

DEPARTMENT OF EDUCATION AND EARLY CHILDHOOD DEVELOPMENT

POLICY 712

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Subject: Search and Seizure
Effective: September 2nd, 2016
Revised:

1.0 PURPOSE

New Brunswick students have a reasonable expectation of privacy with respect to their persons, their information, reputation and belongings while in school. This policy describes standards and procedures in New Brunswick public schools for the search of school property, the search of students and their property, the seizure of any materials as a result of a search, and access to students for the purpose of interviews conducted by law enforcement officials, by describing the reasonable limits set on the rights of school administration. This policy also addresses the use of surveillance cameras in public schools.

2.0 APPLICATION

This policy applies to all students and school personnel. This policy is not intended for searches and seizures conducted on school personnel.

This policy applies unless there are exigent circumstances, as described below. Due to the urgent, and potentially dangerous nature of exigent circumstances, procedures related to those situations, such as Violent Threat Risk Assessment (VTRA), may supersede this policy.

3.0 DEFINITIONS

Body search (also known as a strip search) refers to a search where most or all clothing is removed in order to conduct a visual inspection of the body or of all the clothing. A body search is not permitted; school personnel are not authorized to proceed with or participate in a body search. A body search is different from a search of a student by school personnel, which is authorized as per section 6.2.

Exigent circumstance refers to an emergency situation requiring immediate action in order to prevent an event which may endanger students or school personnel, damage school property, or to prevent the destruction of evidence.

Interview refers to an interview of a student conducted by law enforcement officials on school grounds.

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Law enforcement official refers to a member of either the Royal Canadian Mounted Police (RCMP) or the municipal/regional police.

Parent(s) refers to the definition as per the *Education Act*, and includes guardian(s).

Reasonable grounds refers to information that could affect the health or safety of students or could affect the positive learning and working environment of public schools, and must take into consideration the totality of the circumstances surrounding the event. The information must be received from a credible, reliable source or sources, such as a student, a member of school personnel's own observations, or any combination of these pieces of information which the school administration considers to be credible. This may also include any information received from any witnesses. The compelling nature of the information and the credibility of these or other sources must be assessed by the school administration in the context of all applicable circumstances at the particular school. Past incidences or general suspicions of illicit activities or items at school are not sufficient to be considered reasonable grounds.

School administration, for the purpose of this policy, refers to the school principal, as well as their designated replacement.

School personnel, as defined in the *Education Act*.

School property is vested in the Minister, and includes all furnishings, school buildings and property leased by, or otherwise appointed and used for school purposes.

Student refers to pupil(s), as defined in the *Education Act*.

Student property refers to any items that either belong to the student (including clothes), or items found in their possession (including a vehicle).

4.0 LEGAL AUTHORITY

[Education Act](#)

Section 6 The Minister...

(b.2) may establish provincial policies and guidelines related to public education within the scope of this Act...

5.0 GOALS / PRINCIPLES

5.1 School personnel and students in the public school system have the right to work and to learn in a safe, orderly, productive, respectful and harassment-free environment.

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- 5.2** Although the school administration has the right to proceed with searches and seizures, student's rights to privacy are not extinguished by virtue of being on school property. The Department of Education and Early Childhood Development recognizes that the student's human and legal rights need to be balanced with the school personnel's responsibility to maintain a safe, secure and positive learning and working environment.
- 5.3** The Department of Education and Early Childhood Development, school districts and public schools collaborate with law enforcement officials while respecting related legislation, policies and guidelines.
- 5.4** School personnel will consider the student's age, stage of development and the extent to which their behaviour is voluntary, to intervene appropriately during a search or seizure.
- 5.5** Other methods of handling a situation that may lead to a search and seizure may be attempted before proceeding with a search and seizure. A search and seizure should not be the first step in the process of handling these situations.
- 5.6** Due to the intrusive nature of a search, performing a search and seizure is to be an infrequent event, based on reasonable grounds.

6.0 REQUIREMENTS / STANDARDS

6.1 Duties of school administration**Search and seizure**

6.1.1 The school administration must ensure that:

- a) They authorize any search or seizure, that it is conducted by school personnel whom they approved, and is done in a timely manner upon receipt of the information leading to reasonable grounds.
- b) A search is only undertaken if there are reasonable grounds to believe that the search would yield proof of illegal activity, or of a breach of school or school district rules or policies, or of provincial acts, regulations or policies. Depending on the severity of the suspected infraction, the extent of the search will vary. The seriousness of the suspected infraction must be carefully weighed before the extensiveness of the search is determined. Random searches are not allowed.
- c) All searches are case specific, and that the extent of the search will be based on the information received that led to having reasonable grounds. Any search or any item searched must have a purpose. Reasonable grounds do not automatically permit all types of searches or searching through all items. (E.g. A search of a student should not be undertaken if

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there are reasonable grounds to believe that the student has stolen a sizable item such as a projector. A student's electronic device should not be searched if there are reasonable grounds to believe that the student brought alcohol to school. In both cases, a search of a student's locker and backpack would be more reasonable.)

- d) If information is received that meets the reasonable grounds criteria, an investigation into the situation is initiated.
- e) During a situation which may pose an immediate threat, or may lead to a threat to the safety and security of students and/or school personnel, related policies or protocols, such as Violent Threat Risk Assessment (VTRA), are followed.
- f) The degree of the actions taken by school personnel are proportional to the situation being investigated. The action taken must be reasonable.
- g) School personnel are aware that information related to searches, seizures or interviews is confidential. Searches, seizures and/or interviews are conducted as discreetly as possible.
- h) All searches and seizures are conducted with fairness and respect for the student and their dignity as an individual.

After a search or seizure

6.1.2 The school administration must ensure that:

- a) The parents of a student who has been involved in a search, seizure or interview are contacted to advise them of the event as soon as practicable.
- b) Concerned students and their parents are made aware that the school may pursue their own disciplinary action, regardless of any legal action pursued by law enforcement officials.
- c) A written record of the events surrounding a search or seizure is completed and placed in a confidential record, separate from the cumulative student record. The following information must be included: date; time; location of the event; type of intervention (search, seizure, interview, etc.); description of the circumstances; name(s) of student(s) involved, and details of the incident (type of search, items seized, etc.). The record must be signed by the school administration, and one witness to the search and/or seizure. The written record shall reflect if the student

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refused to participate in a personal search. Appendix B is an example of a document that may be used to record this information.

- d) If a student is detained or arrested on school property or during a school-related event by law enforcement officials, school personnel can expect that these same officials will follow their standard procedures, which includes making an effort to contact a parent of the student. If a parent is unavailable and if law enforcement deems it appropriate, the school administration may ask the student, depending on the situation, if they want a member of school personnel to accompany them. If selected, the member of school personnel may refuse to participate.

Communication and Awareness

6.1.3 The school administration must ensure that:

- a) At the beginning of each school year, all members of school personnel, students and their parents are made aware of the existence of this policy as a reminder of the rights of school administration to conduct searches and seizures on school property.
- b) All students and parents sign an acknowledgment concerning the use of lockers by students. (Appendix A is a suggested form.).

6.2 Search of a student by school administration

6.2.1 The school administration must authorize any search of a student if there are reasonable grounds, as outlined in section 6.1.1 b) and by following the criteria enumerated below. Any search of a student, given the intrusiveness to their privacy, will be held with respect for their human rights.

6.2.2 Prior to a search of a student, the student will be advised of the reasonable grounds that led to the search, and should be given the opportunity to produce the substance or object which he or she is suspected of possessing.

6.2.3 The search of a student will be conducted in a private manner, away from public areas, and efforts will be made to keep the search confidential in order to preserve the dignity of the student. Two members of school personnel must be present. It is recommended that one of the two members of school personnel be the principal or designate.

6.2.4 During the search of a student, and where possible, at least one of the two members of the school personnel must be the same sex as the student, or of a sex requested by the student based on their level of comfort. It is recommended

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that where possible, both of these members of school personnel be of the same sex as the student, or of the requested one.

6.2.5 A “pat down” of a student is not permissible and a student search will be as minimally intrusive as possible. The search of a student is limited to requesting the student to:

- Remove a jacket, blazer, cardigan or outer layer of clothing for a search of the pockets, as long as there is still a layer of clothing underneath covering undergarments.
- Remove a hat and/or other accessories such as gloves or a scarf for an inspection.
- Turn out their pockets (pants, sweatshirts, etc.), lift their pant legs, roll down their socks, and take off their shoes for inspection.
- Roll up sleeves.

6.2.6 School personnel will not proceed with or participate in a body search, also known as a strip search. If during a search and seizure the school administration believes that a body search is necessary, law enforcement officials will be contacted. When law enforcement officials confirm that they are authorized to and will perform a body search, the student will be moved to a private room and supervised until law enforcement arrives, to ensure the safety of the student and to ensure that the student does not dispose of any substances that may be in their possession.

6.3 Search of student property and of private vehicles on school grounds by school administration

6.3.1 The school administration has the authority to search student property (e.g. clothing not being worn, backpack, handbag, etc.) if there are reasonable grounds, as outlined in section 6.1.1 b). A student will be informed of these grounds prior to the search.

6.3.2 Two members of school personnel must be present during the search of student property.

6.3.3 When possible, the search of student property will be conducted in a private manner, away from public areas, and efforts will be made to keep the search confidential in order to preserve the dignity of the student.

6.3.4 The student must be present during a search of their personal property, unless not possible or advisable due to exigent circumstances. At the beginning of the search, the members of school personnel present will decide whether they will perform the search, or if the student will perform the search under direction of the school personnel.

6.3.5 A student's electronic devices or other objects used to record and store data such as a work book may be searched. Due to the personal nature of the information that may be contained on these devices or objects, these searches may only proceed in serious cases where the information threatens student or school personnel safety, or discipline in schools.

6.3.6 A private vehicle used by a student may be searched by school personnel if it is on school property, and there are reasonable grounds to believe that there has been a breach of school rules, policies, procedures or illegal activities, and this search would reveal evidence of that breach. When feasible, the student must be present during a search or seizure.

6.4 Search of school property

6.4.1 The school administration has the authority to search any school property (e.g. lockers, desks, etc.) at any time if there are reasonable grounds to believe that there has been a breach of school rules, policies, procedures or illegal activities, and that a search of the school property would reveal evidence of that breach. When feasible, the concerned student must be present during a search or seizure.

6.4.2 Two members of school personnel must be present during the search of school property.

6.4.3 When feasible, school property (locker, etc.) searches and seizures will be conducted when the other students are in class, in order to maintain discretion.

6.4.4 During a search or seizure conducted on school property, as per section 6.3.4, the members of school personnel present will decide whether they will perform the search, or if the student will perform the search under direction of the school personnel.

6.4.5 A teacher may look into or inspect the desks of their students to ensure cleanliness, to assist with classroom management, and to assist with the health and safety of the classroom and the school. A desk may also be searched for illicit items if there are reasonable grounds.

6.5 Seizure

6.5.1 Any items that contravene school rules, policies or procedures or are considered illegal by law enforcement officials, and are seized as a result of a search by school administration, will be confiscated and dealt with as per existing school procedures. In the absence of school procedures, the school administration will determine how the seized material is to be dealt with.

6.5.2 If during a search, a weapon or an illegal item is found or seized, the school administration will immediately contact law enforcement officials to determine proper procedures to follow.

6.6 Interviews of students by law enforcement officials

6.6.1 Access to a student by law enforcement officials for the purpose of an interview during school hours must be coordinated by the school administration.

6.6.2 The school administration will make every reasonable effort to contact the student's parent when a request is made for an interview so that the parent can be in attendance. This is not applicable if the interview is in relation to suspected parental child abuse, neglect or a similar investigation. If the parent is not available and law enforcement officers deem it necessary to proceed with the interview immediately, if allowed by these officers, the student may ask to have a member of school personnel present other than the principal or designate.

6.7 Surveillance Cameras

6.7.1 The use of surveillance cameras on school property is permitted for the purpose of safety and the protection of property and persons. Footage from surveillance cameras may be used to assist in establishing reasonable grounds prior to any search being conducted under this policy.

6.7.2 School administration must ensure that students, school personnel and parents are made aware of the use of any surveillance cameras on school property.

6.8 Searches and seizures by law enforcement official(s) and sniffer dogs

6.8.1 A law enforcement official may only search school property, a student or student property if they have a warrant or unless there are exigent circumstances. School officials may not undertake a search at the request of law enforcement officers.

6.8.2 A school administration may request that law enforcement officials conduct a search of school property with sniffer dogs, but only if the principal or designate believes there are reasonable grounds for such a search. Random searches by sniffer dogs (whether from law enforcement or private service) are not allowed.

7.0 GUIDELINES / RECOMMENDATIONS

7.1 If during a search or seizure items are found and school administration is uncertain on how to proceed, law enforcement officials may be contacted at any time if it is deemed necessary.

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7.2 If a student has to submit to a personal search as per Section 6.2 and refuses to participate in the search, the school administration may consider the refusal as a behavior that is not tolerated, and may use the District and the School Positive Learning and Working Environment Plan as developed per Policy 703 to deal with incidences of inappropriate behaviors and serious misconduct. If appropriate, the school administration may contact law enforcement officials.

8.0 District Education Council Policy-Making

Not applicable

9.0 REFERENCES

[Education Act](#)

[Policy 701](#) – Policy for the Protection of Pupils

[Policy 703](#) – Positive Learning and Working Environment

[Policy 705](#) – School and School District Crisis Planning

[Right to Information and Protection of Privacy Act](#)

[Canadian Charter of Rights and Freedoms](#)

[United Nations Convention on the Rights of the Child](#)

Relevant search and seizure jurisprudence citations:

Supreme Court of Canada [R v M.R.M.](#)

Supreme Court of Canada [R v. A.M.](#)

10.0 Contacts for More Information

Department of Education and Early Childhood Development, Student Services, Anglophone Sector, 506 453-3326

Department of Education and Early Childhood Development, Policy and Planning division, 506 453-3090

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