

SURRENDER AND RETENTION OF PROPERTY

These Guidelines are issued under section 139AAI of the Education Act 1989. They provide advice about legislation introduced January 1st 2014, relating to searches and confiscation of property in schools. They explain the legislation (Sections 139AAA – 139AAI of the Education Act 1989) and the associated Rules.

Boards of Trustees are responsible for the governance and management of their schools. The Guidelines are intended to assist Boards of Trustees and their staff when the surrender and retention of property from students is contemplated. The legislation requires schools to have regard to these Guidelines.

These Guidelines are designed as a thinking tool, not a reference manual.

These Guidelines are intended as a resource to assist principals and Boards to deal with situations where the safety of students, staff or the school is compromised. There can be no definitive way of dealing with each and every scenario and Principals and Boards will most often be required to look to their own experience and judgement. Often the circumstances will be straight-forward and responses will be routine, but there will be occasions when the best course of action is not obvious.

Where a range of responses is available, Boards and staff are encouraged **to exercise judgment that is based on what is *reasonable* in the circumstances.**

There are, however, some fundamental principles on which the Guidelines are built.

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.

The rules require.....

- require every teacher and every authorised staff member who is in possession of an item or a device that is to be retained **to take all reasonable care** of the item or device while it is in his or her possession or under his or her control and to **place the item or device in secure storage** if it is to be retained overnight or for a longer period:
- require an item or a device to be returned to the student from whom it has been taken as soon as practicable after a teacher, an authorised staff member, or the board determines, in light of the relevant considerations, that the item or device can be appropriately returned to the student:
- provide that, if satisfied that it is appropriate to do so in light of the relevant considerations, a teacher, an authorised staff member, or the board may pass the item or device to another person, such as a parent or caregiver or the person believed to be entitled to the possession of the item or device, or to an agency, such as the New Zealand Police or the New Zealand Customs Service:
- provide that, if satisfied that it is appropriate to do so in light of the relevant considerations, a teacher or an authorised staff member may dispose of an item, but no item may be disposed of by sale:
- require each board to make and keep a record of every item or device taken under the Act that is retained for 2 nights (each of which follows a day on which the school is open for instruction) or for a longer period. The record must contain the particulars that the board prescribes, including those set out in rule 10(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.

- require each board to make and keep a record of every search that is carried out under section 139AAB of the Act. The record must contain the particulars that the board prescribes, including those set out in rule 11(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 was not carried out by a teacher or an authorised staff member of the same sex as the student:
 - (ii) was not carried out in the presence of another teacher or authorised staff member of the same sex as the student:
 - (iii) was carried out in the view of any person other than the teacher or authorised staff member carrying out the search, the student, and another teacher or authorised staff member.

APPENDIX 6.1.

139AASurrender and retention of property (Education Amendment Act 2013)

- (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.

Section 139AAA: inserted, on 1 January 2014, by [section 28](#) of the Education Amendment Act 2013 (2013 No 34).

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.

(5) A teacher or an authorised staff member who exercises a power under this section must comply with any rules made under [section 139AAH](#).

(6) In this section, [section 139AAD](#), and [section 139AAF](#), —
harmful item means an item that a teacher or an authorised staff member has reasonable grounds to believe poses an immediate threat to the physical or emotional safety of any person

outer clothing includes, without limitation, any coat, jacket, jumper, or cardigan

socks does not include tights or stockings.

Section 139AAB: inserted, on 1 January 2014, by [section 28](#) of the Education Amendment Act 2013 (2013 No 34).

139AAC Restrictions on searches under section 139AAB

- (1) A teacher or an authorised staff member who carries out a search under [section 139AAB](#) must carry out the search with decency and

sensitivity and in a manner that affords the student the greatest degree of privacy and dignity consistent with the purpose of the search.

(2) Unless impracticable, a search under [section 139AAB](#) must be carried out—

- (a) by a teacher or an authorised staff member who is of the same sex as the student; and
- (b) in the presence of the student and another teacher or authorised staff member who is of the same sex as the student.

(3) Unless impracticable, a search under [section 139AAB](#) must not be carried out in the view of any person other than the person carrying out the search, the student, and another teacher or authorised staff member.

(4) A teacher or an authorised staff member who carries out a search under [section 139AAB](#) must—

- (a) return any clothing or footwear removed and any bag or other container surrendered as soon as the search is completed; and
- (b) keep a written record of any items seized under [section 139AAB\(4\)](#).

Section 139AAC: inserted, on 1 January 2014, by [section 28](#) of the Education Amendment Act 2013 (2013 No 34).

139AAD Limitations on sections 139AAA and 139AAB

- (1) Nothing in [section 139AAA](#) or [139AAB](#) permits a teacher or staff member—
 - (a) to search any student; or
 - (b) to use physical force against a student; or
 - (c) to require a student to provide a bodily sample (but a teacher or staff member may encourage a student to participate in a voluntary drug treatment programme that involves testing of bodily samples).

(2) Nothing in [section 139AAA](#) or [139AAB](#) permits a teacher or an authorised staff member to have a dog with him or her for the purpose of exercising a power under that section.

(3) The powers set out in [sections 139AAA](#) and [139AAB](#) may not be exercised in relation to 2 or more students together unless the teacher or authorised staff member has reasonable grounds to believe that each student has an item specified in [section 139AAA\(1\)](#) or a harmful item on or about his or her person, or in any bag or other container under his or her control.

(4) Nothing in subsection (1) limits or affects [sections 15](#) and [17](#) of this Act or [sections 41](#), [48](#), and [59](#) of the Crimes Act 1961.

(5) In this section,—

rub-down search means a search in which the person conducting the search—

- (a) runs or pats his or her hand over the body of the person being searched, whether outside or inside the clothing of the person being searched;
- (b) inserts his or her hand inside any pocket or pouch in the clothing of the person being searched

search, in relation to a student, includes—

- (a) a strip search; and
- (b) a rub-down search

strip search means a search where the person conducting the search requires the person being searched to—

- (a) remove any of the latter person's clothing other than outer clothing, head covering, gloves, footwear, or socks; or
- (b) raise, lower, or open all or any part of the latter person's clothing.

Section 139AAD: inserted, on 1 January 2014, by [section 28](#) of the Education Amendment Act 2013 (2013 No 34).

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