

CSBA Update 06/21 **Board Policy**

Students

BP 5145.12

SEARCH AND SEIZURE

Note: The following **optional policy and accompanying administrative regulation** should be modified to reflect district practice. **The legality of a search by school officials is complex and depends on the particular circumstances surrounding the search. Districts with specific questions about the legality of a search should consult legal counsel.** It is also recommended that the district work with legal counsel to provide staff development for employees conducting searches on behalf of the district.

The following policy and accompanying administrative regulation address circumstances under which searches of individual students may be authorized based on individualized suspicion, and circumstances under which the district may conduct searches without individualized suspicion (e.g., searches of lockers, use metal detectors, or use contraband detection dogs). In In re Sean A., the Court of Appeal upheld a limited search for weapons or drugs without individualized suspicion where a school policy called for students who left campus and returned in the middle of the day to be searched. Districts that wish to develop policy authorizing limited searches for weapons or drugs without individualized suspicion should consult legal counsel.

The Governing Board is fully committed to promoting a safe learning environment and, to the extent possible, eliminating the possession and use of weapons, illegal drugs, and other controlled substances by students on school premises and at school activities. As necessary to protect the health and welfare of students and staff, **and only as authorized by law, Board policy, and administrative regulation**, school officials may search students, their property, and/or district property under their control and may seize illegal, unsafe, or otherwise prohibited items. ~~The Board urges that employees~~ **School officials shall exercise discretion and use good judgment when conducting searches.**

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 3515 - Campus Security)

(cf. 3515.3 - District Police/Security Department)

(cf. 5131 - Conduct)

(cf. 5131.7 - Weapons and Dangerous Instruments)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5145.3 - Nondiscrimination/Harassment)

~~The Board urges that employees exercise discretion and good judgment. When conducting a search or seizure, employees shall act in accordance with law, Board policy, and administrative regulation.~~

~~*(cf. 0410 - Nondiscrimination in District Programs and Activities)*~~

~~*(cf. 1312.1 - Complaints Concerning District Employees)*~~

~~*(cf. 5145.3 - Nondiscrimination/Harassment)*~~

Note: As discussed below, the law surrounding student searches is complex. Therefore, it is recommended that the district work with legal counsel to provide training for employees conducting searches on behalf of the district.

The Superintendent or designee shall ensure that staff who conduct student searches receive training regarding the requirements of the district's policy and administrative regulation and other legal issues, as appropriate.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331- Staff Development)

Individual Searches Based on Individualized Suspicion

Note: The Fourth Amendment of the U.S. Constitution, which prohibits unreasonable search and seizure, also applies to students in the school setting. In New Jersey v. T.L.O., the U.S. Supreme Court held that the legality of a search of a student and/or ~~his/her~~ **the student's** belongings depends on whether the search is "reasonable." The "reasonableness" of a search depends on two factors: (1) whether there is individualized suspicion that the search will turn up evidence of a student's violation of the law or school rules and (2) whether the search is reasonably related to the objectives of the search and not excessively intrusive in light of the student's age, gender, and/or the nature of the infraction.

In Redding v. Safford Unified School District, the U.S. Supreme Court held that a strip search of a student (~~permissible in Arizona schools~~) was beyond the scope and overly intrusive in light of the seriousness of the student's alleged violation (i.e., possession of ibuprofen), the lack of immediate danger, and the lack of justification for the search given that the basis of the search was an uncorroborated tip from a fellow student. Although the specific type of search discussed in the court decision is not permissible in California schools pursuant to Education Code 49050, the factors considered by the court are applicable to an analysis as to whether a search is reasonable in scope, as specified below.

The law regarding searches of students' cellular phones, personally owned computers, or other personal communications devices is still developing. It is especially difficult to determine whether the school can impose discipline in circumstances where the behavior, such as sending a threatening message, occurs off campus; see BP 5131 Conduct. When the student brings an electronic device onto school grounds, it may be searched by school officials, but the search is subject to the same legal standards as a search of other student property, such as a backpack or purse. Therefore, when searching a student's personally owned electronic device, the district must have individualized suspicion that the search will lead to evidence that the student is violating a specific law or school rule and the scope of the search must be reasonably related to that violation. For example, searching a student's phone for evidence against another student or searching text messages extending well beyond the period of time of the alleged violation would likely be considered excessive in scope and thus unlawful. These standards for personally owned items are not applicable to a district's right to monitor a student's use of district owned computer equipment or networks, subject to the district's acceptable use agreement; see BP/E 6163.4 Student Use of Technology.

School officials may search any individual student, ~~his/her~~ **the student's** property, or district property under ~~his/her~~ **the student's** control when there is a reasonable suspicion that the search will uncover evidence that ~~he/she~~ **the student** is violating the law, Board policy, administrative regulation, or other rules of the district or the school. Reasonable suspicion shall be based on specific and objective facts that the search will produce evidence related to the alleged violation.

The types of student property that may be searched by school officials include, but are not limited to, lockers, desks, purses, backpacks, student vehicles parked on district property, cellular phones, or other electronic communication devices.

Note: In *Redding v. Safford Unified School District*, the U.S. Supreme Court held that a strip search of a student (permissible in Arizona schools) was beyond the scope and overly intrusive in light of the seriousness of the student's alleged violation (i.e., possession of ibuprofen), the lack of immediate danger, and the lack of justification for the search given that the basis of the search was an uncorroborated tip from a fellow student. Although the specific type of search discussed in the court decision is not permissible in California schools pursuant to Education Code 49050, the factors considered by the court are applicable to an analysis as to whether a search is reasonable in scope, as specified below.

Any search of a student, **his/her the student's** property, or district property under **his/her the student's** control shall be limited in scope and designed to produce evidence related to the alleged violation. Factors to be considered by school officials when determining the scope of the search shall include the danger to the health or safety of students or staff, such as the possession of weapons, drugs, or other dangerous instruments, and whether the item(s) to be searched by school officials are reasonably related to the contraband to be found. In addition, school officials shall consider the intrusiveness of the search in light of the student's age, gender, and the nature of the alleged violation.

The types of student property that may be searched by school officials include, but are not limited to, lockers, desks, purses, backpacks, **and** student vehicles parked on district property, ~~cellular phones, or other electronic communication devices.~~

Note: In California, searches of personal electronic devices such as cellular phones are subject to the restrictions imposed by Penal Code 1546.1 in addition to the prohibitions against unreasonable searches and seizures under the Fourth Amendment. Districts with questions about searches of electronic devices such as cellular phones should consult legal counsel.

A student's personal electronic device may be searched only if a school official, in good faith, believes that an emergency involving danger of death or serious physical injury to the student or others requires access to the electronic device information.

(cf. 6163.4 - Student Use of Technology)

Employees shall not conduct strip searches or body cavity searches of any student. (Education Code 49050)

Searches of individual students shall be conducted in the presence of at least two district employees.

The principal or designee shall notify the parent/guardian of a student subjected to an individualized search as soon as possible after the search.

(cf. 5145.11 - Questioning and Apprehension by Law Enforcement)

Searches of **Multiple Student Lockers/ and Desks**

Note: **The ability of school officials to search a locker without individualized suspicion depends on whether, under the circumstances, the student has a reasonable expectation of privacy in the locker. In In re Cody S., the Court of Appeal observed that, while students in California generally have a reasonable expectation of privacy in lockers, that expectation can be limited where school policy makes it clear that lockers are the property of the district and subject to search. Nonetheless, board policy alone will not determine whether a student has a reasonable expectation of privacy in a locker as other circumstances such as staff communication and school practice can also inform the reasonableness of a student's expectation of privacy. Districts with specific questions about whether school officials can search lockers without individualized suspicion should consult legal counsel.**

~~Like other student belongings, individual lockers and desks may be searched when there is reasonable, individualized suspicion, subject to the limits discussed in the above section entitled "Individual Searches." An argument could be made that, because lockers and desks are the property of the district, a student does not have an expectation of privacy and thus school officials could search them at any time, without individualized suspicion. However, because California courts have not ruled on this issue, the state of the law is unclear and districts that wish to develop policy authorizing searches of lockers and desks at any time, without individualized suspicion, should consult legal counsel.~~

The following **optional** section is for districts that conduct regular, announced inspections of multiple student lockers and/or desks **and should be revised to reflect district practice.** ~~Because such searches are random and announced in advance, individualized suspicion is not required.~~

All student lockers and desks are the property of the district. The principal or designee may conduct a general inspection of school properties that are within the control of students, such as lockers and desks, on a regular, announced basis, with students standing by their assigned lockers or desks. Any items contained in a locker or desk shall be considered to be the property of the student to whom the locker or desk was assigned.

Use of Metal Detectors

Note: **In In re Latasha W., the Court of Appeal upheld a policy of random weapons screening with a handheld metal detector. In addition, an Attorney General opinion (75 Ops.Cal.Atty.Gen. 155 (1992)) states that the reasonable use of metal detectors to deter the presence of weapons in schools is appropriate without individualized suspicion. The Attorney General recommends that the Governing Board make a specific finding identifying the rationale for the use of metal detectors. This finding need not be based on a specific weapons incident, but rather may be based on the need for metal detectors in response to the general harm caused by weapons and the need to provide a safe learning environment.**

The following **optional** paragraph should be modified to reflect the district's rationale for the use of metal detectors.

The Board **believes finds** that the presence of weapons in the schools threatens the district's ability to provide the safe and orderly learning environment to which district students and staff are entitled. The Board also **believes finds** that metal detector searches offer a reasonable means to keep weapons out of the schools and mitigate the fears of students and staff.

Note: The Board should consider where and when metal detectors will be used, such as on a permanent basis at certain sites, rotated among sites, during regular school hours, and/or during special events such as athletic events or dances. To ensure that a metal detector search is reasonable, the Attorney General recommends that an administrative plan be established which contains uniform, established procedures and adequate safeguards against arbitrary and capricious enforcement by school officials. For example, the plan may specify that metal detectors be used at randomly selected schools or that students will be searched on a random basis (e.g., every fifth student entering). The key is to ensure that neutral criteria are applied so that the persons conducting the search do not exercise discretion in determining whether specific persons are targeted or selected for the search. The Attorney General's opinion also recommends that the district's use of metal detectors be incorporated into the district and/or school site safety plan; see BP/AR 0450 - Comprehensive Safety Plan. See the accompanying administrative regulation for other safeguards identified by the Attorney General.

The Superintendent or designee shall use metal detectors **at district schools** as necessary to **keep weapons out of schools and** help provide a safe learning environment. **He/she The Superintendent or designee** shall establish a plan to ensure that metal detector searches are conducted in a uniform and consistent manner.

Use of Contraband Detection Dogs

Note: The following **optional** section is for districts that use trained dogs for random and unannounced inspections for contraband. Prior to instituting such a program, districts wishing to conduct these types of "sniff searches" should make specific findings as to the need for the program and consult legal counsel.

Legally, problems arise when individual persons are sniffed and when students are separated from their belongings so that the belongings can be sniffed. In *B.C. v. Plumas*, the 9th Circuit Court of Appeals concluded that the random and suspicionless dog sniff of a student as he walked by the dog while exiting the room was unreasonable. The court found compelling the fact that there were not specific findings of a serious drug problem at the school that would necessitate the need for the use of the dogs. This court did not rule on whether sniffs of inanimate objects (such as automobiles or lockers) in a school setting are legal. However, courts outside of California (*Zamora v. Pomeroy* and *Horton v. Goose Creek Independent School District*) have indicated that dog sniffing around lockers and cars would probably not be deemed a "search" and thus would be permissible on a random basis without individualized suspicion. If the dog then alerts on a particular car or locker, this alert could then constitute the reasonable suspicion needed in order to conduct a search.

The law is unclear as to whether the district can conduct random and unannounced use of dogs whereby students are asked or required to leave their belongings so that the dog can sniff those belongings. An Attorney General opinion (83 *Ops. Cal. Atty. Gen.* 257 (2001-2000)) states that, unless exigent circumstances exist (e.g., supporting data of a known drug problem), requiring students to leave their belongings behind in the classroom (e.g., backpacks, purses, jackets) in order to conduct random, unannounced and neutral sniff tests on students' personal belongings would be unreasonable and therefore unconstitutional. Whether the district can "ask" students to leave their belongings behind is also questionable since such a request might be considered an unconstitutional "seizure." Districts that wish to institute either type of policy should consult legal counsel and have specific data demonstrating the need for such a policy. Although Attorney General opinions are not law, they are generally afforded deference by the courts. See the accompanying administrative regulation.

In an effort to keep the schools free of dangerous contraband, the district may use specially trained, nonaggressive dogs to sniff out and alert staff to the presence of substances prohibited by law or Board policy. The dogs may sniff the air around lockers, desks, or vehicles on district property or at district-sponsored events. Dogs shall not sniff within the close proximity of students or other persons and may not sniff any personal items on those persons **without individualized suspicion, without their consent.**

Legal Reference:

EDUCATION CODE

32280-32289 School safety plans
35160 Authority of governing boards
35160.1 Broad authority of school districts
48900-48927 Suspension and expulsion
49050-49051 Searches by school employees
49330-49334 Injurious objects

PENAL CODE

626.9 Firearms
626.10 Dirks, daggers, knives or razor

1546-1546.1 Production of or access to electronic communication information

CALIFORNIA CONSTITUTION

Article I, Section 28(c) Right to Safe Schools

COURT DECISIONS

***In G.C. v. Owensboro Public Schools* (6th Cir. 2013) 711 F.3d 623**

***In re Sean A.* (2010) 191 Cal. App. 4th 182**

Redding v. Safford Unified School District, (2009) 557 U.S. 364 ~~(2009)~~

B.C. v. Plumas, (9th Cir. 1999) 192 F.3d 1260

Jennings v. Joshua Independent School District, (5th Cir. 1992) 948 F.2d 194 ~~557 U.S. 364 (2009)~~

***In re Cody S.*, 121 Cal. App. 4th 86, 92 (2004)**

***Klump v. Nazareth Area School District* (E.D. Pa. 2006) 425 F. Supp. 2d 622, 640**

***In Re William V.* (2003) 111 Cal.App.4th 1464**

B.C. v. Plumas, (9th Cir. 1999) 192 F.3d 1260

***In re Latasha W.* (1998), 60 Cal. App. 4th 1524**

O'Connor v. Ortega, (1987) 480 U.S. 709

***In re William G* (1985) 40 Cal. 3d 550**

New Jersey v. T.L.O., (1985) 469 U.S. 325

Horton v. Goose Creek Independent School District, (5th Cir. 1982) 690 F.2d 470

Zamora v. Pomeroy, (10th Cir. 1981) 639 F.2d 662

ATTORNEY GENERAL OPINIONS

83 *Ops.Cal.Atty.Gen.* 257 ~~(2001-2000)~~

75 *Ops.Cal.Atty.Gen.* 155 (1992)

Management Resources:

NATIONAL INSTITUTE OF JUSTICE PUBLICATIONS

The Appropriate and Effective Use of Security Technologies in U.S. Schools: A Guide for Schools and Law Enforcement Agencies, 1999

WEB SITES

CSBA: <http://www.csba.org>

California Attorney General's Office: <http://caag.state.ca.us>

California Department of Education, Safe Schools: <http://www.cde.ca.gov/lss>

National Institute of Justice: <http://www.ojp.usdoj.gov/nij>

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Policy adopted: February 18, 2009

revised: December 14, 2022 (pending board approval)