



Search of a Student and Search and Seizure of Student Property - Procedure

Background, Context and Guidelines

In addition to the procedural responsibilities of staff related to this topic, staff must be aware of the legislation, court decisions and police procedures prior to making any decisions on the search of students or the search and seizure of student property. This section will review reasonable grounds for searching students, the concept of reasonableness as it is applicable to students' legal rights, and court and police guidelines for searches by Southeast staff and the police.

a. Reasonable Grounds for Searches

To determine whether a search is reasonable, all the surrounding circumstances are considered. The following may constitute reasonable grounds:

- information received from one student considered to be credible,
- information received from more than one student,
- a staff member's own observations, or
- any combination of the above or information which the relevant authority considers to be credible.

The compelling nature of the information and the credibility of these or other sources must be assessed by the staff member in the context of the circumstances existing at Southeast.

b. Student Rights - Concept of Reasonableness

The following sections of the *Canadian Charter of Rights and Freedoms* are applicable to students' legal rights.

Section 7: The right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;

Section 8: The right to be secure against unreasonable search and seizure;

Section 9: The right not to be arbitrarily detained or arrested.

Section 10: The right, on arrest or detention, to be informed promptly of the reasons for it; to retain counsel without delay; to be informed of the right to retain counsel without

delay; to challenge the validity of the arrest or detention and to be released if it is unlawful.

Section 12: The right to not be subjected to any cruel and unusual treatment or punishment.

Section 24(2): The right to have evidence obtained in a manner that infringed or denied any Charter rights or freedoms be excluded from court proceedings if, having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute.

c. Investigations by Southeast Collegiate and Investigations by Police

Staff should be aware of the distinctions between investigations conducted by Southeast authorities and investigations by police.

i. Southeast Collegiate Investigations

Where a school investigation is followed by school discipline, the courts give significant deference to the judgment of a school administrator as long as the process is fair. In matters of school discipline, a broad measure of discretion and flexibility is afforded the school authorities.

ii. Police Investigations

Where a police investigation is followed by criminal charges, the courts and legislation have provided that:

- police must respect the privacy of young people as they would be mindful of the privacy of adults; and police must not exercise their criminal law search powers without reason or evidence,
- police cannot, even by invitation by the Southeast Director/ Principal, perform general searches of students' belongings,
- police have the power to perform school/lodge searches, subject to compliance with the *Canadian Charter of Rights and Freedoms*,
- normal standards of reasonable and probable grounds may apply to school/lodge searches by police; mere suspicion would not be enough to justify school/lodge searches by police.

2. Roles and Responsibilities

a. Director/Principal

Shall ensure that:

- i. the primary purpose of the inspection of lockers and or dorm room or the personal property of a student shall be the protection of the health, safety, and general welfare of students, staff members, and Southeast property.
- ii. searches are conducted where there is reasonable suspicion that a student is concealing something which is in violation of the law, Southeast policy,

Southeast rules, or when in the case of locker searches, the person using the locker is no longer in active attendance at the school.

- iii. inform students and parents/guardians annually of the guidelines for the search of lockers, personal effects, and/or students through the use of assemblies, newsletters and school handbooks,
- iv. establish procedures for the recording of search and seizure incidents and advising the parents/guardians of the student involved that such a search took place,
- v. ensure the development of consequences for inappropriate possession of prohibited substances or objects in lockers or on Southeast property in accordance with policies for student discipline and withdrawal.

3. Search of a Student

a. Responsibilities and Procedures

- i. Southeast staff members have authority to conduct reasonable searches to enforce rules and protect the health and safety of students in their care.
- ii. In determining the permissible scope of the search, the need to ensure safety of all students must be balanced against the privacy and dignity of the individual student.
- iii. To permit staff members to react quickly to safety problems in the facility, a warrant is not essential in order to conduct a search of a student by a staff member.
- iv. The staff member must have reasonable grounds to believe that there has been a breach of Southeast policies or discipline and that a search of a student would reveal evidence of that breach.
- v. The search itself must be carried out in a reasonable and sensible manner, having regard to all the circumstances, and must not be overly intrusive.
- vi. Under no circumstances will a staff member conduct a body search of a student/this is only for personal property.
- vii. If a student refuses a search of his/her personal effects, the Director/Principal or designate will advise the student and the police will be contacted.

4. Search of a Student's Locker/Personal Effects or dormitory room

- a. A student's locker and/or a student's personal effects or Dormitory may be searched by staff members where there is a reasonable cause to believe that the student is concealing evidence of an illegal act, rule violation, or that illegal or prohibitive substances or objects are present.
- b. The student will be informed and be present, where reasonably possible, when a search is conducted.
- c. Students will be given the opportunity to provide for such a search or to make voluntary disclosure of the property where reasonably possible in the circumstances.

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