

POLICY ON SEARCHING STUDENTS AND/OR THEIR PROPERTY

POLICY STATEMENT

At times it may be necessary for searches to be carried out of students and/or their property in order to maintain a safe, healthy and orderly educational environment. Such searches should be carefully carried out to avoid breaches of the dignity or rights of students.

PURPOSES

- a. To ensure that nominated school staff are able to carry out searches for specific and valid reasons.
- b. To ensure that such searches are reasonable in intent and practice.

GUIDELINES

1. Purpose of Searches

Searches may be carried out to recover stolen property, to detect illegal substances or weapons or to uncover any matter reasonably believed to be a threat to the maintenance of an orderly educational environment.

2. Reason for Search

In general, a search will be conducted only when there are grounds for suspecting a particular student.

3. Use of Force

Force may be used only when there is threat of imminent harm. A refusal to co-operate may lead to disciplinary action. In extreme cases the police may be notified.

4. Who Conducts The Search

Teachers who feel that a search is necessary will first inform the **Principal** or **Deputy Principal**, or the **Assistant Principal** or the **Senior Manager**. Generally, the search will be carried out by one of these four people, if available. Any search needs to be witnessed by another member of staff.

Searches required during school activities off the school site without access to the **Principal, Deputy Principal** or the **Assistant Principal** or the **Senior Manager** need to be conducted at the teacher's discretion, and with reference to the spirit of this policy.

5. Information To Students

Students will be advised of the reason for suspicion and the reason for the search. They will be asked to co-operate. Property seized as a result of a search will be returned to the student's parents except where the Principal considers the property should be handed to the police or destroyed.

6. Informing Parents

Parents will be notified of the search, the circumstances and the results of the search as soon as is reasonably possible after the search has taken place. Where practicable, a reasonable effort will be made to notify parents in advance of personal searches.

7. What May Be Searched

The school may search bags (of all kinds including wallets, purses and pencil cases), lockers and clothing not being worn. A student may be requested to remove articles of outer clothing such as coats, jackets, jerseys, shoes and socks, or to turn out pockets. No student will be required to remove other items of clothing. Student vehicles may also be searched if necessary.

As in all matters to do with the rights and dignity of students, schools should guard against acting hastily. Careful consideration and, where practicable, expert advice, will help in most cases.

Appendix

LEGAL OPINION

The Board of Trustees endorses the following legal opinion.

Conclusion and summary by Paul Rishworth, Barrister and Senior Lecturer in Law, Auckland University.

"My view is that a legal power for schools to search students exists. But it is a power only to undertake reasonable searches. The guiding principle is weighing the need to search against the invasiveness of the search. In particular, force is extremely invasive of bodily integrity and will render a search unreasonable unless the countervailing reason for the search is one of avoiding imminent or serious harm to the students or others.

The requirement of reasonableness means that, in practice, student co-operation must be sought for the examination of the contents of pockets and clothing. Requirements to remove clothing for inspection ought to be limited to outer clothing such as jackets, shoes and socks. A strip search in schools, even if students acquiesce through co-operation, is likely to be unreasonable.

I believe the approach which I advocate is solicitous for the welfare and dignity of children. It ought to avoid their even being asked to co-operate in strip searches, for example. And it will mean in practice that even though criminal conduct such as possession of drugs might be revealed, the matter will not necessarily be reported to the police (as would be the case if the law required that all suspicions be reported to the police and could not be acted upon by school officials). I believe it to be appropriate that schools deal with such matters in house where their judgment is that it would be in the interests of the students to do so.

It must not be forgotten that the power is predicated on the educational needs of children (both the searchee and others), not eradication of crime in the community.

If "reasonableness" seems too imprecise a standard for day to day operations in schools, two things may be said.

First, the touchstone of reasonable suspicion was expressly developed by the United States Supreme Court as a workable standard which teachers in the field could discern through the application of common sense.

Second, it is worth noting that the two searches to have attracted national publicity in this country (NZ) were each examples of searches which clearly failed the reasonableness test. If, then, searching of students is relatively common (as Youth Law Project has suggested) and there is little complaint (or little complaint which is seriously pursued and virtually never in court), this could suggest that most of what happens in schools is in fact reasonable. The practical common sense to make determinations of reasonableness is probably there already.

It would be helpful for all schools to have guidelines, and the Ministry of Education would be an appropriate source of those guidelines. Of course, just as this seminar paper is one person's view, so the Ministry's guidelines would be just another view: they would not represent the law on the point which can only be determined by a court or by Parliament. Plainly, however, any guidelines issued by the Ministry will and should be influential in schools. In the meantime it is desirable that a school itself should decide upon and publish a policy on school searches. This will assist both staff and students to know where they stand. If a school and its advisers agree with the position taken in this paper, then a policy could include the suggestions above."

A full discussion of this subject may be read in Paul Rishworth's article "Search and Seizure in Public Schools" published in *School Discipline and Students' Rights*, March 1996. Obtainable from the Legal Research Foundation Inc, University of Auckland, Private Bag, Auckland 1.