



PORTLAND PUBLIC SCHOOLS

OFFICE OF General Counsel

501 North Dixon Street / Portland, OR 97227

Telephone: (503) 916-3274

Date: October 17, 2019
To: School Board
From: Mary Kane, Senior Legal Counsel
Subject: Updated Search and Seizure Policy

BACKGROUND

The Search and Seizure Policy 4.30.040-P was last amended in 2002 and was not representative of current practice or law. It was also contained vague direction to administrators of how contraband should be handled in schools. We were asked by administrators to create clear guidance on this issue in particular, but we also realized that we need to make changes to other areas within the policy.

RELATED POLICIES/BEST PRACTICES

State and Federal guidance include: Article 1, sec. 9 of the Oregon Constitution and 4th Amendment of the U.S. Constitution; *Riley v. California*, 134 S.Ct. 2473 (2014); *N.J. v. T.L.O.*, 469 U.S. 325 (1985); *State ex rel Juv. Dept. of Clackamas County v. M.A.D.*, 348 Or. 381 (2010).

ANALYSIS OF SITUATION

We pulled the procedural elements from the policy and created a separate administrative directive document where we could outline more specific processes around student searches and interviews in school as well as for the documentation and disposal of contraband found as a result of school searches.

The policy now reflects core goals and guiding principles in our handling of search and seizure of students. In developing this policy and administrative directive, we received input from building administrators and our SROs to create the initial framework on the handling of contraband and then asked them and the other stakeholders listed below to provide edits to the draft document.

The policy was then reviewed in the Board's Policy Committee at meetings held on August 29, 2019 and again on October 14, 2019. After incorporating the edits recommended in the earlier meeting, the committee approved moving the policy to the full Board.

FISCAL IMPACT

As part of the documentation and disposal of contraband protocols, all middle and high schools were to have been provided a lock box to hold contraband. We anticipated that this would

create a fiscal impact but we instead have repurposed used locked filing cabinets that had been in storage. The filing cabinets have been relocated to the buildings.

COMMUNITY ENGAGEMENT (IF APPLICABLE)

The General Counsel's office worked with stakeholders from the Departments of Student Success and Health, Student Conduct and Discipline, Security Services, Risk, Office of School Performance, school administrators, parent groups and the Portland Police Bureau.

TIMELINE FOR IMPLEMENTATION / EVALUATION

We have already developed an administrative directive which provides specific procedures and guidelines for searches and contraband retrieval and disposal. We have also created a contraband documentation and disposal procedure one-pager for administrators which has been distributed District-wide through cohort meetings. In addition, some elements of the policy have already been incorporated into the 2019-2020 Student Rights and Responsibilities Handbook. Finally, notice of the policy and administrative directive will be communicated via Admin Connects and ppscomms newsletter.

BOARD OPTIONS WITH ANALYSIS

If this policy is not enacted, schools will be left with out of date and incomplete guidance in this important area.

CONNECTION TO BOARD GOALS

This policy aligns with the Board desire to ensure equitable educational experiences for all students.

STAFF RECOMMENDATION

Staff recommends that you approve the amendments made to the policy.

As a member of the PPS Executive Leadership Team, I have reviewed this staff report.



ATTACHMENTS

- A. XXXX
- B. XXXX

4.30.040-P Search And Seizure

The Board of Education is committed to maintaining a safe school environment while respecting the privacy rights of students. The purpose of this policy is to preserve and foster a safe, non-disruptive educational environment for effective teaching and learning, to maintain a safe school climate, and to achieve these objectives consistent with the law.

The Board recognizes that each student shall have the [right to](#) privacy at school with respect to [his/hereach individual](#) person, which is also accorded [to](#) public school students by law. To protect the educational climate and the health and safety of students and staff, school officials are empowered to conduct searches of students and student property when the school official has a reasonable suspicion that there has been a violation of a law, [De](#)istrict policy or school rule or policy, and the official has a reasonable suspicion that the search will produce evidence of that wrongdoing.

Reasonable suspicion may include, but is not limited to, eyewitness observations of school personnel; information from a source deemed reliable; suspicious behavior; recognizable smell of alcohol, tobacco or marijuana; or other unusual behavior.

A school official may conduct a search during the school day and during all school-sponsored activities [such as athletic events or concerts](#), whether on or off school property. In conducting a search of a student or student property, a school official shall take reasonable steps to preserve student privacy and dignity whenever possible and encourage student cooperation in any search.

The School District provides students with storage areas, such as lockers, desks and similar areas and also provides students certain technology, software and internet access (collectively, "District Property"). Students do not have an expectation of privacy in District Property. School officials are permitted to search District Property or other non-student property as needed and without reasonable suspicion, student/parent/guardian consent, or notification. [They are also permitted to inspect unidentified items found on PPS property without reasonable suspicion.](#) Parents/guardians shall be notified after a search of a student's person or property and shall be informed of the results of the search.

Students and parents/guardians shall be notified of the District's policy regarding search and seizure in readily-available material, such as the Student Handbook [insert link].

Parents/guardians shall also be notified ~~at least 30 minutes~~ before any law enforcement conducts ~~an custodial~~ interview of a student who is the subject of an investigation taking place on District premises, and no interview shall take place ~~if the parent/guardian objects to the custodial interview without parental/guardian consent~~. The requirement to notify parents/guardians does not apply when the child is taken into protective custody as a suspected victim of child abuse or if there is an imminent threat to safety or security. [By law, school administrators may not interfere with the lawful arrests of students. If a student is to be interviewed as the suspect of a school-based crime by police, PPS administrators will notify a parent or guardian prior to the interview.](#)

For more information about the process by which school officials may conduct a search or seizure of students or their property, the nature and types of prohibited property, and other details on the implementation of this policy, see the related Administrative Directive [insert link].

Legal References: ORS 332.075; ORS 419B.010 - 419B.045; OAR 581-021-0050 to -0075; ORS 332.107

History: Adpt 8/27/73; Amd 5/84; Amd 10/25/84; Amd 10/13/88; Amd 10/25/90; Amd 9/9/02; BA 2420

4.30.040-P Search And Seizure

- (1) **Student Right to Privacy.** Each student shall have the privacy at school with respect to his/her person, which is accorded public school students by law. Under the law, each student's conduct is necessarily limited by the school's need to protect its educational climate from disruption by the presence of weapons, explosives, drugs or other dangerous or prohibited items.
- (2) **Possession of Prohibited Items.** To protect the educational climate and the health and safety of persons and property on the school grounds and at school functions, the following items are prohibited:
- (a) Dangerous or deadly weapons including, but not limited to, firearms, knives, metal knuckles, straight razors, weapons of the nunchaku type, black-jack, sap, sap glove, and other instruments capable of inflicting injury to persons or property;
 - (b) Explosives;
 - (c) Noxious, irritating or poisonous gases;
 - (d) Poisons;
 - (e) Intoxicants and drugs (except medicines prescribed for the student which shall be in the labeled container and non-prescription remedies);
 - (f) Paraphernalia used in the transporting, sale or use of illegal drugs;
 - (g) Stolen property;
 - (h) Materials or devices which endanger the physical safety or persons or property;
 - (i) Gang member identifying markings or paraphernalia;
 - (j) Materials, devices, identifying markings or paraphernalia which are patently racially, religiously or sexually offensive including those associated with clubs, sects or groups avowing or practicing discrimination against persons on the basis of age, color, creed, disability, marital status, national origin, race, religion, sex or sexual orientation;
 - (k) Other items or materials prohibited by Board policies, Administrative Regulations or school rules.
- (3) **Checks of Assigned Student Storage Areas (Lockers, Desks, etc.)**
- (a) **General.**
 - (A) Lockers, desks and other storage areas assigned to a particular student(s) (hereinafter called "student storage") remain in the possession and control of the school when they

4.30.040-P Search And Seizure

are made available (assigned) for student use. Students may use student storage for the limited purpose of temporarily keeping items needed by the student to participate in school instruction and activities only. No other purpose is permitted. Students shall expect that student storage will be checked by the school from time to time without prior notice to assure that such areas are not being used for any unauthorized purpose. Dogs capable of detecting the presence of drugs may be used as needed for these purposes. Prohibited items will be removed and held by the school.

- (B) Students shall be particularly warned that food must be fresh and tightly packaged and that expensive items invite theft and are discouraged.
- (b) Student Notification. A student need not be notified in advance of any check of the assigned student storage. Following any student storage check, if anything was removed, the principal shall, in writing, notify the student that the assigned student storage has been checked, the time of the check, the persons present, the items which were taken from the student storage and when and where returnable items will be available for the student or the student's parents (guardians).
- (c) Cleanout. From time to time, the principal may set aside a time period during which all students shall clean their assigned student storage.
- (d) Disposition of Prohibited Items. Items found in student storage which are not permitted shall be removed and held for the student except that prohibited items shall only be released to the student's parents (guardians), contraband will be destroyed or held for School Police and stolen items will be returned to the owner or the police.
- (e) Limitations on Check. Checks of the student storage are only permitted on a random basis for the purpose of encouraging compliance by the students with Board policy, regulations or school rules and shall not be used by the school to focus on a particular student by searching an assigned student storage area. However, if the principal has a reasonable suspicion that evidence of a prohibited item will be found in a particular student storage, the procedures set out in Section 4.a. below shall be followed.
- (4) Searches.
- (a) Searches Pursuant to Administrative Procedure. If the principal has a reasonable suspicion that a prohibited item is on a student's

4.30.040-P Search And Seizure

person or in a particular student's storage area, the following procedure shall apply:

- (A) Request for Authorization. The principal shall obtain verbal authorization from the assistant superintendent or designee or, in his/her absence, the Director of Student Achievement to search. The assistant superintendent or designee or the Director of Student Achievement shall maintain a written record of the authorization given. If it appears necessary to search beyond outer clothing, the School Police shall be contacted for assistance in the search and its standards and procedures shall apply;
 - (B) Emergency Search. If there is not sufficient time to obtain authorization and the principal has a reasonable suspicion that he/she will find an item or evidence of an item, which could create an immediate danger to persons or property, the principal may conduct an emergency search of a student or student storage without prior authorization. If it appears necessary to search beyond outer clothing and if the immediate danger will permit a delay, the School Police shall be contacted for assistance in the search and its standards and procedures shall apply;
 - (C) Assistance to Principal in Conducting Search. Unless an emergency situation prevents it, the principal shall be assisted in the search by a responsible adult;
 - (D) Student Present at Search. It is recommended that a student be present at any search of the student's assigned storage unless the student will, in the judgment of the principal, use physical force against the person conducting the search or disrupt the school. The student shall open the lock if requested;
 - (E) Disposition of Prohibited Items. Items held after a search shall be held by the school if needed as evidence, but otherwise shall be released to the student or the student's parents (guardians), except that stolen property shall be returned to its owner or police and contraband will be destroyed or held for school police.
- (b) Searches by Law Enforcement Officers. A search of a student's person or assigned student storage may be conducted by law enforcement officers in accordance with law.
 - (c) Limitations on Searches. Except for a search provided in Sections 4.a. and 4.b. above or unless the student gives prior consent to the

4.30.040-P Search And Seizure

particular search, a student's person or assigned student storage area shall not be searched. School authorities may not consent on behalf of a student to a search of the student's person or storage area.

(5) **Definition of "Principal". As used in Section 4**

(a) The term "principal" shall include, in high schools, any vice principal or in his/her absence another person temporarily designated by the principal; in middle schools, the assistant principal or in his/her absence another person temporarily designated by the principal; and in elementary schools, the administrative assistant, or if there is none, then in the absence of the principal from the school, any other staff member designated by the principal.

- (6) **Reports of Searches.** Promptly following each search, the principal shall submit a Report of Search to the assistant superintendent. The report shall include the identity of the person or student storage; the time of the search; whether the search was under warrant or by administrative procedure; the identity of the person conducting the search; the persons present; the items, if any, taken; and if known, the intended disposition of these items. If the search was by administrative procedure, the report should also state the type of initial authorization (verbal or emergency) and the facts giving reason for the reasonable suspicion that a prohibited item was present. A copy of each Report of Search shall be kept on file at the school.
- (7) **Reports to the Board.** The superintendent shall, from time to time, submit a report to the Board, which shall include, by school, the number of searches conducted and whether a person or student storage was searched.
- (8) **Student Information.** Notice of Section 1 through 7 of this policy shall be made available to students and parents (guardians) as a part of the Handbook on Student Responsibilities, Rights and Discipline or Guide to Policies, Rules and Procedures on Student Responsibilities, Rights and Discipline.

Legal References: ORS 332.075; ORS 419B.010 - 419B.045; OAR 581-021-0050 to -0075; ORS 332.107

History: Adpt 8/27/73; Amd 5/84; Amd 10/25/84; Amd 10/13/88; Amd 10/25/90; Amd 9/9/02; BA 2420

Letter Opinion, Office of the Attorney General (May 25, 1984)

Letter Opinion, Office of the Attorney General (August 18, 1986)