

ANNEXURE B

GUIDELINES FOR RANDOM SEARCH AND SEIZURE AND DRUG TESTING AT SCHOOLS

1. Introduction

Search and seizure is based on the principles of common sense. It is a procedure that is conducted within the confines of an *in loco parentis* relationship between the educator and the learner. The focus is on identifying the drug abuse problem, and learners who are victims of a dependency must be assisted, as provided for in the system. The Guidelines are aimed at establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of the quality of the learning process.

2. Random search and seizure and drug testing at schools

2.1 General guidelines

2.1.1 The principal may authorise the presence on the school premises of dangerous objects, such as scissors, needles and knives, for legitimate educational purposes (section 8A(1)), and of medicines prescribed by a doctor. However, all these objects must be kept strictly under lock and key.

2.1.2 The principal or his or her delegate may at random search a group of learners only after a fair and reasonable suspicion has been established (section 8A(2)). The following may be an indication of the presence of illegal drugs and dangerous objects at a school:

- (a) Whistleblowers informing the principal about their presence.
- (b) Scent of dagga on the school premises.
- (c) Reports from parents.
- (d) Traces of drugs on the school premises.
- (e) Threats of the use of dangerous objects against other learners.
- (f) Injury as a result of the use of such objects.
- (g) Any other reasonable indication.

In the absence of such indications, the principal may not conduct random search and seizure and drug testing.

2.1.3 The principal or his or her delegate must conduct the search in a manner that is reasonable and proportional to the suspected illegal activity (section 8A(3)(b)). The following serves as an illustration of this provision:

- (a) Where there is a suspicion that learners have illegal drugs or dangerous objects in their school bags or lockers, the random search must be directed at the learners' school bags and lockers only and may not be extended to their bodies.
- (b) Where there is a suspicion that learners are carrying illegal drugs or dangerous objects in their pockets or elsewhere in their clothing, only

their clothing and pockets may be searched, and not their property (such as school bags and lockers).

- (c)(i) If there is doubt about where the illegal drugs and/or dangerous objects are hidden, the search must initially be directed at the belongings, such as school bags and lockers, of the group of learners.
- (ii) If nothing is found in the school bags and lockers, the search may be directed at the clothes and body.

3. The approach to search and seizure

- 3.1 The search must be conducted by the principal or his or her delegate, if he or she is of the same gender as the learner.
- 3.2 The search must be conducted in a private area.
- 3.3 The search must not be conducted in the presence of other learners.
- 3.4 The search must be conducted in the presence of an adult witness of the same gender as the learner.
- 3.5 The object or drug found on the learner or in his or her property should be photographed whenever it is reasonable practicable to do so.
- 3.6 The search must not be extended to a search of any body cavity of the learner, and the learner's private parts may not be touched.

4. Practical steps to search and seizure

4.1 How to conduct a search

- 4.1.1 If learners' clothes and/or school bags are to be searched, the search must be conducted in an empty and clean space, such as the principal's office, and each learner must have his or her own school bag(s) with him or her.
- 4.1.2 If lockers are to be searched, the principal or his or her delegate must ensure that every learner stands next to his or her locker.
- 4.1.3 Where possible, a witness must be identified for each learner to be searched.
- 4.1.4 While the learner is awaiting his or her turn to be searched, the witness must observe the behaviour of the learner.
- 4.1.5 The witness must also identify what other property (for example, a locker) belongs to the school and is available for the learner to use. If there is such an item of school property, the witness must find out its identification (for example, a locker number).
- 4.1.6 The learner and the witness must be allowed into the principal's office (out of sight of other learners), and the learner must be requested to reveal any illegal drug or dangerous object in his or her possession.
- 4.1.7 If the learner does not at this point voluntarily hand over any illegal drug or dangerous object in his or her possession, he or she must be requested to empty his or her pockets (jacket/trousers) and school bag or sports bag.
- 4.1.8 While the learner's arms are stretched out, the person conducting the search must do a superficial body search – that is, he or she must frisk the learner. Under no circumstances may a learner's private parts be touched.

4.1.9 As a last resort, the learner must be requested to strip down to his or her underwear, and then the clothes handed over must be searched for suspicious objects.

4.1.10 If, at this point, it is suspected that the learner has swallowed a suspicious object, it is advisable for the matter to be handed over directly to the police.

4.2. How to handle a special request by a learner to leave the area

4.2.1 An urgent need to use the bathroom should, under all normal circumstances, be the only acceptable reason for requesting to leave the area.

4.2.2 Bring this request to the attention of the person in charge of the search by knocking on the closed door of the room in which the search is taking place or by phoning the person in charge.

4.2.3 Attempt to accommodate the learner by arranging for that specific learner to be the next one to be searched.

4.2.4 If it is not feasible to search that learner next, the learner must, as a last resort, be allowed to go to the bathroom, but the witness must accompany him or her and must have the learner in his or her sight the whole time.

4.2.5 If the person in charge of the search leaves the room in which a learner is being searched in order to deal with the special request of another learner, the witness with the learner inside the room must be cautioned to observe any suspicious conduct by the learner, who is not allowed to walk around but must remain in one place. The witness must note down any suspicious conduct on the part of the learner.

4.3 Management of possible interruption during the search

The search may not be disrupted by telephone calls to the learner, the witness or the person conducting the search, or in any other way. However, phone calls in connection with 4.2.1 above and 4.6.1 and 4.6.2 below are allowed.

4.4 Time of search

4.4.1 When the possession of a dangerous object is suspected, it is best to conduct the search early in the morning.

4.4.2 The search must be done in a structured manner and evidence must be noted down.

4.4.3 It is advisable not to disrupt classes, especially where it is feasible to plan ahead – for example, where information has been received that learners will bring dangerous objects to school the next morning.

4.4.4 Ensure that the search and seizure is done effectively, timeously and at a reasonable time, so as not to allow the learners the opportunity to use the dangerous objects.

4.5 Delegation in case the principal is not available

4.5.1 Two persons, one female and one male, must be delegated to perform the search and seizure function in case the principal is not available. The names of these persons must be reflected in a log book and must be known at all times, so that there will be certainty about whose responsibility it is to act in the

principal's absence. The following is an example of the delegation, which must be in writing:

"I,, principal of (name of school), hereby authorise X (female educator's name) and Y (male educator's name) to be responsible for search and seizure in my absence. I hereby delegate to X and Y the same authority that I as principal have, and he or she may give instructions about a search, and conduct a search, on my behalf."

- 4.5.2 The delegated persons must have insight into the process of search and seizure. No formal training is needed; reading these guidelines is sufficient. If the delegated person is uncertain about any part of the search procedure, he or she must, before conducting the search, again read the guidelines attentively to ensure that he or she knows exactly how to conduct the search. A copy of these guidelines must be available at the principal's office at all times.
- 4.5.3 If the principal will be away for a long period, for example on study leave, vacation leave or sick leave, a formal acting appointment can be made in his or her place, and the person so appointed will have the same authority as the principal.
- 4.5.4 If the principal will be absent only temporarily, he or she must, before leaving, identify the person delegated (who may be appointed as delegate on a permanent basis), so that everybody knows who the principal's delegate is as far as searches are concerned.
- 4.5.5 If the principal did not identify a delegate before he or she left, he or she may do so, and may instruct such delegated person, by phone. Such delegations made and instructions given by phone must be written down by the delegate in a logbook at the school.
- 4.5.6 A search and seizure operation cannot be cancelled or postponed because the principal is not available.
- 4.6 How to deal with a learner who is unwilling to be searched
- 4.6.1 If reasonably practicable, the parent should be telephoned or a message should be sent to the parent in some other way to inform the parent that the learner is unwilling to cooperate in a lawful search and seizure procedure as provided for by the South African Schools Act, and that the learner will be handed over to the police.
- 4.6.2 If the parent indicates that he or she is willing to participate by instructing the learner to cooperate in a search and seizure that is being conducted in terms of section 8A, where the outcome is linked to an internal disciplinary process, the parent may be given a reasonable opportunity to come to the school and to instruct the learner to cooperate. A parent may also give such instruction to the learner and to the principal over the phone. As is the case during the rest of the search and seizure process, a witness must be with the learner while such a phone conversation takes place. It is vitally important that the principal

communicate with the parent and that the principal explain the basis for the search and seizure according to the provisions of section 8A.

4.6.3 If either the learner or the parent refuses to cooperate, the matter, and the learner, must be handed over to the police, so that they may conduct a search in terms of the Criminal Procedure Act. The outcome of such a search is linked to a Criminal Court Process with possible criminal prosecution.

4.7 How to deal with an emergency that involves circumstances not necessarily provided for in section 8A

4.7.1 At an ordinary school it might happen that an emergency occurs in which one cannot make use of the normal procedures and the principles of section 8A and of the Safety Regulations.

4.7.2 The emergency might be that a situation arises for which the procedure has not yet been instituted, or that, while the procedure is being instituted, a learner takes out a dangerous object and starts wounding other people or damaging school property. The emergency might even be that a learner, with or without a dangerous object in his or her possession, starts making serious threats against another person or other persons.

4.7.3 Calm the situation down. Get everyone out of reach or sight of such a learner.

4.7.4 Negotiate with the learner, taking into account the following issues:

- (a) Do not take action that could worsen the situation even further.
- (b) Try to persuade him or her to hand over any dangerous object.
- (c) Assure him or her that his or her parent has been called to resolve the situation or that he or she may phone whomever he or she wants (there might be other people than the parent whom he or she trusts).
- (d) Calm him or her down, and plead with him or her to talk about the matter.
- (e) Try to persuade him or her not to endanger any person or property and, if there are hostages, try to negotiate a position in which the problems can be discussed without endangering the lives of such persons.
- (f) Assess the situation and, if it deteriorates even slightly or if the learner does not agree to calm down, call the police immediately.

4.7.5 Always negotiate from a safe position.

5. Seizure

5.1 The procedure to be followed after seizing a dangerous object, as stipulated in section 8A(5) to (7), must be followed to the letter.

5.2 The outcome of this procedure may be a disciplinary process, which may result in a punitive sanction.

6. Guidelines

- 6.1 These guidelines must be used in conjunction with Annexure A to the Notice. Measures that precede testing, such as identifying a learner who may be using drugs – for instance, one who is sleepy or displays a lack of concentration – must correspond with Annexure A, and subsections (2), (3), (8), (9), (10), (12), (13) and (14) of section 8A of the South African Schools Act must govern the circumstances under which and the procedure according to which such testing may be done.
- 6.2 The approach must be sensitive to the rights of the learner. Request the learner to come to the office without humiliating him or her in public, and ensure that an adult witness is present when you talk to the learner in your office.
- 6.3 Always treat all aspects of drug testing as confidential, so as not to humiliate the learner or expose his or her drug habit, which would infringe on his or her human rights.
- 6.4 Always test a group of learners; never concentrate on individuals.
- 6.5 "Group" means more than one person without limiting the number of persons, although the bigger the group is, the more complex and involved the testing becomes.

7. The approach to drug testing

- 7.1 Drug testing must be conducted –
- 7.1.1 by the principal, if he or she is of the same gender as the learner; or
 - 7.1.2 by the principal's delegate, who must be of the same gender as the learner, if the principal is not of the same gender as the learner or is not available to do the search himself or herself;
 - 7.1.3 in a private area and not in view of other learners;
 - 7.1.4 in the presence of an adult witness of the same gender as the learner; and
 - 7.1.5 by using an unused device, in kit form, identified by the Minister in the *Government Gazette*.

8. Practical steps to drug testing

- 8.1 The principal or his or her delegate must remove the drug testing device from its sealed packaging in the presence of the learner and the adult witness.
- 8.2 The principal or his or her delegate must order the learner to provide a sample of urine.
- 8.3 The principal or his or her delegate must apply the method prescribed on the testing device to test the urine sample for illegal drugs.

9. Recording of information and disposal of dangerous objects, illegal drugs and urine samples

9.1 Any dangerous object or illegal drug that has been seized or urine sample that has been tested must be clearly and correctly labelled with full particulars, including –

- (a) the name of the learner in whose possession it was found or whose sample was taken;
- (b) the time and date of search and seizure or sample taken;
- (c) an incident reference number;
- (d) the name of the person who searched or tested the learner;
- (e) the name of the witness; and
- (f) any other details that may be necessary to identify the item and the incident.

9.2 All the details must be recorded in the school record book.

9.3 After the dangerous object has been seized, the principal or his or her delegate may hand the object to either the police or the parent.

9.3 If the object that has been seized is illegal, the principal or his or her delegate is obliged to hand it to the police.

9.5 The principal or his or her delegate must take the object concerned to the nearest police station if the police cannot collect it.

9.6 The police officer who receives the object must issue a receipt to that effect.

10. Notices to parents and disciplinary proceedings

10.1 The principal or his or her delegate must, within one working day after testing or searching the learner, inform the parent about the test or search that was conducted.

10.2 The principal or his or her delegate must inform the parent and the learner about the result of the test or search.

10.3 If the learner has tested positive for illegal drugs, a discussion must be held with the parent so that he or she may understand the consequences of the use of illegal drugs. The principal may, if the parent so requests, refer the learner to a rehabilitation institution for drug counselling.

10.4 The principal or his or her delegate may initiate disciplinary proceedings against the learner in whose possession a dangerous object has been found or who has tested positive for illegal drugs. No criminal proceedings may be instituted against the category of learners.

10.5 The situation would be different in a case where the learner refused to be searched or tested for drugs. In this instance, the principal or his or her

delegate must inform the police, who would take the relevant steps in terms of the Criminal Procedure Act, 1977.

11. Counselling

- 11.1 Counselling must be done by social workers and NGOs as identified in the National Policy on the Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training Institutions, promulgated under General Notice No. 3427 of 2002 (*Government Gazette* No. 24172 of 13 December 2002.)

The Prevention of and Treatment for Substance Abuse Bill, 2008, is serving before Parliament. Once enacted, the provisions of this legislation will play an important role in identifying treatment centres and facilities to assist the school in dealing with the problem of drug abuse.

- 11.2 Schools must identify social workers in their own provincial departments, and must obtain the contact details of those social workers. If those officials cannot assist, schools must seek the cooperation of social workers connected to the national Department of Social Development and its provincial offices, and of NGOs that offer such services at rates that parents can afford. This would fall under the provisions of regulation 9(5) and (6) of the Regulations for Safety Measures at Public Schools, published in *Government Gazette* No. 22754, under Government Notice No. 1040 of 12 October 2001.

12. Outcome must be kept confidential

- 12.1 Only the learner and his or her parent must be informed about the outcome of the drug test.
- 12.2 The identity of the learner may not be revealed, except to his or her parent.

13. Confirmation

- 13.1 If the result of a test conducted at school is disputed, a secondary test by means of gas chromatography coupled with mass spectrometry (GC/MS) must be done to confirm the result.
- 13.2 This sophisticated test should be done with the assistance of the Department of Health.
- 13.3 In terms of this process –
- 13.3.1 search and seizure may be done only in respect of a group, and not in respect of an individual; and
 - 13.3.2 when an individual is suspected, and only when there is a clear link between an illegal activity and an individual, that individual may be searched and any illegal object found in the possession of that person may be seized, but in such a case, the provisions of the Safety Regulations will apply.