

ANNEXURE A

PROPOSED PRO FORMA POLICY TEMPLATE FOR DRAFTING A SCHOOL POLICY ON RANDOM SEARCH AND SEIZURE

Name of School

Address and telephone number

School logo

1. DEFINITIONS AND ABBREVIATIONS

In this policy, unless the context indicates otherwise –

‘alcoholic substance’ means –

- (a) any unlawful substance that has a psychological or psychological effect;
or
- (b) any substance having such effect that is possessed unlawfully, and or
- (c) any unlawful intoxicating or stupefying drug substance;

‘Constitution’ means the Constitution of the Republic of South Africa, (Act 108 of 1996);

‘dangerous object’ means –

- (a) any explosive material or device;
- (b) any firearm or gas weapon;
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or
- (d) any object that -
 - (i) the National Minister declares to be a dangerous object under the South African Schools Act for the purpose of that Act; or
 - (ii) the Provincial Minister declares by notice in the Provincial Gazette, to be a dangerous object for the purpose of this Act;

‘digital device’ means any mobile device used to make phone calls or send messages using signals or information represented as digits;

'educator' means an educator as defined in the Employment of Educators Act, 1998 (Act 76 of 1998);

'Head of Department' means the head of the Western Cape Education Department;

'illegal drug' means any drug as defined in the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), that is used or possessed in the contravention of section 4 of that Act;

'officer' means the employee of the Western Cape Education Department appointed in terms of the Employment of Educators Act, 1998 (Act 76 of 1998)(Proclamation 138 of 1994), or the Public Service Act, 1994 (Proclamation 103 of 1994);

'learner' means any person receiving education or obliged to receive education in terms of the Act;

'Provincial Minister' means the Provincial Minister responsible for education in the Province;

'principal' means an educator appointed or acting as the head of a school;

'parent' means –

- (a) the parent or guardian of a learner;
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraph (a) and (b);

'school activity' means any educational, cultural, sporting, fundraising or social activity of the school within or outside the school premises of the school;

'supervision' means the management and control of learners at school or during school activity;

'this Act' means Western Cape Provincial School Education Act 1997 (Act 12 of 1997); and

'Western Cape Education Department' means the provincial department responsible for education in the Province.

ABBREVIATIONS

CPA Criminal Procedure Act, 1977 (Act 51 of 1977);

HOD Head of Western Cape Education Department;

NEPA National Education Policy Act, 1996 (Act 27 of 1996);

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| SANCA | South African National Council on Alcoholism and Drug Dependency; |
| SAPS | South African Police Services; |
| SASA | South African Schools Act, 1996 (Act 84 of 1996), as amended; |
| WCED | Western Cape Education Department; |
| WCP | Western Cape Province; and |
| WCPSEA | Western Cape Provincial School Education Act 1997 (Act 12 of 1997); as amended |

2. INTRODUCTION

2.1 Purpose of Policy

To provide (*name of school*) with standardised procedures to conduct random search and seizure and alcoholic liquor and illegal drug testing at (*name of school*) and applies to all learners of (*name of school*).

2.2 Scope and Application of Policy

2.2.1 The Constitution of the Republic of South Africa, 1996, provides for a Bill of Rights. The following rights are relevant to random search and seizure and alcoholic liquor and illegal drug testing at schools:

(i) Human dignity (section 10)

Everyone has inherent dignity and the right to have their dignity respected and protected.

(ii) Privacy (section 14)

Everyone has the right to privacy, which includes the right not to have –

(a) *Their person or home searched;*

(b) *Their property searched;*

(c) *Their possessions searched; or*

(d) *The privacy of their communications infringed.*

2.2.2 Random search and seizure and alcoholic liquor and illegal drug testing obviously would infringe on these rights. However, the Constitution itself provides that no right is absolute, given that any right in the Bill of Rights may be limited in terms of section 36.

- 2.2.3 Given that section 45A limits certain rights conferred in the Bill of Rights, it must be implemented with due regard to human dignity, privacy and the right to property of the learner concerned.
- 2.2.4 This Policy, therefore, serves to regulate the application of section 45A of the Act by providing the means by which such measures can be implemented, and the necessary procedures to be employed to achieve the purpose or objective of these legislative provisions in a school environment.

3. LEGISLATIVE FRAMEWORK

Constitution of the Republic of South Africa, 1996 (Act 1 of 1996);

Criminal Procedure Act, 1977 (Act 51 of 1977);

Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992);

National Education Policy Act, 1996 (Act 27 of 1996);

Regulations for Safety Measures for Public Schools;

The South African Schools Act, 1996 (Act 84 of 1996) as amended; and

The Western Cape Provincial School Education Act (Act 12 of 1997) as amended.

4. CONTEXT

The possibility exists that learners in possession of dangerous objects or alcoholic liquor or illegal drugs on our school grounds, may cause serious psychological damage or physiological injury to others. This directly contributes to the challenges of providing an education of progressively better quality for all learners.

This policy of search and seize and alcoholic liquor and illegal drug testing is adopted by (*name of school*), and sets down strict procedures by which random searches will be carried out by the principal or his delegates at school to protect the rights and dignity of learners, even if they have transgressed. The intention of this policy is also to stem incidents of violence and use of illegal substances by learners, and to create a safe school environment for teaching and learning for all at (*name of school*).

5. RANDOM SEARCH AND SEIZURE

5.1 The Principal

- 5.1.1 Section 45A of the Act stipulates that, unless authorised by the principal for legitimate educational purposes, no person may bring any dangerous object, alcoholic liquor or illegal drug(s) onto school premises or have in his or her possession any dangerous object, alcoholic liquor or illegal drug(s) during any school activity.
- 5.1.2 The principal may, for educational purposes, authorise the presence on the school premises of dangerous objects, such as pairs of scissors, needles and knives, for legitimate educational purposes, and of medicines prescribed by a doctor.
- 5.2 Procedure for Random Search and Seizure
- 5.2.1 In terms of section 45A(2)(a) of the Act, the principal or his or her delegate may search any learner, or the property of any learner, for any dangerous object, alcoholic liquor or illegal drug, if the principal reasonably suspects the presence of a dangerous object, alcoholic liquor or an illegal drug on the school premises or during a school activity. The following may be an indication of the presence of illegal drugs and dangerous objects at (*name of school*):
- (a) Whistle-blowers informing the principal about their presence;
 - (b) Reports from parents;
 - (c) Traces of drugs and alcoholic liquor on the school premises;
 - (d) Threats of the use of dangerous objects against other learners;
 - (e) Injury as a result of the use of such objects; and
 - (f) Any other reasonable indication.
- 5.2.2(a) Where there is a suspicion that learners have dangerous objects or alcoholic liquor or illegal drugs, in their school bags or lockers, the random search will 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 dangerous objects or alcoholic liquor or illegal drugs 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 dangerous objects, alcoholic liquor and/or illegal drugs 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 only.
- 5.2.3 Section 45A(4) of the Act stipulates that where a search contemplated in paragraph 5.2.1 entails the body search of any learner, the person searching the learner—
- (a) May not require the learner to remove any clothing other than outer clothing;

- (b) Shall be of the same gender as the learner; and
 - (c) May carry out the search only in the presence of another member of staff who is also of the same gender as the learner.
- 5.2.4 The search must be conducted in a private area.
- 5.2.5 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.
- 5.2.6 (a) If, as a result of a search or as a result of reliable information received, or for any other reason, the principal has good reason to believe that any dangerous object, alcoholic liquor or illegal drug is concealed on the body or person of a particular learner, the principal may request a member of the South African Police Services to conduct a more extensive search of that learner's person, which may entail the removal of clothing in terms of section 45A(5) of the Act.
- (b) If it is suspected that the learner has swallowed a suspicious object, the matter must be handed directly over to the police.
 - (c) The principal or his or her delegate may seize any dangerous object, alcoholic liquor or illegal drug, found during the search in terms of section 45A(2)(b) of the Act.
- 5.3 Delegation of authority owing to unavailability of principal
- 5.3.1 Two educators, one female (*designation and name of person*) and one male (*designation and name of person*), have been delegated to perform the search and seizure function in case the principal is not available. These names have been recorded in the log book so that there is certainty about whose responsibility it is to act in the principal's absence.
- 5.3.2 A search and seizure operation cannot be cancelled or postponed because the principal is not available.
- 5.4 Dealing with a learner who is unwilling to be searched in terms of section 45A(5)
- 5.4.1 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 co-operate in a lawful search and seizure procedure as provided for by the Act, and that the learner will be handed over to the police.
- 5.4.2 If the parent indicates that he or she is willing to participate by instructing the learner to co-operate in a search and seizure that is being conducted in terms of section 45A of the Act and where the outcome is linked to an internal disciplinary process, –
- (i) The parent may be given a reasonable opportunity to come to the school and to instruct the learner to co-operate;
 - (ii) The parent may also give such instruction to the learner and to the principal over the telephone or digital device;
 - (iii) A witness must be with the learner while such conversation takes place; and

- (iv) The principal communicates with the parent and the principal will explain the basis for the search and seizure according to the provisions of section 45A of the Act.

5.4.3 If either the learner or the parent refuses to co-operate, the matter and the learner will 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 the possibility of criminal prosecution.

5.5. Seizure of Dangerous Objects, Alcoholic Liquor and Illegal Drugs

5.5.1 The principal, or his or her delegate or a police officer, may seize any dangerous object or alcoholic liquor or illegal drugs present on a public school premises or on a person on the school premises or at a school activity.

5.5.2 Section 45A(6) of the Act determines that any dangerous object, alcoholic liquor or illegal drug that has been seized shall be —

- (a) Clearly and correctly labelled with full particulars, including—
 - (i) Where it was found and, if applicable, the name of the learner in whose possession it was found;
 - (ii) The time and date of search and seizure;
 - (iii) An incident reference number;
 - (iv) The name of the person who conducted the search;
 - (v) The name of the member of staff in whose presence the search was conducted, where applicable; and
 - (vi) Any other details that may be necessary to identify the item and incident;
- (b) Recorded in the school record book; and
- (c) Handed over to a member of the South African Police Services immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

5.5.3 Section 45A(7) of the Act determines that, if the police cannot collect the dangerous object, alcoholic liquor or illegal drug from the school immediately, the principal or his or her delegate shall –

- (a) Take the dangerous object, alcoholic liquor or illegal drug to the nearest police station; and
- (b) Hand the dangerous object, alcoholic liquor or illegal drug over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977.

5.5.4 Section 45A(8) of the Act determines that the police officer who receives the dangerous object, alcoholic liquor or illegal drug shall issue an official receipt to the principal or delegate.

6 NOTICE TO PARENTS AND DISCIPLINARY PROCEDURES

6.1 Notice to Parents

Section 45A(11) of the Act stipulates that the principal or his or her delegate shall —

- (a) Within one working day, if practicable, inform the parent of the learner concerned that a test or search and seizure was done in respect of his or her child; and
- (b) Inform the learner and parent of the result of the test immediately after it becomes available.

If the learner has tested positive for alcoholic liquor or illegal drugs, a discussion must be held with the parent so that he or she may understand the consequences of the use of alcoholic liquor or illegal drugs. The principal may, if the parent so requests, refer the learner to a rehabilitation institution for drug counselling. Only the learner and his or her parents must be informed about the outcome of the alcohol or drug test. The identity of the learner may not be revealed, except to his or her parents.

6.2 Disciplinary Procedures

6.2.1 In terms of section 45A(12), a person who exercises a power under this section may use such force as is reasonable in the circumstances for exercising that power.

6.2.2 In terms of section 45A(13), a learner may be subjected to disciplinary proceedings if —

- (a) The learner is in possession of a dangerous object, alcoholic liquor or an illegal drug during school hours or at a school activity; or
- (b) The learner tested positive for alcoholic liquor or an illegal drug in the circumstances described in section 45A(10).

6.2.3 In terms of section 45A(14), any disciplinary proceedings in respect of a learner shall be conducted in terms of the code of conduct contemplated in section 45(1) of the Act. No criminal proceedings may be instituted against this category of learner.

6.2.4 In a case where the learner refused to be searched or tested for alcohol or drugs, 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.