

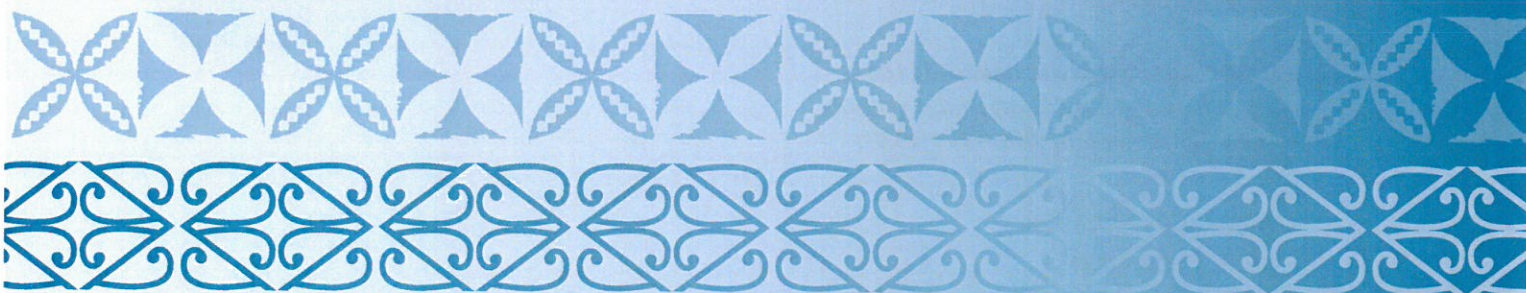


MINISTRY OF EDUCATION

*Te Tāhuhu o te Mātauranga*

# GUIDELINES

for the surrender  
and retention  
of property and  
searches



JANUARY 2014



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# Legislation

## KEY FEATURES

The new legislation deals with three key types of items, covering things that are:

- likely to endanger the safety of others
- likely to detrimentally affect the learning environment
- harmful (poses an immediate threat to the physical or emotional safety of any person).

While all three allow a staff member to *require* students to produce, reveal, and surrender items in their possession, only a belief that a student has something that is **harmful** allows a staff member to conduct a search. It is for this reason that a robust investigation process is important since the more evidence you have the greater the justification for any search.

A staff member may require a student to reveal an item that is stored on an electronic device, and may require the device to be surrendered.

In each case staff must have reasonable grounds for their actions.

There is a difference between a device and an item. For the purposes of these guidelines, a device can be thought of as something electronic (for example, a mobile phone, a tablet or a computer). An item is everything else.

If an *item* is surrendered, staff may retain and/or dispose of it (if appropriate). If a *device* is surrendered, staff may retain it, but cannot dispose of it. Items and devices that are retained must be stored appropriately. After a reasonable period of retention, they must be returned to the student or passed to another person (such as a parent) or agency (such as the Police).

If a student refuses to show or surrender an item that is likely to endanger safety or detrimentally affect the learning environment, then the school's usual disciplinary or behaviour management practices may apply. This may include (but is not limited to) a stand-down or suspension.

If a student refuses to show or surrender an item that is harmful, then either a search can be conducted, or the school's usual disciplinary or behaviour management practices may apply.

To conduct a search for an item, staff must require the student to remove outer clothing,<sup>4</sup> or surrender a bag or other belongings in which they suspect the item/device is.

Staff may not search clothing that the student is still wearing, nor may a student's person/body be searched. If however you think a serious criminal offence has been or will be committed and drugs or weapons are involved, the Police should be notified. Police may have the power of search in such circumstances.

As above, if a student refuses to remove the outer clothing, or surrender a bag or other belongings, then the school's usual disciplinary or behaviour management practices may apply.

If the outer clothing is removed, or the bag or other belongings are surrendered, then staff can search them. If any one of the three types of items is found, then staff may retain it.

Whether or not an item is found, the clothing, bag, or other belongings must be returned immediately.

## Some specific points

Schools are always free to apply their usual disciplinary or behaviour management practices at any time.

There is a clear distinction between school property and a student's property. A school can search any part of its own property (including its own digital property):

- at any time
- for any reason
- by any means (as long as it acts professionally and respects privacy).

Staff cannot require a group of students to produce, reveal and surrender items, or to remove outer clothing or surrender a bag or other belongings, as above, unless they have reasonable grounds to believe that each student has a relevant item. This means, in effect, the legislation does not permit blanket searches in any circumstances.

There are many factors that can elevate a reasonable suspicion (that a student has an item) to a reasonable belief. These are things such as proximity to the item, exhibited manner/behaviour, answers to questions, and sometimes propensity. A considered common-sense assessment of these, oral inquiries to gather objective material, and credible factors are sufficient to form a reasonable belief that an identified student may have the item. A negative result in a search can legitimately inform a new assessment of whether there are reasonable grounds to believe the item is in fact held by another identified student.

<sup>4</sup> See definition in Short Guide to Terms on page 7.



A school may choose to involve the Police and/or apply its own usual disciplinary practices, from detention or contacting parents right through to suspension (depending on the situation).

Schools are always able to:

- use a range of disciplinary measures
- involve parents or caregivers.

The measures described in the *Guidelines for Principals/ Boards of Trustees on stand-downs, suspensions, exclusions and expulsions* are also relevant when deciding what to do.

### **Police involvement**

As a matter of course, schools should have a close and continuing relationship with local Police (particularly their School Community Officer or local community constable). This relationship, based on information-sharing and agreed protocols, is part of a sound prevention and deterrence strategy.

In cases of significant risk or suspected criminal activity, the involvement of the Police may be sought.

Police may conduct searches if it is lawful and reasonable. This will depend on the circumstances in each case. Police cannot conduct a search on behalf of a school, nor can they undertake 'blanket searches'.

High-value theft should definitely be reported to Police. It is good practice to let students know that this will be school practice, and that the Police may be able to link such theft to other thefts or known dealers in such items.

The Police do have some specific powers in violent situations or where there are illegal items, such as drugs, but it is important to note that these are not blanket powers. Nonetheless, these powers will be of use if difficult situations arise and the school needs to call the Police because of safety concerns.

Please note that a school runs a risk if it retains possession of unlawful drugs. The school could take reasonable steps to destroy the drugs, but may prefer to hand them over to Police.

Advice on how to contact the Police is provided under "Police" in Appendix Three.



## **Board of Trustees' Responsibilities**

### **Health and Safety obligations**

Boards and Principals have legal obligations arising from NAG 5, legislation and the common law to ensure the health and safety of employees, students and visitors.

Effective teaching and learning cannot take place in an unsafe school environment.

It is therefore essential that Boards are aware of their legal obligations and take action to ensure they meet them.

Boards should set expectations about what students can and cannot bring to school.

### **Communicating with students and with the school community**

Confiscation or searches affect students' rights and their privacy. It is the school's responsibility to let students know about expectations in relation to the surrender and retention of property and searches.

Only teachers and authorised staff may carry out searches. The names and positions held by authorised staff must be made available for inspection at the school. The method and manner of communication is a matter for each Board to decide but it must be available to staff, parents and students.

Parents and students cannot be asked by the Board or school staff to waive their rights as a condition of enrolment or at any other time. They can however, be advised of their obligation not to engage in behaviour that would compromise their or others' health and safety – and if they do, the consequences they may face.

### **New Zealand Human Rights Legislation**

There are two main pieces of legislation that specifically promote and protect human rights in New Zealand: the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. School Boards of Trustees are bound by both these pieces of legislation.

The New Zealand Bill of Rights Act 1990 prohibits unreasonable search and seizure.

The Human Rights Act 1993 protects people from discrimination. Discrimination occurs when a person is treated unfairly or less favourably than another person in the same or similar circumstances because of one of the prohibited grounds such as: age, race, colour or disability.



# Short Guide to Key Terms

<b>Authorised staff</b>	A person (but not a teacher) who is an employee of the Board of Trustees, and who has been given authorisation by the Board to exercise specified powers under the surrender and retention of property and searches legislation. See also <i>Teachers</i> below.
<b>Belief on reasonable grounds</b>	What is reasonable depends on context and the nature of the item in question. "Belief on reasonable grounds" does not mean "absolutely certain". A good test is to ask, "If I explained my decision to another staff member, would that person be <i>likely</i> to agree with me?"
<b>Contractor</b>	A person who works at a school under contract (but not under an employment contract) – a non-employee who has been engaged to carry out a specified task.
<b>Detrimentially affect the learning environment</b>	Has a negative or disruptive effect on learning or general discipline.
<b>Drugs</b>	Includes all illegal drugs as described in the Schedule of Misuse of Drugs Act (1975). May include legal drugs (for people over 18) such as alcohol and psychoactive drugs.
<b>Electronic device</b>	Anything electronic that is capable of storing and/or displaying digital information (includes mobile phone, smart phone, computer, laptop, tablet, netbook, game console, portable media player, camera, digital voice recorder).
<b>Endanger safety</b>	This depends on circumstances, rather than relying solely on the nature of the item itself. Almost any object could be used as a weapon for example, but in the circumstances at the time, is that object likely to endanger safety?
<b>Harmful</b>	Poses an immediate threat to the physical or emotional safety of any person (a higher test than "likely to endanger safety"). This criterion must be met before a search can be undertaken.
<b>Item</b>	Any physical object.  Any information stored in digital form. An item in digital form includes a text, an image, an audio clip or track, and a video clip or movie.
<b>Outer clothing</b>	Includes coat, jacket, jumper, or cardigan. Other clothing that can be required to be removed includes any head covering, gloves, footwear or socks (except tights or stockings).
<b>Retain</b>	Possession of an item passes from a student to a teacher or authorised staff member.
<b>Search</b>	Can be carried out by a teacher or authorised staff member for a harmful item only. It involves outer clothing (except where there is no other clothing or only underclothing beneath), head coverings, gloves, footwear, socks, bags or other containers when handed over by the student. It does not include a search of the student's person.
<b>Teacher</b>	A person employed in a teaching position at a state or state-integrated school. This includes a person with a Limited Authority to Teach, and a relief teacher employed by the Board.  All teachers are automatically authorised to act under the legislation. <sup>7</sup>
<b>Usual behaviour management practices</b>	The full range of policies, procedures, actions and influences that a school brings to bear on student behaviour. This includes the full range of disciplinary actions (for example, detentions, stand-downs and suspensions).

<sup>7</sup> See page 19 for information related to Partnership Schools/Kura Hourua.





**CRITERIA**

1 2

**SURRENDER**

3 4

**SEARCHES**

5 6 7

**RETENTION**

8 9 10

*This chart outlines a summary of the steps and processes in the legislation that deal with the surrender and retention of property and searches.*

A school's usual disciplinary or behaviour management practices apply at any time

```
graph TD
    1[1. If a teacher/authorised staff member has belief on reasonable grounds...] --> 2[2. ...that a student has an item that is:  
• likely to endanger safety  
• likely to detrimentally affect the learning environment  
• harmful]
    2 --> 3[3. ...then he/she can require the student to:  
• produce, reveal, surrender the item  
• surrender device on which item is stored]
    2 --> 4[4. • produce, surrender the harmful item]
    3 --> 5[5. If an item or device is surrendered...]
    4 --> 6[6. If student refuses to produce and surrender harmful item...]
    5 --> 8[8. May retain and/or dispose of item, or retain device on which item is stored]
    8 --> 9[9. Store appropriately]
    9 --> 10[10. Return to student, or pass to another person or agency]
    6 --> 7[7. Require student to:  
• remove specified clothing  
• surrender bag or container]
    7 --> 9
    7 --> 11[11. Staff member can search:  
• removed specified clothing  
• bag or container]
    11 --> 12[12. If harmful item or item likely to detrimentally affect learning environment found...]
    11 --> 13[13. If no relevant item found...]
    12 --> 14[14. Return specified clothing, bag or container]
    13 --> 14
    6 --> 15[15. If student refuses to remove specified clothing or surrender bag or container...]
    15 --> 16[16. If student refuses to produce, reveal, surrender the item or device on which the item is stored...]
    15 --> 17[17. If student refuses to produce, reveal, surrender the item or device on which the item is stored...]
    16 --> 18[18. If student refuses to produce, reveal, surrender the item or device on which the item is stored...]
    17 --> 18
    18 --> 19[19. If student refuses to produce, reveal, surrender the item or device on which the item is stored...]
    19 --> 20[20. If student refuses to produce, reveal, surrender the item or device on which the item is stored...]
```

School's usual disciplinary or behaviour management practices



Other examples of harmful items may include text messages, drugs, weapons, gang colours or insignia, and sexually explicit photographs of a student.

### General items

Many schools have either general bans or restrictions in place on a range of items. Such items often include:

- non-uniform articles of clothing
- some types of jewellery
- some types of food or drink
- some types of electronic devices.

Most students understand that they must comply with school rules and instructions given by school staff. The school environment is not one where students can expect unfettered freedom.

Surrender and retention, however, may occur only in line with the legislation. Schools do not have to always seek to retain items – circumstances at the time need to be taken into account.

#### Key question:

Is surrender of a banned item necessary in the circumstances to protect the safety of students or to remove a negative influence on the learning environment?

If either of those two conditions is met, then the provisions of the legislation can be triggered. If not, the school's usual disciplinary or behaviour management practices apply (a staff member does not need to actually have an item in order to enforce a school rule against it).

Staff are free to use their professional judgement when forming a view on reasonable grounds that the presence of a particular item is likely to detrimentally affect the learning environment.



## SURRENDER

Steps 3 and 4 on the chart deal with the 'surrender' aspect of the legislation.

When a student is *required* by a staff member to surrender, produce or reveal something, the legislation is triggered and applies.

A staff member may require students to produce, reveal and surrender items in their possession or control if the staff member has reasonable grounds to believe that a student has an item that is likely to endanger safety or detrimentally affect the learning environment, or is harmful.

If such an item is stored on an electronic device, staff may require the student to reveal the item and/or may require the device to be surrendered. If the item is believed to

be harmful, the staff member also has the option of conducting a search for the device.

If a student refuses a staff member's request, the school's usual disciplinary or behaviour management practices may apply.

A relatively benign object can be used by a student inappropriately or unsafely (for example, sports equipment can be used unsafely or a musical instrument used to annoy other students in class) and in such instances, staff can quickly and easily resolve the situation by applying usual behaviour management practices.

The reasons for seeking confiscation of an item may not be as obvious to a student as they will be to a staff member. It is good practice to explain the reasons for confiscation to the student. An explanation may also help if a student is not willing to follow an instruction to hand over an item.

### Specific questions and scenarios – Surrender

#### 1. What can be done about items not stored on a device, but accessible on that device?

- What rights does a school have to access a student's Facebook account?
- May a staff member require a student to reveal an item on a Facebook account?
- What about items stored in the Cloud?

There is no power in this legislation to access or require that a student show content that is stored offsite or off the device.

In a number of cases, however, other students might be able to reveal the item.

We will provide further advice about this once the Harmful Digital Communications Bill 2013 has been considered by Parliament and enacted.

#### 2. Can a student be instructed to "empty your pockets"?

**Yes** – provided that one of the criteria for producing/revealing/surrendering an item is met. The legislation allows teachers (when one of the criterion is met) to require a student to produce an item regardless of where it is stored (for example, in a bag or a locker or in a pocket). The legislation does not allow staff to search pockets other than of outer clothing after it has been removed by the student.

#### 3. Does a general question like "What have you got there?" trigger the steps under the legislation?

**No.** A general enquiry like this one is not a requirement. A requirement is a specific instruction.

Whether an item is found or not, the clothing or footwear or bag or other belongings must be returned to the student immediately.

## Restrictions and limitations

A search should be carried out in a manner that gives the student the greatest degree of privacy and dignity consistent with the purpose of the search. A link to the Human Rights Commission website is included in Appendix Three.

New Zealand schools have students from many different nationalities. It is important for staff to be aware of relevant sensitivities when considering a search, in particular.

Links to information about Sikh and Muslim head coverings can be found in Appendix Three.

Unless impracticable, a search must be carried out by a staff member who is of the same sex as the student, and in the presence of the student and another staff member who is of the same sex as the student. An example of “impracticable” is a small primary school that would find it difficult (if not impossible) from time to time to meet the same sex or second staff member requirements.

Unless impracticable, a search must not be carried out in the view of any person other than the person carrying out the search, the student and another staff member.

It is unlawful to search a student’s person.

A staff member cannot use physical force against a student, other than in an emergency situation where staff are acting to defend themselves or others against immediate harm.<sup>9</sup>

A staff member may not have a dog with him or her for the purpose of searching a student’s property.

A search of the property of two or more students together cannot be initiated unless the staff member has reasonable grounds to believe that each student has a harmful item.

## Written records

The Board must have a written record of all searches.<sup>10</sup>

The written record must include:

- (a) the date of the search
- (b) the name of the student
- (c) the name of the staff member who conducted the search
- (d) if applicable, an explanation of why any of the “if practicable” requirements could not be fulfilled (re sex of person searching, presence of second staff member of same sex as student, presence of student)
- (e) any other details specified by the Board.

A record must be kept for a minimum period of seven years. This covers the period for the statute of limitations for civil matters, and schools will be familiar with this period in relation to records for other matters.

There is no requirement for a register of records to be kept but a Board may decide to keep one if it chooses.

## Taking a deep breath

In many cases a student questioned by staff will admit to possessing an item and will hand it over when asked. Where there is a refusal to produce, reveal or surrender an item, staff will need to consider the next steps. If staff believe the item in question to be harmful, then there are two basic choices:

- initiate a search or
- apply the school’s usual disciplinary or behaviour management practices (which may also be applied at any time).

Staff can slow down the process to give a student time to consider his or her behaviour and choices. If it is explained:

- what is being looked for
- why it is believed there is an immediate threat to safety and
- why the staff member thinks that the item is likely to be found some students may then choose to produce the item.

Some students may produce the item at the point when matters become a little more formal (for example, a second staff member is called to be a witness to the search). There will always be students who do not co-operate at all.

Unless it is an emergency, there is always time to weigh up the situation and to seek advice from other staff or professional advisers.

## Safety

If you begin a search and it becomes unsafe to continue, stop. Ensure the student and the belongings in question are under supervision in a safe place, and contact the parents and/or the Police.

It is then up to the parents and/or Police to decide what action to take.

If you begin a search and the student takes the item and runs away, consider your options. It may not be wise to run after the student.

If a student seeks to obstruct a search you might:

- contact the Police if you believe there is an immediate threat to safety or
- contact the parent or guardian of the student, alert them to the circumstances and ask them to ensure that the item is not brought to school again.

<sup>9</sup> See page 20 for information on the Crimes Act.

<sup>10</sup> See Rule 11.



if they manufactured or artificially created a situation to separate students from bags to carry out a search. For example, students cannot be ordered out of a room and be told to leave their bags so that a drug dog can go through the room and search the bags they left behind.

**11 A locker can be used by one student, or a group of students. Can a teacher search a communal locker knowing that the locker is used by a group of students?**

If the area is used only temporarily (for example, during a single PE class) then a student has probably not relinquished control of the bag. A search could only be conducted following the procedures under the legislation.

Whether a student has a bag in the student's control is all about context. (*see comments in Q 10 above*).

If students have freely chosen to use a storage area or locker, then the school is free to search it (under the BOT's own policy re searching the school site and lockers etc). It need not be a personal storage area.

**12. If there are bags that belong to a group of students stored in the locker, can the teacher search their bags?**

(*see comments in Q 10 and 11 above*).

**13. Sports teams use a school-provided sports bag. Can the school search these bags although students use them to carry their personal belongings?**

It doesn't matter who *owns* the bag. A bag under the student's control can only be searched in the circumstances set out in the Act.

**14. The school is organising a trip. Can a teacher search students' bags before they a) get on the school's van (school property), or b) get on the bus?**

The answer to both a) and b) is "No." The criteria of the new legislation apply. In respect of *each* student, there must be a belief on reasonable grounds that there is a harmful item in the bag before a search can be initiated.

Boards should have a policy on EOTC that sets clear expectations of the responsibility of students and parents. It should include clear articulation of prohibited items and the consequences of having them (Including being sent home from the trip). It could also include parent and student attestation of contents, and proof of packing of essential safety items if necessary.

A proactive public packing process which is designed to ensure that essential safety items are packed and unnecessary items eliminated (especially where bags are being carried such as for tramping) may also result in evidence which forms the basis for a reasonable belief search.

It is permissible to ask students to show that they have necessary items related to the trip (for example, parka, lunch, torch). Asking the students to show that they have such items does not mean it is a search under the legislation. Schools might consider asking parents to sign a checklist that says (1) all required items are packed, (2) the parent has ensured that no banned items are packed and (3) that the parent understands the consequences for the student if the student is found with any banned items.

It is also an option that schools ask parents to be present to attest that a student's bag is free of banned items. Schools may also wish this to be carried out just prior to the trip's departure.

No amount of searching can replace supervision of activities while on a trip.

**15. Can schools conduct searches outside of the new legislation (for example, under the normal school behaviour management regime)?**

The legislation prescribes how searches may be carried out by schools. It is not lawful, therefore, for a school to carry out a search in circumstances or in a way that differs from the legislation.

It should also be noted that the legislation does not differentiate between what may occur in class, at a bus stop outside the school, at the local library or during EOTC. There are no school events or school-supervised situations where a student attends as a school student which are exempt from the legislation (see "Residential Schools and Hostels" below re young persons who are also residents of a hostel).

**16. When schools organise events such as school trips or school balls, Principals want to ensure that these events are drug or alcohol free. Can a school conduct a search of students as they enter the school ball venues?**

Only if it is believed on reasonable grounds that an individual student has a harmful item. Patting down is not allowed, as schools are not permitted to conduct a search that involves searching a student's person/body.

Balls held on school premises but organised by others, such as the PTA or the Old Pupils Association, can set their own rules. Outside venues may also have their own rules around entry to a function on their premises. It is good practice in these cases to notify students beforehand of any conditions to entry.



In some circumstances, it could be appropriate to pass the item or device to another person (such as a parent or caregiver or the person believed to be entitled to possession of it), or to an agency. Agencies to which items may be passed include the Police, the Department of Internal Affairs (for certain types of pornography, for example), and the New Zealand Customs Service (for certain types of contraband, for example).

In the great majority of cases, retained items/devices would be returned either on the same day or in the short term. Keeping an item, in itself, should not be used as a form of punishment.

Schools are able to continue with long-standing practices such as: first occasion, item returned to student; second occasion, parents or caregivers asked to pick the item up.

If it is not appropriate to return the item to the student (for example, because of the student's age), the item may be returned to the student's parents or caregivers.

Unless otherwise instructed by the Police, stolen property should be returned to its rightful owner.

### Disposal

An item may be disposed of if a teacher or an authorised staff member considers it appropriate.<sup>15</sup>

An item that has been retained may not be sold. Other forms of disposal are permissible (for example, unclaimed items may be donated to charity).

Disposal may include destruction, if appropriate. For some items, such as drug paraphernalia, the best course of action is to pass them to the Police (see comments on 'passing to an agency' below).

In some circumstances, it may be possible to dispose of an electronic item (such as a photo or text message) by deleting it.

Note that an electronic device cannot be disposed of.

This is another instance of when a Board may place conditions on an employee's use of powers (for example, staff may be required to consult with the Principal before disposing of an item).

### Written records

There must be a record of every item or device retained under the legislation and retained for two or more school nights.<sup>16</sup> The reference to school nights is to avoid triggering the need for a record when an item is retained on a Friday with the intention of returning it on the Monday.

The record must include the following:

- the date on which the item or device was taken
- the name of the student from whom the item or device was taken
- the name of the teacher or authorised staff member who took the item or device.

The record can include anything else the Board decides. There is no requirement for a register of records to be kept but a Board may decide to keep one if it chooses.

The nature of the record (as distinct from the content) may well depend on the nature or value of the item. For some items, a note attached to the item may suffice. For other items, a more substantial record may be better.

### Specific questions and scenarios – Retention

#### 21. If a student's property is retained and stored at the school, can the school charge students for storage of the item and administration?

No. There is no provision in the legislation for a fee.

#### 22. Can a school dispose of an item which it considers to be part of drug paraphernalia but parents view it as a valuable item?

Yes. In theory, the judgement call is the school's but a safer and more appropriate course of action would be to pass it to the Police.

#### 23. Can a non-authorised member of staff return retained property (for example, the school secretary)?

Yes. The legislation does not require the staff member who retained the item to hold on to it or restrict return to teachers or authorised staff members.

<sup>15</sup> See Rules 9 & 6.

<sup>16</sup> See Rule 10.



## When would a stolen item be “likely to detrimentally affect the learning environment?”

The question of which items may be “likely to detrimentally affect the learning environment” is a question of context rather than the inherent nature of an item.

In essence, anything that interrupts the ability of a teacher to carry out normal teaching responsibilities can be seen to be detrimental to the learning environment.

Most teachers are likely to be of the view that *any* instance of theft is likely to detrimentally affect the learning environment.

For example:

- when a student steals something in order to bully, goad or upset another student
- when theft is used as a stunt (for example, stealing the crest off the honours board) or to otherwise undermine the authority of the teacher (for example, stealing from the teacher’s desk)
- something that prevents delivery of the curriculum such as theft of a teacher’s laptop that contains a powerpoint presentation, or another student’s books.



## Residential Schools and Hostels<sup>17</sup>

How does the legislation apply to the following?

- a residential school
- a hostel owned by the BoT of a non-integrated state school
- a hostel owned by a proprietor.

The legislation applies when a person is in the role of a student and is being supervised by a person in the role of a teacher or authorised staff member. It can apply when students are off-site (for example, on trips, at nearby bus stops which the school supervises or when students play for a school sports team).

The legislation does not apply when a teacher or authorised staff member is performing a different role (for example, when they act as a volunteer at a community event or when they are performing hostel-related work). Staff with dual roles should know who they are working for at any given time as they will have two employers.

The legislation does not apply when a child or young person is attending a place or event in a role other than as a student (for example, when they are at a community youth group or when they are a resident in a hostel).

Boards of Trustees running their own hostels are still subject to the New Zealand Bill of Rights Act 1990 and the Privacy Act 1993, and therefore should exercise due caution.

Boards can seek advice from the New Zealand School Trustees Association.

Proprietors of state-integrated schools can seek advice from the Association of Proprietors of Integrated Schools.

Private parties who run hostels may also wish to seek their own advice.



## Partnership Schools/Kura Hourua

For Partnership Schools/Kura Hourua a reference in the Guidelines to a Board of Trustees can be read as a reference to the Sponsor of the Partnership Schools/Kura Hourua.

In relation to the surrender and retention of property and searches legislation, the following are considered to be “teachers”:

- any person in a “teaching position” at the Partnership School/Kura Hourua
- any person to whom the Sponsor has assigned any of the functions of the Principal (for example, the functions related to stand-downs and suspensions and the functions related to professional leadership). Note that these functions may be spread across multiple persons in a Partnership School/Kura Hourua. In a state school there will be a single Principal.

Because a person working at a Partnership School/Kura Hourua as staff may be a contractor, rather than an employee, the Sponsor may authorise such a contractor to exercise any of the powers in section 139AAA or 139AAB.

In all other respects, the legislation related to the surrender and retention of property and searches applies to Partnership Schools/Kura Hourua in the same way as it applies to state schools.

<sup>17</sup> The Ministry of Education intends to review its advice related to hostels. That advice is likely to include reference to searches – and the relationship between, and relevance of, the Bill of Rights Act and the Education Act. Once that occurs, schools with hostels will be notified.



Whilst these scenarios cannot guide staff on exactly how to handle a real situation in a school, the main aim of the scenarios is to guide staff in thinking through situations and applying the legislation and the guidance given above.

## SCENARIO 1 – PORNOGRAPHY

*A group of students has reported to their teacher that a student (Student W) was showing other students a pornographic movie on his tablet during a break. Pornography presents a risk to students and could be illegal. Staff are now considering what to do next.*

*Staff should first consider the information they have and consider the reports from the other students. Are the students who have reported the issue viewed as credible? Do their individual accounts of the events match? Where were the witnesses in relation to the reported incident?*

If staff believe the accounts of students are credible, they should put allegations to Student W and consider what Student W has to say. At this point the situation may resolve itself if the student admits wrongdoing and/or opens up the tablet to show staff what it contains.

If staff believe that Student W's tablet does contain pornography, what do they do next?

Staff should consider whether the movie (which is an item) is likely to either endanger the safety of any person or is likely to detrimentally affect the learning environment. If so, then Student W can be required to hand the tablet over and/or can be required to reveal the movie.

If Student W refuses to cooperate, then staff could consider taking action to manage Student W's behaviour. Such action may include considering whether there are good grounds for disciplinary action (note that in a school environment a student does not need to be caught 'red-handed' in an unsafe act before staff can take action in response to a student's behaviour).

Staff should also consider the circumstances in which safety could be endangered. In this case if the tablet is not turned on, other students will be safe irrespective of what it contains.

There is no need to find or view the pornography to ensure the safety of other students.

The other points staff need to consider may include:

- contacting Student W's parents/caregivers
- providing guidance and counselling to Student W
- changing the school's rules or practices around students' use of computers or other electronic devices.

Any students who viewed the pornography may need some support or counselling. Parents and caregivers should also be told if their children have been affected by such an incident.

## SCENARIO 2 – DRUGS

*A teacher on lunchtime duty caught two students smoking marijuana on the back field. These students claim they bought the marijuana that day from another student (Student G) and claim that Student G has more marijuana hidden in packets in his socks.*

*Student G is now in the Principal's office. Student G denies possessing or selling marijuana.*

The Principal should first consider the information at hand, including the reports of the other students. Are the students who have reported the issue viewed as credible? Do their individual accounts match? Were there other witnesses to the alleged drug dealing?

The Principal should then consider what Student G has to say. If the Principal then believes that Student G does have packets of marijuana, and that this is likely to either endanger the safety of any person or detrimentally affect the learning environment, Student G can be required to hand the drugs over.

If Student G refuses, and the Principal forms the view that the drugs pose an immediate threat to the physical or emotional safety of any person, then a search may be initiated. The Principal will need to ensure that another teacher or authorised staff member (of the same sex as Student G) is present. In this case, Student G would be asked to remove his socks.

Alternatively, the suspected presence of illegal items means that the Principal should contact the Police who are trained to respond to such issues. Drug dealing is an issue for the Police to be involved in and the student could be kept under supervision until the Police arrive.

For any refusal, or for the suspected presence of drugs, the Principal would want to take action to manage Student G's behaviour. Taking action may include considering whether there are good grounds for disciplinary action (note that in a school environment a student does not need to be caught 'red-handed' before staff can take action in response to a student's behaviour).

One course of action is for Student G to be suspended by the Board. If that happens, the Board is free to impose conditions on Student G's return to school – and one such condition could be a **requirement** for Student G to participate in a drug treatment programme that may or may not involve testing for drugs.



# SECTION 4

## APPENDICES



### Appendix One

#### Extracts from the Education Act 1989

##### 139AAA Surrender and retention of property

- (1) This section applies if a teacher or an authorised staff member has reasonable grounds to believe that a student has hidden or in clear view on or about the student's person, or in any bag or other container under the student's control, an item that is likely to—
  - (a) endanger the safety of any person; or
  - (b) detrimentally affect the learning environment.
- (2) If this section applies, the teacher or authorised staff member may require the student to produce and surrender the item.
- (3) If the item is stored on a computer or other electronic device, the teacher or authorised staff member may require the student—
  - (a) to reveal the item;
  - (b) to surrender the computer or other electronic device on which the item is stored.
- (4) A teacher or an authorised staff member may do either or both of the following to an item surrendered under this section:
  - (a) retain the item for a reasonable period;
  - (b) dispose of the item (if appropriate).
- (5) A teacher or an authorised staff member may retain a computer or other electronic device surrendered under subsection (3)(b) for a reasonable period.
- (6) If an item or a computer or other electronic device is retained under this section, it must be stored in an appropriate manner.
- (7) At the end of any period of retention, any computer or other electronic device, or any item that is not disposed of under subsection (4)(b), must be—
  - (a) returned to the student; or
  - (b) passed to another person or agency, as appropriate.

- (8) A teacher or an authorised staff member who exercises a power under this section must comply with any rules made under section 139AAH.
- (9) In this section and sections 139AAB to 139AAI, unless the context otherwise requires,—
  - authorised staff member means an employee of a board who is authorised by that board,—
  - (a) when used in this section, to exercise powers under this section; and
  - (b) when used in section 139AAB, to exercise powers under that section

item includes information stored in electronic form

student includes a person under the supervision of a teacher, whether or not the person is enrolled at the school at which the teacher is employed

teacher means a person employed at a State school in a teaching position (within the meaning of section 120).
- (10) An authorisation referred to in the definition of authorised staff member in subsection (9) must be in writing and may be subject to conditions.

##### 139AAB Searches of clothing and bags or other containers

- (1) This section applies if—
  - (a) a teacher or an authorised staff member has reasonable grounds to believe that a student has on or about the student's person, or in any bag or other container under the student's control, a harmful item; and
  - (b) the teacher or authorised staff member has required the student to produce and surrender the harmful item under section 139AAA and the student has refused to produce and surrender it.
- (2) If this section applies, the teacher or authorised staff member may do any of the following:
  - (a) require the student to remove any outer clothing, except where the student has no other clothing, or only underclothing, under that outer clothing;
  - (b) require the student to remove any head covering, gloves, footwear, or socks;
  - (c) require the student to surrender the bag or other container.
- (3) The teacher or authorised staff member may search any clothing or footwear removed, and any bag or other container surrendered, under subsection (2).
- (4) If, during a search under this section, the teacher or authorised staff member finds a harmful item or an item that is likely to detrimentally affect the learning environment, the item may be seized by the teacher or authorised staff member and section 139AAA(4) to (7) apply with any necessary modifications.



section 139AAA(2) or (3), a teacher or an authorised staff member may take any disciplinary steps, or steps to manage the student's behaviour, that the teacher or authorised staff member considers reasonable.

- (2) If a student refuses to remove any outer clothing, head covering, gloves, footwear, or socks or to surrender a bag or other container under section 139AAB(2), a teacher or an authorised staff member may take any disciplinary steps, or steps to manage the student's behaviour, that the teacher or authorised staff member considers reasonable.

### **139AAG Power to search storage containers not affected**

Nothing in section 139AAA or 139AAB limits or affects any power to search any locker, desk, or other receptacle provided to students for storage purposes.

139AAH Rules about surrender and retention of property and searches

- (1) The Secretary must make rules (which must be consistent with this Act) regulating the practice and procedure to be followed by boards, principals, teachers, and authorised staff members under sections 139AAA to 139AAF, including, without limitation, rules—
  - (a) providing for the keeping of written records relating to the use of the powers under section 139AAA; and
  - (b) prescribing requirements relating to the keeping of written records under section 139AAB; and
  - (c) prescribing the procedure for authorising staff members to exercise powers or carry out functions under sections 139AAA to 139AAI; and
  - (d) specifying the circumstances in which items may be disposed of under section 139AAA(4)(b); and
  - (e) setting out requirements for the storage of items and computers and other electronic devices under section 139AAA(6); and
  - (f) making provision for the return of items and computers and other electronic devices under section 139AAA(7)(a).
- (2) Rules made under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

### **139AAI Guidelines about surrender and retention of property and searches**

- (1) The Secretary must issue guidelines for the exercise of powers and carrying out of functions under sections 139AAA to 139AAH.
- (2) Boards, principals, teachers, and authorised staff members must have regard to guidelines issued under subsection (1).



- (3) The board must give the staff member a copy of the authorisation.
- (4) As soon as practicable after the staff member receives the authorisation, the staff member must give the board a written acknowledgment of its receipt.
- (5) The board may, by written notice to the staff member, revoke an authorisation at any time.

## **6 Considerations to be taken into account in dealing with**

items or devices taken under Act

- (1) A person must take into account the considerations specified in subclause (2) when the person decides, under the Act or these rules, whether—
  - (a) an item or a device taken under the Act is to be retained, returned to a student, passed to another person, or passed to another agency; or
  - (b) an item taken under the Act is to be disposed of.
- (2) The considerations are—
  - (a) the health and safety of people;
  - (b) the apparent value of the item or device concerned;
  - (c) the person believed to be entitled to the possession of the item or device concerned.

## **7 Retention and storage of items or devices taken under Act**

- (1) This rule applies to any item or device that has been taken under the Act and is to be retained.
- (2) Every teacher and every authorised staff member who is in possession of the item or device must take all reasonable care of the item or device while it is in his or her possession or under his or her control.
- (3) The teacher or authorised staff member who takes the item or device may—
  - (a) keep the item or device in his or her possession; or
  - (b) give the item or device to another teacher or to another authorised staff member; or
  - (c) arrange for the item or device to be placed in secure storage.
- (4) A teacher or other staff member of a school who is in possession of an item or a device that is to be retained overnight or for a longer period must ensure that the item or device is placed in secure storage.

## **8 Returning items or devices to students or passing them to other persons or agencies**

- (1) If a teacher, an authorised staff member, or the board determines that, in light of the considerations specified in rule 6(2), an item or a device taken under the Act can be appropriately returned to the student from whom it was taken, the item or device must be made available to the student as soon as practicable after that determination.

- (2) A teacher, an authorised staff member, or the board may, if satisfied that it is appropriate to do so in light of the considerations specified in rule 6(2), pass the item or device to—

- (a) another person, such as a parent or caregiver or the person believed to be entitled to the possession of the item or device; or
- (b) an agency, such as the New Zealand Police or the New Zealand Customs Service.

## **9 Disposal of items**

- (1) An item taken under the Act may be disposed of if a teacher or an authorised staff member considers that it is appropriate to do so in light of the considerations specified in rule 6(2).
- (2) No item taken under the Act may be disposed of by selling the item.

## **10 Record of retentions**

- (1) Each board must ensure that a record is made and kept of every item or device taken under the Act that is retained—
  - (a) for 2 nights, each of which follows a day on which the school is open for instruction; or
  - (b) for a longer period.
- (2) Every record must contain the particulars that the board prescribes from time to time, which must include the following:
  - (a) the date on which the item or device was taken;
  - (b) the name of the student from whom the item or device was taken;
  - (c) the name of the teacher or authorised staff member who took the item or device.

## **11 Record of searches of students' clothing, bags, or other containers**

- (1) The board of each school must ensure that a record is made and kept of every search that is carried out, under section 139AAB of the Act, of a student's clothing, bags, or other containers.
- (2) Every record must contain the particulars that the board prescribes from time to time, which must include the following:
  - (a) the date on which the search was conducted;
  - (b) the name of the student whose belongings were searched;
  - (c) the name of the teacher or authorised staff member who conducted the search;
  - (d) where applicable, why it was not practicable to comply with the relevant requirements stated in section 139AAC(2) and (3) of the Act in any case where the search





## Appendix Three

### Further information, advice and links to related resources

#### Professional advice

The NZSTA Helpdesk can be contacted on 0800 782 435 or via [helpdesk@nzsta.org.nz](mailto:helpdesk@nzsta.org.nz) for professional advice regarding school policies, practice or rules. Helpdesk staff can also help assess particular situations. The Helpdesk service is funded by the Ministry of Education and may be accessed by trustees and school management regardless of membership of NZSTA.

#### Further legal advice

Each Board is also able to consult a lawyer for advice. Please contact your Board's liability insurer for advice regarding a suitable firm to contact.

#### Privacy

The Privacy Commissioner's Office works to develop and promote a culture in which personal information is protected and respected. <http://privacy.org.nz/>

*Privacy in schools: A guide to the Privacy Act for Principals, teachers and Boards of Trustees* <http://privacy.org.nz/assets/Files/Brochures-and-pamphlets-and-pubs/Privacy-in-Schools-September-2009.pdf>

*Privacy and CCTV: A guide to the Privacy Act for businesses, agencies and organisations* <http://privacy.org.nz/privacy-and-cctv-a-guide-to-the-privacy-act-for-businesses-agencies-and-organisations/>

#### Police

If it is not an emergency, phone your local police station (Refer to the Phonebook or <http://www.police.govt.nz/district/phonebook.html> )

Information regarding the New Zealand Police School Community Services can be found at <https://www.police.govt.nz/advice/personal-community/school-community-services/about>

#### Ministry of Education guidelines

*Effective Governance – working in partnership* <http://www.minedu.govt.nz/Boards/EffectiveGovernance.aspx>

*Guidelines for Principals and Boards of Trustees on stand-downs, suspensions, exclusions and expulsions* <http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/StanddownsSuspensionsExclusionsExpulsions.aspx>

*Improving attendance – managing truancy and the prosecution process* <http://www.minedu.govt.nz/Boards/SupportForBoards/ImprovingAttendance.aspx>

### For further information relating to Health and Safety

#### Chapter 6 of the EOTC Guidelines

<http://eotc.tki.org.nz/EOTC-home/EOTC-Guidelines>

#### National Administration Guideline 5

<http://www.minedu.govt.nz/theMinistry/EducationInNewZealand/EducationLegislation/TheNationalAdministrationGuidelinesNAGs.aspx>

The Department of Labour's Health and Safety Site: <http://www.osh.govt.nz/>

### The Human Rights Commission

The primary functions of the Human Rights Commission are to advocate and promote respect for and appreciation of human rights in New Zealand society and to encourage the maintenance and development of harmonious relations between individuals and the diverse groups in New Zealand society.

Core Human Rights Commission publications can be found at <http://www.hrc.co.nz/resources>

### United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCROC) is a comprehensive human rights treaty that enshrines specific children's rights in international law. It was adopted by the UN in 1989 and defines universal principles and standards for the status and treatment of children worldwide. UNCROC was ratified by New Zealand in 1993.

Article 16 of UNCROC states that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.”

The Office of the Children's Commissioner and YouthLaw Tino Rangatiratanga Taitamariki have created a guide to UNCROC for young people – <http://www.occ.org.nz/childrens-rights-and-advice/uncroc/>

### Cyberbullying

Netsafe: <http://www.cyberbullying.org.nz/>

### Sikh Turban

Information about the Sikh turban can be found at: [http://en.wikipedia.org/wiki/Sikh\\_turban](http://en.wikipedia.org/wiki/Sikh_turban)

### Islam and clothing

An article on Islamic clothing can be found at: [http://en.wikipedia.org/wiki/Islam\\_and\\_clothing](http://en.wikipedia.org/wiki/Islam_and_clothing)

### School Anti-violence Toolkit

The Post Primary Teachers' Association toolkit can be found at [www.ppta.org.nz](http://www.ppta.org.nz)



