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Wes-Kaap Onderwysdepartement

Western Cape Education Department

ISEBE IeMfundo IeNtshona Koloni

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TO: CHIEF DIRECTORS, DIRECTORS, IMG MANAGERS, CIRCUIT TEAM MANAGERS, IMG ADVISERS; PRINCIPALS, GOVERNING BODIES, EDUCATORS AND LEARNERS OF PUBLIC PRIMARY AND SECONDARY SCHOOLS

BRIEF SUMMARY: *This circular introduces the Amendments to the South African Schools Act, 1996 (Act 84 of 1996) (hereinafter referred to as 'SASA'), as promulgated in the Education Laws Amendment Act, 2007 (Act 31 of 2007), dealing with random search and seizure and drug testing at schools, and further sets out the devices to be used for drug testing and the procedure to be followed in terms of Notice 1140, Government Gazette No. 31417 of 19 September 2008.*

SUBJECT: RANDOM SEARCHES AND SEIZURES AND DRUG TESTING AT SCHOOLS

1. In terms of Section 8A (1) of SASA, no person may bring a dangerous object or illegal drug onto school premises or have such object or drug in his or her possession on school premises or during any school activity.
2. Section 8A (2) of SASA enjoins the principal or his or her delegate, subject to subsection (3), to, at random, search any group of learners, or the property of a group of learners, for any dangerous object or illegal drug if a fair and reasonable suspicion has been established.
3. Section 1 of SASA defines the following terms:

- **Dangerous objects**, as referring to an explosive material or device; any firearm or gas weapon; any article, object or instrument that may be employed to cause harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or any object declared by the Minister, in the Gazette, to be dangerous;
- **Illegal drugs**, as any unlawful substance that has a psychological or physiological effect; or any substance having such effect that is possessed unlawfully; and
- **School activity**, as meaning any official educational, cultural, recreational or social activity of the school within or outside the school premises.

4. SASA contains elaborate procedures in Section 8A, subsection (1) to (14) and regulates the circumstances and conditions under which random search and seizure and drug testing in schools may be conducted and dealt with. The following critical provisions are highlighted:
 - (a) The principal or his/her delegate must conduct the body search, but must be of the same gender as the learner. The principal or his/her delegate may also, at random, administer urine or other non-invasive tests to a learner. These activities may be carried out based on a fair and reasonable suspicion that dangerous objects and/or illegal drugs may be found on school premises or during a school activity;
 - (b) Where such dangerous object or illegal drug has been seized by the principal or his/her delegate, they must be correctly marked and labelled with full particulars of the learner, and any dangerous object or illegal drug confiscated must be handed over to the police, who in turn, shall issue to the principal or his/her delegate, an official receipt;

- (c) The implicated learner may be subjected to disciplinary proceedings in a case where a dangerous object or illegal drug has been found or where such a learner tested positive for an illegal substance;
 - (d) However, no criminal proceedings may be instituted **by the school against the learner** in respect of being in possession of a dangerous object or an illegal drug or testing positive for an illegal substance;
5. Further guidelines on random search and seizure and drug testing are dealt with in [Annexure B](#) to the Government Notice 1140 of 2008, and include the following:
 - General guidelines;
 - The approach to search and seizure;
 - Practical steps to search and seizure;
 - Management of possible interruption during the search;
 - Time of search;
 - Delegation in case the principal is not available;
 - How to deal with a learner who is unwilling to be searched;
 - How to deal with an emergency that involves circumstances not necessarily provided for in section 8A of the Act;
 - Seizure procedure;
 - Guidelines to seizure;
 - The approach to drug testing.
6. In terms of Section 8A (11) of SASA, the Minister is enjoined to identify the list of devices and procedure to be followed for drug testing, and publish such relevant information in the Gazette. The following list of devices have been identified by the Minister, and the school must only use one of these devices:
 - Drug detective wipe detection system for surfaces;
 - One step home cocaine test strip;
 - Multi-drug test;
 - Quicktox drug screen dipcard test;
 - Monitect drug screen cassette test;
 - Toxcup drug screen cup test;
 - Multipanel drug testing device;
 - Smart check drug screen test;
 - Drug smart cup;
 - Avitar oral screen 4 or drugometer.
7. Section 8A serves as a limitation to the Constitutional rights conferred in the Bill of Human Rights enshrined in the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and must therefore be implemented with due regard to human dignity, privacy and the right to property of the learners concerned.
8. [Annexure A](#) of the Schedule to Government Notice 1140 of 2008 stipulates a list of signs and symptoms that might point to possible drug use (as derived from the South African Council on Alcoholism and Dependence (SANCA)), which are discussed under the following sub-headings:
 - Physical indicators;
 - Behavioural indicators;
 - Emotional indicators;
 - Social indicators
9. The [Education Laws Amendment Act, 2007 \(Act 31 of 2007\)](#), can be found in the *Government Gazette*, 4 May 2007, and the Government [Notice 1140](#) can also be obtained on www.education.gov.za.
10. Please bring the contents of this circular to the attention of all educators, parents, and learners and all concerned.

SIGNED: RB SWARTZ
HEAD: EDUCATION
DATE: 2009:06:30

Grand Central Towers, Lower Parliament Street, Private Bag X9114, Cape Town 8000
Please quote reference numbers in all correspondence
SAFE SCHOOLS: 0800 45 46 47
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[Annexure A: Other relevant information to be considered before the drug testing device may be used](#) (size: 181 KB)

[Annexure B: Guidelines for random search and seizure and drug testing at schools](#) (size: 519 KB)

[Education Laws Amendment Act, 2007: General Explanatory Note](#) (size: 450 KB)

[Notice 1140 of 2008](#) (size: 404 KB)

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