

Friday, July 24, 2020

TO WHOM IT MAY CONCERN

RE : MINISTER ZULU'S RESPONSE TO LETTER OF DEMAND OF 17 JULY 2020 PERTAINING TO THE RE-OPENING OF EARLY CHILDHOOD DEVELOPMENT (ECD) CENTRES

1. This letter serves to provide guidance specifically to owners of ECDs who have experienced obstacles to re-opening as a result of unlawful conduct by the Department of Social Development (DSD) officials.
2. On 17 July we addressed a letter to Minister Zulu's attorney on behalf of our clients, SA Childcare, in the matter of Skoleondersteuning Sentrum NPS & Others// The Minister of Social Development & Others. A great many points were raised in that letter, including the following (we quote):

"Our clients are in possession of countless complaints from its members, as well as from non-member ECD and Partial Care facilities all over South Africa, complaining of threats and intimidation tactics imposed by officials presenting themselves as the duly authorised representatives of your client.

These officials claim to perform verification and monitoring duties on instruction of your client which they refer to as: "inspections for purposes of authorising re-opening" or wording to the similar effect.

The officials enter the premises of both registered and deregistered ECDs and Partial Care facilities to proceed with inspections only to inform every single facility that they are not permitted to re-open until they have been furnished with a compliance certificate issued by your client.

This conduct is unlawful, vexatious, and performed in complete disregard of the court order granted. Most ECDs and Partial Care facilities complaining of the aforementioned conduct were fully compliant with all the conditions imposed by the directions but were informed that they must remain closed until a certificate is issued, although the date of issuing of such certificate could not be provided.

The alleged issuing of a compliance certificate imposed as a prerequisite for ECDs and Partial Care facilities to reopen was also personally confirmed to various complaining ECD and Partial Care facility owners by Ms. Oliphant, the spokesperson of your client.

It follows that your client is presently unlawfully prohibiting ECDs and Partial Care facilities from re-opening in direct contempt of a court order."

3. Since we wrote that letter of 17 July 2020, we have continued to receive disturbing reports of this conduct on the part of DSD officials in areas across South Africa.

4. In our letter of 17 July 2020 we made a specific demand that the Minister should 'refrain with immediate effect from imposing the requirement for the issuing of a compliance certificate on any ECD and/or Partial Care facility in South Africa.'
5. We were delighted therefore to receive a response to our letter on 23 July 2020 from the Minister's attorney, which addressed this point (among many others which will be dealt with in separate correspondence). The response merits quotation in full as it comprehensively and unequivocally lays this issue to rest. The Minister's attorney states:

"Neither the Directions issued by the Minister nor the standard operating procedures require that a compliance certificate need to be issued by the Department of Social Development neither that the Department of Social Development needs to give permission for an early childhood development programme and/or partial care facility to reopen.

If an early childhood development programme and/or partial care facility is certain that it meets all the requirements, it may re-open. It does not need to wait for inspection or verification visit. This is directly linked to the judgment that states "subject to the appropriate and/or prescribed safety measures being in place".

6. This statement by the Minister confirms that she abides by the court order for all ECDs.
7. Furthermore she has publicly clarified that the court order means that all ECDs may re-open **without the requirement of an inspection or the issuing of a compliance certificate prior to re-opening.**
8. Any DSD official who indicates otherwise is acting unlawfully. We suggest that you keep a copy of this letter in your files should you need to make this point to any such official in the event of this particular instance of unlawful conduct.

Yours sincerely

VAN WYK AND ASSOCIATES

Per:


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