

Toronto District School Board

Operational Procedure PR.524 SCH

Title: **SEARCH AND SEIZURE**

Adopted: February 29, 2000

Revised:

Authorization:

1.0 OBJECTIVE

To provide a process for search and seizure

2.0 RESPONSIBILITY

Associate Director

3.0 PROCEDURES

From time to time, proper investigation of an incident in a school may involve a search of a student or his/ her property. A teacher may have reason to suspect that a student is carrying a concealed weapon. A student questioned with regard to a fight may blurt out that one of the antagonists sells drugs and keeps some in his locker. A student reports that her walkman has been stolen and indicates that she believes it was taken by another student and may be found in his knapsack. What is the proper procedure to follow in circumstances such as these?

4.1 Canadian Charter of Rights and Freedom

Section 8 of the *Canadian Charter of Rights and Freedom* (the "Charter") provides that: "Everyone has the right to be secure against unreasonable search and seizure". In applying this provision in a school context, Canadian courts have held that in carrying out the duty to maintain order and discipline in the school, the principal may search a student. However, the courts have ruled that the school authority must have reasonable grounds to believe that there has been a breach of school regulations and that a search of a student would reveal evidence of that breach.

4.2 Grounds for a search

- (a) The courts have held that a warrant is not essential in order to conduct a search of a student by a school authority. The courts have recognized that school authorities are in the best position to assess information given to them and relate it to the situation existing in their school.

- (b) The following may constitute reasonable grounds:
 - information received from one student considered to be credible;
 - information received from more than one student;
 - a teacher's or principal's own observations; and
 - any combination of these pieces of information which the school authority considers to be credible.
- (c) The compelling nature of the information and the credibility of these or other sources will be assessed by the school authority in the context of the circumstances existing at a particular school. Random or arbitrary searches or searches on groundless suspicion will likely be in contravention of the Charter.

4.3 Factors to consider

Educators assessing whether to undertake a personal search of a student should consider the following:

- (a) all serious incidents of anti-social behaviour, violence or threats of violence with a connection to a school should be reported to the police. Where there is a need to search a student personally and school authorities are not comfortable in conducting such search, school authorities should contact the police
- (b) only principals or their designates should be permitted to conduct a search or seize prohibited objects or substances, unless there is an immediate threat to the safety of a person or persons or the school premises
- (c) a search should only be conducted when there are reasonable grounds to believe that a student or visitor is in possession of an object or substance that is prohibited by school policies or regulations
- (d) principals and their designates should exercise reason and judgement in determining the scope of any search. Searches should be conducted in a sensitive manner and be minimally intrusive. Due consideration should be given to the age and gender of the student and the gravity of the infraction
- (e) all searches should be conducted in the presence of at least one adult witness. To be prudent, searches of a student's locker, desk or knapsack, should be conducted in the presence of the relevant student
- (f) all personal searches of a student should be conducted in the privacy of the principal's office or another suitable room designated by the principal. Where need for a personal search is indicated, the individual involved should be given the opportunity to produce the substance or object which he or she is suspected of possessing. School authorities are advised not to undertake a cross-gender search
- (g) when a search is conducted, a record of all pertinent information should be documented. Information to be documented includes details of allegations, names of relevant parties and possible witnesses, time of relevant incidents, time and place of the investigation, parties interviewed, effort made to contact

parents, discussions held to date, and details of police involvement, if any. The principal should retain one copy of this documentation on file and should file a second copy with the appropriate supervisory officer. Access to, and disclosure of, such information is subject to the *Municipal Freedom of Information and Protection of Privacy Act*

- (h) when police are called in to an investigation involving a student, the police/school procedures should be followed. Except in emergency situations, police, upon entering the school, are expected to identify themselves to the main office. During a police investigation at school, it is primarily the responsibility of the police to explain to a young person his/her rights in a manner that enables him/her to understand them
- (i) in appropriate circumstances, where a prohibited substance or object is discovered as a result of a search, the principal/designate should promptly contact the parent/guardian of a student under 18 years of age who is the subject of such investigation. The principal/designate should maintain a record of his/her attempts to contact the student's parent/guardian
- (j) any prohibited substance or object discovered as the result of a search will be confiscated and retained in a secure location. In all cases, a record should be kept of all seized substances or objects

4.0 REFERENCE DOCUMENTS

Canadian Charter of Rights and Freedom

Municipal Freedom of Information and Protection of Privacy Act