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Our reference: WCED Draft SOGI Guidelines (Public schools)

Date: 19 June 2020

Email: info@causeforjustice.org

TO: Adv. Lynn Coleridge-Zils
Director
Western Cape Education Department

By email: Lynn.Coleridge-Zils@westerncape.gov.za

Dear Adv Coleridge-Zils,

RE: Comments on the Draft Guidelines on Gender Identity and Sexual Orientation in Public Schools of the Western Cape Education Department (WCED)

1. We refer to the abovementioned Draft Guidelines ('the guidelines') hereby thank the WCED for the opportunity to comment thereon.
2. We present our written comments in the following order:
 - 2.1 Background to CFJ and interest in the guidelines
 - 2.2 The need for public hearings
 - 2.3 Substantive comments on the content of the guidelines
 - 2.4 Requests for response
 - 2.5 Conclusion
 - 2.6 Annexures:
 - 2.6.1 Drafting proposals for amending the wording of the guidelines – Annexure 'A'
 - 2.6.2 Questions requiring answers and/or clarification – Annexure 'B'

BACKGROUND TO CFJ AND INTEREST IN THE GUIDELINES

3. Cause for Justice ('CFJ' / 'we' / 'us' / 'our') is an a-political, non-partisan human rights organisation that exists to act in the public interest and in the interest of justice by promoting and protecting constitutional rights, freedoms and obligations in South Africa. The principal ways in which CFJ does this are through:
 - 3.1 Court proceedings;
 - 3.2 Public education and awareness campaigns; and

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- 3.3 Participating in the policy-making and legislative process, and other state decision-making structures.
4. All five of CFJ's core values gives it a keen interest in the guidelines, namely protecting the inherent worth of all persons and promoting the value of human dignity in society, protecting family life (including parental rights and children's rights), advocating for the responsible exercise of freedom, social justice (protection of vulnerable individuals and groups, including children), and ensuring accountable government action.
5. CFJ has been actively engaging with the national Department of Basic Education ('DBE') and other stakeholders in relation to the proposed roll-out state-sponsored Comprehensive Sexuality Education learning materials in public schools and the DBE's Draft Policy on Learner Pregnancies over the past two years.
6. Our office is located in Somerset West, City of Cape Town. All of our Board members and staff live and work in the Western Cape province and have children at school in the province.

THE NEED FOR PUBLIC HEARINGS

7. Due to the importance of the matters addressed in the guidelines and its potential far-reaching impact, we hereby request that the WCED hold public hearings across the province to ensure adequate public participation and meaningful engagement with the people of the Western Cape.
8. To the extent that intervention measures in relation to the Covid-19 pandemic create limitations on engagements in physical/geographical locations across the province, we propose that the WCED facilitate public hearings for the various geographical communities by way of virtual platforms.¹

SUBSTANTIVE COMMENTS ON THE CONTENT OF THE GUIDELINES

9. It is not the purpose of our comments herein to be exhaustive or comprehensive in answering all relevant and important issues in relation to the guidelines. The time allotted for written comments – one month – does not allow us to engage with the guidelines in an exhaustive and comprehensive fashion.
10. Rather, it is our aim to hereby initiate discussion and meaningful engagement with the WCED about the most pertinent matters of concern and requiring attention, as we see things.

¹ Given the potential far-reaching implications of these guidelines for learners who fall under the WCED public school system (i.e. not only current learners, but also hundreds of thousands of learners to come – and stats indicate that WCED learner numbers are increasing due to migration), there must be proper public engagement.

With COVID-19 lockdown regulations/safety pre-cautions, physical meetings may be difficult and for many too risky.

Unfortunately, it will be the already socio-economically vulnerable – learners and parents who either cannot afford the technology to have virtual meetings or who are most vulnerable to contracting and falling seriously ill with COVID-19 (given their reliance on the public transport, the public health system, general poorer health due to lack of resources to access the best or even enough food/nutrition to keep their bodies/immune systems strong) – it is most likely they who will be 'left out' if only virtual meetings are held or will be placed at risk of COVID-19 in the case of physical meetings.

The potential impact of these guidelines is sufficiently significant – it may well impact learners beyond their schools years (for the rest of their lives, in fact) and also the fabric of the society those learners will form part of and influence, We accordingly advise that the WCED do not move to finalise the guidelines until adequate public consultations have been held – so that the vulnerable and marginalized who are less able to participate in online meetings, can attend and make their voice heard as well.

Constitutional framework applicable to the guidelines

11. At the outset, we note that the Constitutional context of a policy on gender identity and sexual orientation for public schools – in other words, for learners who attend public schools – is section 28 (Children) and its intersection with section 29 (Education) of the Bill of Rights ('BoR').²
12. In terms of section 28(2) of the BoR -

"A **child's best interests are of paramount importance** in every matter concerning the child."
13. In terms of section 29(1)(a) -

"Everyone has the right- to a basic education ..."
14. Also, because each child is a unique individual, regard must at all times be had for the child's -
 - Inherent worth and right to human dignity (section 10, BoR);
 - Equality before the law and right to equality (including to not be discriminated against unfairly) (section 9, BoR);
 - Right to freedom and security of the person (section 12, BoR);
 - Right to privacy (section 14, BoR);
 - Right to freedom of conscience, religion, thought, belief and opinion (section 15, BoR); and
 - Right to freedom of expression (section 16, BoR).
15. In the context of the school environment, the practical outworking of these rights is complex due to the diverse nature of South African society and of individual school communities. While a school cannot have multiple sets of rules for each group represented in the school community, it can in the application of the principle of democratic rule, make reasonable accommodations for individuals, and should attempt to do so whenever possible and to the extent reasonable and practicable in the circumstances in order to respect and protect individuals' rights.
16. In the Constitutional Court's judgment in *Minister of Home Affairs and Another v Fourie and Another*,³ the court held that:

*"The hallmark of an open and democratic society is its capacity to accommodate and manage difference of intensely-held world views and lifestyles in a reasonable and fair manner. The objective of the Constitution is to allow different concepts about the nature of human existence to inhabit the same public realm, and to do so in a manner that is not mutually destructive and that at the same time enables government to function in a way that shows equal concern and respect for all."*⁴
17. Although this task of showing equal concern and respect for all and treating all equally and fairly is near impossible, the above pronouncement from the Constitutional Court offers much needed perspective and

² Chapter 2 of the Constitution of the Republic of South Africa, 1996 (as amended) ('the Constitution').

³ *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005)

⁴ *Ibid* para [95].

guidance. One of the main challenges for any society, community and institution that seeks to accommodate diversity is to do so in a manner that is contextually appropriate and gives due weight to the diverse interests represented *without exchanging* reasonable and fair accommodation and showing equal concern and respect for all, *for* special or preferential treatment/favouritism and the effective destruction of certain concepts about the nature of human existence in order to elevate certain others.

First concern: Ideological nature of the guidelines

18. Our first concern with the guidelines is that it promotes a particular concept about the nature of human existence, which creates the risk of it being perceived as ideologically biased, thereby bringing the WCED's commitment to the neutrality of the state into question. By promoting a particular ideological narrative or agenda (or being perceived as doing so), the guidelines create the risk of politicising school communities and/or making them vulnerable to influence, interference, infiltration and/or exploitation by progressive activists promoting radical gender ideology.⁵
19. Examples of how and where the guidelines either express actual ideological bias, or could be perceived as doing so, include (amongst others – this is not an exhaustive list):
- 19.1 **Use of terminology – both terminologies used, as well as relevant terminology and concepts omitted:**

- Use of the term “**sex assigned at birth**”, “**assigned birth sex**” and “**birth sex**” in relation to homosexual (lesbian / gay), bi-sexual and transgender persons –

Biological sex is neither merely externally determined *by* nor assigned *at* birth. It is also not a mere legal label that is slapped on a person at birth – rather, it is coded into each person's DNA and is as such fundamental to the human identity. The term “sex assigned at birth” has limited legitimate application in the context of a small number of intersex persons who due to anomalies of sex characteristics may be assigned a sex at birth. However, the use of the term in relation to “gender identity” generally, for application across the board, is indicative of an ideology that “gender” and by implication “gender identity” can be severed completely from biological sex, because (so the argument goes) sex could have been incorrectly externally ‘assigned’ at birth. This is not a view that is universally held and the guidelines’ application of the terminology in this manner, is demonstrative of ideological bias.

⁵ : Radical feminists, unlike the so-called ‘first wave’ of feminists who advocated for equality between the sexes, instead call for cultural change. Radical feminists, such as Sheila Rowbotham, for example, argue, ‘democratic control has to be extended to the circumstances of everyday life.’ Such a prescriptive state (the public sphere) would encroach into the private sphere, so as to enforce feminist norms.

The radical gender ideology also seeks to distinguish between gender and sex. In 1955 psychologist John Money made a distinction between the physical differences of men and women, sex, and the behaviour and roles a person expresses, gender. In the 1960s and 1970s, second-wave or radical feminists took this further to argue that gender was constructed by society; thus only nurture, but no nature. In Money's understanding of gender, and others like him, they were not seeking to deny the underlying biological reality of a person's sex. With the radical feminist idea though, there was a clear and distinct shift from biology to ideology. To affect these cultural changes in society, this ideological approach calls for a prescriptive state and an intrusion of the public into the personal. This is encapsulated in the mantra of the second wave feminists that the ‘personal is political’. This is focus on culture (norms, values and beliefs) with the understanding that it should be the state that should effect this culture change. The WCED guidelines certainly moves beyond the neutral state – it is not biology per se, but rather is imbued with ideology, which is being imposed on the broader society.

In order to allay this bias or perception of bias, we propose that the above terms be replaced with the term 'biological sex' throughout the guidelines.

- **Lack of relevant and necessary definitions:**

- **“gender” –**

There is no definition of gender in the guidelines, although it is critical for purposes of an understanding of difference that may exist between (biological) sex and gender identity. While there is not full consensus about the meaning of gender, the overriding view is that gender has to do with social expression of the bodily / biological reality of male and female. Even on the view of activists of radical feminist gender ideology / transgender ideology - that gender is a social construct - hermeneutically and logically gender identity must then be a person's subjective perception of such social construct as it applies to his/her psychosocial reality and bodily existence. Either way, whether gender is understood as having a biological origin which is socially shaped or is free-floating (fluid/existing on a spectrum/not grounded in biology but in the subjective realities people create for themselves - the guidelines cannot effectively deal with the weighty matters it seeks to address, such as 'gender identity', without expressly defining "gender", on which the definitions of 'gender identity' (as well as 'gender expression' and 'transgender') and 'sexual orientation' are predicated.⁶

- **“biological sex” –**

Because the term “sex assigned at birth” only has limited legitimate application in relation to some intersex persons, the guidelines cannot be interpreted and applied without a definition of biological sex, which is a prerequisite for understanding the term gender identity as it relates to transgender persons.⁷

- **“gender dysphoria”, “transient/temporary gender dysphoria” and “persistent gender dysphoria” –**

Without these definitions, the guidelines are inadequate and insufficient to meaningfully engage with the subject matter it seeks to address and give practical guidance on. There are distinct groups within the broad umbrella of 'transgender persons'.

- It can include persons who self-identify more with the opposite sex than with their own sex, but who do not experience significant distress or impairment because of the discord/incongruence between biological sex and experienced gender / internal sense of gender.
- It can also include persons experiencing gender incongruence for whom it does cause significant distress and impairment of normal functioning. Such individuals are typically diagnosed with a pathological disorder, gender dysphoria. According to the best available statistics, between 80 % and 95 % of adolescent gender dysphoric children naturally grow out of it and accept their biological sex by late adolescence.⁸ In only 5% to 20% of gender

⁶ We propose wording for purposes of inserting a definition of “gender” in Annexure 'A', attached hereto.

⁷ We propose wording for purposes of inserting a definition of “biological sex” in Annexure 'A', attached hereto.

⁸ Cohen-Kettenis PT, Delemarre-van de Waal HA, Gooren LJ. The treatment of adolescent transsexuals: changing insights. J Sexual Med 2008;5:1892–1897.

confused children (which make up an even smaller percentage of the general population) does the gender dysphoria persist into adulthood. It is not possible for clinicians to accurately predict which children will persist in transgender identity into adulthood.

- It also includes individuals who suffer from other mental/psychological problems, of which gender incongruence is a symptom, as well as individuals who “catch-on” due to social contagion⁹ and those who are incorrectly diagnosed with gender dysphoria.¹⁰

Because up to 95% of transgender children grow out of it (on the low side, up to 80%), the approach of affirming gender incongruence in all transgender learners, which will more likely than not serve to intensify and prolong these learners’ gender confusion, is unlikely to be in the best interests of the vast majority of such learners. To the extent that the guidelines promote affirmation of transgender identities and encourage or recommend this through naming conventions, school dress code, cross-sex participation in sports, cross-sex use of intimate spaces, placing and sleeping arrangements, admissions policies, diversity movements within schools, SOGI sensitisation (curricular and co-curricular interventions), the guidelines promote a distinct radical/progressive gender ideology.

- **“gender reassignment” or “gender affirming actions” –**

- The reference to “reassigning a person’s sex by changing physiological or other sexual characteristics” is a deeply dishonest and misleading statement. This builds on from the misrepresentation about “sex assigned at birth”. Because biological sex is fixed or determined at the genetic/DNA level and cannot be reassigned or changed, representing sex reassignment as a possibility is to posit a particular ideological proposition – that sex is somehow malleable. To represent this unscientific and ideological proposition without reference to the costs, risks and harms associated with some interventions to arrest the natural development and processes of the human body (e.g. puberty blocking, cross-sex hormone administration), does not only entail the promotion of an ideology, but is highly unethical and antithetical to the best interests of all children, including the transgender child.
- The practice by some so-called progressive physicians and clinicians who undertake these interventions on children, is at worst - unethical practice exposing them to legal/professional liability - and at best - highly experimental – i.e. medical experimentation on children. Schools should either reject and oppose such practice, or at the very least remain neutral, to ensure that they do not open themselves up to legal liability for cooperating in a process that causes either temporary or permanent harm to learners (children).

- **“LGBTQI+” –**

The use of this term throughout the guidelines – which is a political term representing a particular special interest conglomerate and ideological narrative and agenda – is another example of how a particular ideology is promoted. The use of the term LGBTQI+ is in most instances in the guidelines both unnecessary and inaccurate, conflating concepts that are unrelated, *but for* the

⁹ <https://thefederalist.com/2018/08/31/explosive-ivy-league-study-repressed-for-finding-transgender-kids-may-be-a-social-contagion/>

¹⁰ <https://www.telegraph.co.uk/news/2019/12/12/childrens-transgender-clinic-hit-35-resignations-three-years/>

ideological/political agenda it supports. For example, in each of clauses 6, 7, 9 and 12 “LGBTQI+” is used.

In each of the above instances, lesbian, gay or bisexual learners are not contemplated, implying that the use of LGBTQI+ is for effect – to endorse a particular ideology / narrative / agenda. Furthermore, it is categorically the case that sexual attraction preference (LGB), gender incongruence (T) and anomalies of sexual development/sex characteristics (I) are conceptually unrelated – and are only connected in the term LGBTQI+ by virtue of a shared underlying ideological agenda to drive social change in society.

- 19.2 **Clause 3.1 (c)** speaks for itself: The purpose of the guideline is to “*promote gender identity and gender expression.*” Seeing as the gender identity and gender expression of learners who do *not* have gender incongruence are not addressed in the guideline, it is only fair to assume that the clause is to be interpreted with reference to transgender learners – in which case the clause has in mind the promotion of transgender identities/ideology. It is concerning, and completely illegitimate, for the state (WCED) to promote and impose particular ideological positions and agendas. The state is supposed to remain ideologically neutral and allow the citizenry/society to express themselves in accordance with their rights and freedoms and to order their affairs within the bounds of the constitutional and legal framework they have democratically elected to abide by.
- 19.3 We are also concerned about where (from whom, when and how) the WCED obtained its mandate to develop these guidelines, as we are unaware of any dialogue process which might have led to a mandate for the WCED. The more democratic way to have approached this issue, would have been to launch a process similar to the Ministerial Dialogues on Marriage Law Reform (National Department of Home Affairs process currently underway), to have extensive discussions to determine the mandate of the people before starting to draft policy documents. To the extent that such a dialoguing process to obtain a mandate from the people has not taken place, serious questions arise about influences of special interest groups on the WCED behind the scenes.

Second concern: Subversion of parental rights and authority

20. As early as the **definition of “parent”** in Clause 1, there is an apparent watering down of parental rights and authority in the guidelines:
- 20.1 **Sub-paragraph (b)** excludes parents who do not have joint custody or whose custody-rights may have been suspended (potentially temporarily) in relation to their child. This would allow schools, in acting in accordance with the guidelines in its current format, to exclude certain parents from participation and/or decision-making in relation to their children.
- 20.2 **Sub-paragraph (c)** removes parental rights and authority completely in circumstances where someone else, for example an educator who undertakes to act *in loco parentis*, even without being authorised (mandated) to that end by the learners’ parents.
21. Looking at the opportunities for participation and decision-making contemplated in the guidelines, further concerns about subversion of parental rights and authority arise, for example (not an exhaustive list):

21.1. Clauses 5.1.1 and 5.1.2 –

The guidelines encourages schools, when a learner discloses his/her gender identity or sexual orientation to someone at school, to refer the learner to a social worker, psychologist or any other organisation which deals with matters of this nature in order to facilitate counselling and assistance – and the principal may manage this process. This is a flagrant denial and violation of parental rights and authority and undermines the family. At most, the school can report the learner's disclosure to the parents – it is for the parents, together with the child, to decide what happens next. To create space for schools to interfere with parent-child relationships in the most intimate matters concerning the child, cannot be constitutionally justified.

21.2. Clause 5.1.4 –

This clause similarly goes over the head of parents, as the principal may (with the consent of the learner) take the initiative to convene a meeting with the learner and parents. Again, the school is not allowed to interject itself in something that falls squarely and solely within the purview of parents. This is an unjustifiable infringement of parental rights and authority, which cannot be in the best interests of the child/learner.

21.3. Clauses 9, 10, 14, 15 –

No mention is made of consulting parents prior to making decisions about opening up intimate spaces for cross-sex use, sleeping arrangements in hostels and on excursions, using school curriculum and assemblies to promote gender ideology, and providing training to learners about gender diversity. Again, this is indicative of undermining parental rights and authority, which in the light of the Constitution, international law on the rights and authority of parents, and Education White Paper I, 1995, is both unacceptable and unlawful. According to the White Paper:

“Parents or guardians have the primary responsibility for the education of their children, and have the **right to be consulted** by state authorities with respect to the **form** that education should take and to **take part in its governance**. **Parents have the inalienable right to choose the form of education which is best for their children, particularly in the early years of schooling, whether provided by the State or not, subject to reasonable safeguards which may be required by law.** The parents' right to choose includes choice of the **language, cultural or religious foundation** of the child's education, with due respect to the rights of others and the rights of choice of the growing child.” (Quote from the White Paper on Education, 1995 (White Paper One))

22. The guidelines in its current form, unjustifiably undermine parental rights and authority and require substantial redrafting to correct this wrong. We propose wording for purposes of redrafting in Annexure 'A', attached hereto.

Third concern: Lack of equal respect and concern for learners who do not identify as transgender, as well as school staff AND elevating the rights and interests of transgender learners above others

23. Another area where the guidelines fall short is in showing equal respect and concern for learners who do not identify as transgender, as well as staff, and their rights. This is coupled with the elevation of the rights and interests of transgender learners above other learners.

24. **Examples include:**

24.1 **Clause 3.1(a) and (b) –**

The stated purposes of the guidelines are to create an environment free from discrimination. This goes beyond the constitutional injunction, which allows for **FAIR** discrimination, and only prohibits **UNFAIR** discrimination. The result is to promote an approach to real issues that are presented in a skewed and constitutionally unbalanced manner.

24.2 **Clause 6.1 –**

Promoting a right for the transgender learner to choose the first name by which he or she wants to be called, but omitting the right of other learners, educators and staff to not be compelled to call the transgender learner by his/her preferred name or pronoun. Compelled or forced speech is an unjustified violation of the right to freedom of expression and the guidelines' omission of provision for others' rights shows ideological intent, which is contrary to the principle of state neutrality.

24.3 **Clause 8 –**

Promoting allowance for cross-sex sports participation fails to take proper account of the equality and non-discrimination rights and interests of for example biological girls who may be compelled to compete against biological males who identify as girls. Due to biological differences between men and women, men have a distinct advantage over women in athletic performance (as a general proposition) in most sports. The male-female categories in sports competition was created for the purpose of fairness and is based on biological differences between the sexes. To maintain this distinction is to maintain fairness in sport and does not unfairly discriminate against transgender learners, whose biological sex is not affected by their gender incongruence, i.e. the fact of identifying subjectively with the opposite sex. Transgender learners are still able to compete on equal footing with their biological peer group. To promote a system that accommodates biological males' participation in female categories, goes beyond reasonable accommodation of the transgender learner and results in unfair treatment of both the transgender learner (who is given an unfair advantage) and biological girls (who are disadvantaged by having to compete against biological males).

Apart from fairness, there is also the issue of real physical/bodily danger or risk of serious bodily harm to biological girls who compete against biological boys in contact sports. This is a serious concern and cannot merely be put down as part of the collateral of implementing radical gender ideologies in schools.

24.4 **Clauses 9.1, 10 –**

Downplaying the best interests and constitutional rights of other learners to privacy, dignity, personal/bodily safety and security as "sensitivities", rather than giving it its due as fundamental rights, creates a perception that the rights and interests of transgender learners are favoured or given preference at the expense of other learners.

24.5 **Clauses 7, 11, 12, 13, 14, 15 –**

The promotion of transgender affirmation by way of cross-sex dressing, admissions policies of single sex schools, creating an affirming environment, curriculum development and external training in line with progressive/radical gender ideology, *without considering the impact of these interventions on learners,*

especially young and impressionable children, is highly problematic. The guidelines to not take adequate account of the best interests of other learners, the confusion and trauma they may experience and that they may then suffer issues regarding their own gender identity because of confusing ideological messaging about gender being fluid, existing along a spectrum and being detached from bodily/biological sex.

Fourth concern: Interference with the role and authority of schools and the national executive authority

25. With the decentralisation of school education post-Apartheid, parents – through their majority on each individual school’s governing body – became the effective final authority on most matters in the life of the school, apart from those matters specifically excepted and given to either the national or provincial education departments.
26. As far as school rules and policies are concerned, each school – which constitutes both a separate legal entity and comprises a so-called tri-partite public-private partnership between the school community, the national and provincial education departments – has the autonomy to make its own rules and policies under the leadership and authority of the school governing body. It is also important to remember that public schools are not ‘state schools’ – they are neither part of the state nor are they state organs – although they are ‘state-aided institutions’.
27. Although the guidelines are legally not prescriptive or binding on public schools, and the language used confirms this, because of its ideologically biased approach to the subject matter, there is a very real risk that the guidelines may influence schools unduly in their approach to the issues.
28. In addition, the guidelines also risk trampling on the domain of the national education department.
29. **Examples of problematic content in the guidelines include:**
 - 29.1 **Clause 5, 15.4 –**

The guidance provided addresses the actions of school management (the principal), but bypasses the school governing body, who is responsible for development and instituting school rules and policies and to whom school management (the principal) must answer. The guidance accordingly interferes with the institutional authority of schools and undermine school governing bodies’ role and function.
 - 29.2 Throughout the guidelines the WCED “encourages” schools, makes “recommendations”, makes certain permissive statements (e.g. “Learners of all sexual orientations and gender identities **may be encouraged** to participate.. “, “LGBTQI+ learners **can participate**.. “), and makes prescriptive statements (e.g. “**Ensure that** all learners.. “). Because the guidelines promote a particular ideological position, there is a real risk of being perceived by schools as something more than mere guidance, but as a framework to which its own rules and policies should conform and within which same should function. Although such a perception may not have been intended, the current formulation of the guidelines creates this impression.

29.3 **Clause 14 –**

The guidelines propose interference with school curriculum, which falls within the sole purview of the National Department of Basic Education. The clause accordingly proposes and promotes *ultra vires*, i.e. unlawful, conduct by schools. Section 6A of the South African Schools Act, 1996 (as amended) provides as follows:

Curriculum and assessment

- (1) The Minister must, by notice in the *Government Gazette*, determine-
- (a) a national **curriculum statement** indicating the minimum **outcomes or standards**; and
 - (b) a national **process and procedures** for the **assessment** of learner **achievement**.

29.4 **Clause 15 –**

Training and ongoing professional development by the WCED is touted and promoted as something that will necessarily be provided. Again, the language used does not make it clear that schools are entitled to choose their own service providers for purposes of the trainings contemplated and that the WCED is but one possible service provider for schools to choose from. If the guidelines were ideologically neutral, the current wording of the clause would have been less concerning, but in its current form the guidelines suggest that the type of training that can be expected to be provided by the WCED will be promoting progressive/radical gender ideology.

- 30. In light of the above, it is critical that the guidelines be improved and amended by adding a clause that specifically states in so many words that the guidelines are not prescriptive or binding to any extent. This addition would address the risk of unduly influencing schools in their own policy- and rule-making processes.
- 31. We propose wording for purposes of redrafting to address some of the above concerns in Annexure 'A', attached hereto.

Miscellaneous concerns

32. **Clause 15.4 –**

We find it alarming that the guidelines suggest the co-opting of learners ('the Representative Council of Learners' ('RCL')) as gender activists to promote transgender ideology in their schools. This proposal constitutes child exploitation and/or direct coercion, alternatively indirect coercion of children in the promotion of a particular ideological agenda.

Younger learners typically look up to, and in some cases even idolise their leaders. The promotion of transgender ideology by leaders (principal, school management team and RCL) would constitute a form of undue influence or indoctrination of vulnerable children.

- 33. We address a number of other concerns in the attached Annexure 'A', containing comments/reasoning and drafting proposals to address additional concerns.

34. Some of our concerns require answers to specific questions in relation to process, approach, motivation, driving forces, etc. – which we set out in the attached Annexure 'B'.

REQUESTS FOR RESPONSE

35. As noted at the outset, we trust that these comments can form part of the start of meaningful engagement between the WCED and ourselves in respect of the topic at hand. We accordingly request your response regarding whether the WCED is open to such further and more in-depth engagement for the purposes of acting in the best interests of all learners (present and future) in the Western Cape public schooling system.
36. We also request your response whether, when, where and how the WCED will hold public consultations with the people of the Western Cape in their communities as part of the process of developing these guidelines.
37. We finally request your response to our comments above, as well as our drafting proposals (Annexure 'A') and our specific questions (Annexure 'B').

CONCLUSION

38. We trust that the inputs above and attached are of assistance to you and look forward to your response for purposes of continued engagement in relation to this matter.

Yours faithfully,

Ryan Smit
Director: Law and Policy

Professionals and practitioners consulted in the process of drafting these comments:

- (1) **Prof. Reitze Rodseth** MBChB (Pret); DCH (SA); DA (SA); FCA (SA); MMed Anaesth (UKZN); Cert Crit Care (SA); MSc HRM (McMaster); PhD Anaesth (UKZN). Rodseth and Partners.
- (2) **Mrs. Liesl Pretorius**; Attorney and Legal Advisor, Cause for Justice
- (3) **Prof. Nicola de Jager**; PhD (Political Science); Associate Professor: Department of Political Science; Co-Editor-in-Chief: Commonwealth & Comparative Politics; Research Associate: Transformation Research Unit; Faculty of Arts and Social Sciences, University of Stellenbosch