

## 5.3E SEARCH AND RETENTION

Occasionally it may be necessary to look through a student's belongings for the safety of themselves or others, or when property has gone missing.

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

**Principle 1:** All schools are required to provide a safe physical and emotional environment for students and staff. A safe environment for students and staff is of paramount importance and therefore must be given primacy when applying the guidelines. National Administration Guideline 5 and other legislation clearly establish this.

**Principle 2:** Parents, students and the public will have a legitimate expectation that the school environment will be free from drugs, weapons, alcohol and cyber bullying. They will expect schools to develop a written policy and procedure on surrender and retention and to advise them accordingly. Schools must be mindful of these expectations.

**Principle 3:** Parliament has given new powers and clarified the law in relation to searches and retaining student property. In exercising these powers, schools must act reasonably, in good faith and in the least intrusive manner to achieve a safe environment.

**Principle 4:** Students are protected under Section 21 of the New Zealand Bill of Rights Act 1990, which states "Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property or correspondence or otherwise". This section does not prohibit searches or seizure of student property but schools must be able to justify their actions as reasonable and necessary to maintain a safe environment.

### Search

1. To conduct a search for an item, staff must require the student to remove outer clothing, or surrender a bag or other belongings in which they suspect the item/device is.
2. 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.
3. 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.
4. 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 devices, school desks and storage areas):
  - at any time
  - for any reason
  - by any means (as long as it acts professionally and respects privacy).

### Retention

5. 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 so long as the staff member has reasonable grounds for their actions.
6. If an item is surrendered, staff may retain and/or dispose of it (if appropriate).
7. If a device is surrendered, staff may retain it, but cannot dispose of it.
8. 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).
9. 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.

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.