
- (b) inokuthathela ingqalelo enye indlela yokubonelela ngemfundo kumfundi ochatshazelweyo kwimimiselwana (1) no-(3), nenokubandakanya:—
- (i) ukuqinisekisa ukuba umfundi uyamkelwa kwesinye isikolo kwalapha kwiphondo;
- (ii) ukufuna umfundi ukuba aye kwiingcebiso zoluleko lwegqondo (*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 unokucelwa yinqununu yesikolo ukuba abhale uviwo kwindawo eyahlukileyo kweyabafundi besikolo ebehamba kuso ngesha 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 nomhla wokuqalisa ukusebenza

Le Mimiselo ibizwa ngokuba yiMimiselo emalunga nokuLuleka, ukuNqumamisa nokuGxotha ABafundi kwiZikolo zikaRhulumente kwiPhondo leNtshona Koloni, yaye iya kuqalisa ukusebenza ngomhla we-2 Apreli 2012.