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To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Heads: Management and Governance (district offices), Deputy Directors: Corporate Services (district offices), Circuit Managers, District Safe Schools Coordinators, Principals of public schools and Chairpersons of governing bodies

Short summary: *Implications of the Prince judgment on the decriminalisation of the private use and cultivation of cannabis on school legislation and policies.*

Subject: Amended guidelines for random search and seizure, and alcoholic liquor and illegal drug testing at public schools in response to the 2018 Constitutional Court judgment on the decriminalisation of the private use of cannabis

1. This circular must be read in conjunction with **Circular 0024/2011**, dated 03 October 2011.
2. On 18 September 2018, the Constitutional Court handed down judgment in the case of the Minister of Justice and Constitutional Development and Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton [2018] ZACC 30; 2018 (10) BCLR 1220 (CC); 2018 (6) SA 393 (CC); 2019 (1) SACR 14 (CC) ("the Prince judgment"), regarding the private use of cannabis (dagga) in South Africa.

3. The Constitutional Court's order declaring legislation criminalising the use, possession and cultivation of cannabis by an adult in a private place for that adult's personal consumption in private unconstitutional¹, has implications for school policy regarding substance abuse by learners.
4. These implications² are as follows:
 - a) Only an adult person (18 years and older) may use or be in possession of cannabis in private for his or her personal consumption in private.
 - b) The use, including smoking, of cannabis in public or in the presence of children or non-consenting adults is not permitted.
 - c) The use and possession of cannabis in private, other than by an adult for his or her personal consumption, is prohibited and remains unlawful.
 - d) The cultivation of cannabis by an adult in a private place for his or her personal consumption in private is no longer a criminal offence.

5. **Relevance to schools**

- 5.1 The judgment poses a few challenges for schools. Learners aged 18 and above, who are by law adults, may lawfully use or be in possession of cannabis for their personal consumption in private. This equally applies to educators and other school staff, some of whom often reside on the school grounds.
- 5.2 The question arises as to what would qualify as a private place. The Constitutional Court emphasised that the judgment should be understood in the context of cannabis only being accessible for use, possession and cultivation by an adult person, in private. Furthermore, that "in private" is not confined to just one's "home or private dwelling". Put differently, provided that an adult person uses, possesses or cultivates cannabis in private for his or her personal consumption, such conduct will not be subject to criminal sanction.
- 5.3 As the workplace is seen as a "public space", if the employer's policy prohibits the use and/or possession of cannabis in the workplace an adult employee may be guilty of misconduct should he or she be found in possession thereof whilst on the employer's premises. As a school is a public space, an educator, any other staff member, person or any learner under or over the age of 18 years, will be in violation of the law if they use or cultivate cannabis on the school premises.

¹ Sections 4(b) and 5(b) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), read with Part III of Schedule 2 of that Act and section 22A(9)(a)(i) of the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965), were declared to be inconsistent with section 14 of the Constitution of the Republic of South Africa, 1996, to the extent that they criminalise the use or possession in private or cultivation in a private place of cannabis by an adult for his or her own personal consumption in private.

² See paragraph 109 of the Prince judgment.

- 5.4 Accordingly, the position remains that learners under the age of 18 years old may not use, possess or cultivate cannabis, whether in private or elsewhere. The South African Schools Act (SASA), 1996 (Act 84 of 1996), the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), and the *Regulations for Safety Measures at Public Schools*, published in *Government Gazette* No. 22754 of 12 October 2001, as amended by *Government Gazette* No. 29376 of 10 November 2006 ("the Safety Regulations"), apply as they did prior to the Prince judgment in respect of all learners under the age of 18 years old. However, the implications of the Prince judgment are that learners who are 18 years and older may use, possess and cultivate cannabis in private or in a private dwelling except in the presence of children and non-consenting adults.
- 5.5 A school is not a private place since the general public has access thereto and many people frequent a school for a variety of reasons. Furthermore, there are minors and other adults who may be non-consenting adults at a school. As such, no adult can use or cultivate cannabis at a school, on school property or at a school event.
6. Section 8A of SASA as well as section 45A of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), allow random search and seizure and testing for the use of illegal drugs. The Safety Regulations also deal with the possession and use of illegal drugs. However, the use, possession and cultivation of cannabis by an adult is no longer illegal unless it does not take place in private or in a private dwelling. All schools should note that while a learner 18 years or older cannot use cannabis at school, on school property or at a school event, that learner may fail any random drug tests if they have used cannabis as lawfully permitted and as outlined in the Prince judgment.
7. In terms of the Safety Regulations, schools have been declared drug-free and violence-free zones. However, it must be noted that the Safety Regulations specifically refer to illegal drugs. As the status quo regarding the prohibition on the use and/or cultivation of cannabis in public remains, schools must display clear signs at the school entrance stating that any person who enters the school may be subjected to a search and that right of access is reserved.
8. Drug testing at a school should be supported by the school's code of conduct or intoxicating substances/drug policy, which must provide clear guiding principles on the steps to be taken should anyone be found to be in breach of such rules. Such rules may need to be revised following the Prince judgment in order to include a specific reference to cannabis as a prohibited substance which cannot be used, cultivated or possessed on the school's premises. To ensure that everyone understands the rights and responsibilities of learners regarding drug abuse and the use of mind-altering substances, each school should introduce a drug testing policy as part of its admissions policy, which is to be signed and accepted by both learners and parents.

9. The contents of the circular should be brought to the attention of educators, non-educators, parents, governing body chairpersons and all governing body members, learners and community members concerned.

SIGNED: B WALTERS

HEAD: EDUCATION

DATE: 2021-06-10