

Policy 5145.12: Search And Seizure

Status: ADOPTED

Original Adopted Date: 03/01/2000 | Last Revised Date: 06/01/2021 | Last Reviewed Date: 06/01/2021

CSBA NOTE: The following optional policy 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. School officials shall exercise discretion and use good judgment when conducting searches.

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.

Searches Based on Individualized Suspicion

CSBA NOTE: The Fourth Amendment of the U.S. Constitution, which prohibits unreasonable search and seizure, 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 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 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.

School officials may search an individual student, the student's property, or district property under the student's control when there is a reasonable suspicion that the search will uncover evidence that 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.

Any search of a student, the student's property, or district property under 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.

CSBA 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.

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.

Searches of Student Lockers and Desks

CSBA 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.

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.

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

CSBA 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 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 finds that metal detector searches offer a reasonable means to keep weapons out of the schools and mitigate the fears of students and staff.

CSBA 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 as necessary to keep weapons out of schools and help provide a safe learning environment. 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

CSBA 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 (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.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

Description

CA Constitution Article I, Section 28(c)	Right to Safe Schools - https://simbli.eboardsolutions.com/SU/G5dZ2hJx2fjXslshlvWSYTNiQ==
Ed. Code 32280-32289	School safety plans
Ed. Code 35160	Authority of governing boards
Ed. Code 35160.1	Broad authority of school districts
Ed. Code 48900-48927	Suspension and expulsion
Ed. Code 49050-49051	Searches by school employees
Ed. Code 49330-49334	Injurious objects
Pen. Code 626.10	Dirks, daggers, knives or razor
Pen. Code 626.9	Firearms

Management Resources References

	Description
Attorney General Opinion	18 Ops.Cal.Atty.Gen. 114 (1951)
Court Decision	A.M. v. Albertsons, LLC, (2009) Cal.App.4th 455
National Institute of Justice Publication	The Appropriate and Effective Use of Security Technologies in U.S. Schools: A Guide for Schools and Law Enforcement Agencies, rev. 2005
Website	AASA The School Superintendents Association - https://simbli.eboardsolutions.com/SU/MOaF8AO8cslshSlfGc13QQoEQ==

Cross References

	Description
3513.4	Drug And Alcohol Free Schools - https://simbli.eboardsolutions.com/SU/NjNas6YslshVrD5emvU2inQpA==
3515	Campus Security - https://simbli.eboardsolutions.com/SU/f6i6slshR6cGolXslsh moldU69iw==
3515	Campus Security - https://simbli.eboardsolutions.com/SU/WKgc aiEXXQzkZR3wljM36Q==
3515.3	District Police/Security Department - https://simbli.eboardsolutions.com/SU/plus0c74vF8Nf22j6JrQypnMA==
3515.3	District Police/Security Department - https://simbli.eboardsolutions.com/SU/OplusT25bscsqRaR2b2YrRt9Q==
5111	Admission - https://simbli.eboardsolutions.com/SU/nuR04rLqQba9tVkycAdVxQ==
5111	Admission - https://simbli.eboardsolutions.com/SU/czTFqRNPwMTH6QYRKuCCplusA==
5111.1	District Residency - https://simbli.eboardsolutions.com/SU/8brj2C9qQs2kiMOOYJgChA==
5111.1	District Residency - https://simbli.eboardsolutions.com/SU/yWavmgVplusYpQ9ml60gQOaPQ==
5125	Student Records - https://simbli.eboardsolutions.com/SU/ZvxF6XkQA2GslshUjbmSlshh0HOQ==
5125	Student Records - https://simbli.eboardsolutions.com/SU/3plusp31Lkmh0LChplusQ18aDY6w==
5125.1	Release Of Directory Information - https://simbli.eboardsolutions.com/SU/hcFgrjshOLJmNVebXJYn2ng==
5125.1	Release Of Directory Information - https://simbli.eboardsolutions.com/SU/MdbbibwL2sHhKmT3lVYQMg==
5125.1-E(1)	Release Of Directory Information - https://simbli.eboardsolutions.com/SU/NBxOWW6CR08TQqB8AtzSbQ==
5131	Conduct - https://simbli.eboardsolutions.com/SU/rcn2VGELy8pB5ycAAiZE9w==
5131.2	Bullying - https://simbli.eboardsolutions.com/SU/tDboCINOvOslshQiptfXslshzJmA==
5131.2	Bullying - https://simbli.eboardsolutions.com/SU/f2cYyaJzLvsyMmt1BZQC0Q==
5131.6	Alcohol And Other Drugs - https://simbli.eboardsolutions.com/SU/xzplusi2SplusKSeQu0AFVCplusJC5g==
5131.6	Alcohol And Other Drugs - https://simbli.eboardsolutions.com/SU/ehwaVjHFsKfboxMDjftEQ==
5131.7	Weapons And Dangerous Instruments - https://simbli.eboardsolutions.com/SU/AYOe7jfXGXVLjfs6dco1Mg==

- 5131.7 Weapons And Dangerous Instruments -
<https://simbli.eboardsolutions.com/SU/SoEBAkXslshnzqYslsheiTbjsNdw==>
- 5131.8 Mobile Communication Devices -
<https://simbli.eboardsolutions.com/SU/LiV8VhZLai3nuA7Sw2q4HA==>
- 5144.1 Suspension And Expulsion/Due Process -
<https://simbli.eboardsolutions.com/SU/nR9v7aowO1lIDycR9XplfA==>
- 5144.1 Suspension And Expulsion/Due Process -
<https://simbli.eboardsolutions.com/SU/nP0B06HwRVeUUjBJqKyzyw==>
- 5145.11 Questioning And Apprehension By Law Enforcement -
<https://simbli.eboardsolutions.com/SU/RNslshjOlsh0slshLk5lmtplushGFgA==>
- 5145.13 Response To Immigration Enforcement -
<https://simbli.eboardsolutions.com/SU/r29JkZV6wbly6r7yUCzwlG==>
- 5145.13 Response To Immigration Enforcement -
<https://simbli.eboardsolutions.com/SU/4pSABJbmnhl6HUeJBbkvBw==>
- 5145.3 Nondiscrimination/Harassment -
<https://simbli.eboardsolutions.com/SU/CUCON6Qd8nkjOdljoQgkAQ==>
- 5145.3 Nondiscrimination/Harassment -
<https://simbli.eboardsolutions.com/SU/3RLPKjNPsN7ZGURJ4LNGYw==>
- 5145.6 Parental Notifications -
<https://simbli.eboardsolutions.com/SU/4cHxLdg4slshoGlsnHthCslshbfQ==>
- 5145.6-E(1) Parental Notifications -
<https://simbli.eboardsolutions.com/SU/1jjU8DgBkLxH11wb8eJDWw==>
- 5145.9 Hate-Motivated Behavior -
<https://simbli.eboardsolutions.com/SU/GMbDh5yDVyMtcEirOa4j9A==>
- 6163.4 Student Use Of Technology -
<https://simbli.eboardsolutions.com/SU/JGEzNOif276slshdQ1x079gdw==>
- 6163.4-E(1) Student Use Of Technology -
<https://simbli.eboardsolutions.com/SU/LgUhzWlaStCLhVsHclhmXw==>