

SCHOOL DISTRICT OF BAYFIELD

445.2

SEARCH OF STUDENTS AND STUDENT POSSESSIONS

Students have an expectation of privacy in their persons and possessions. Because of an expectation of privacy, any search of a student or students by a school official must be reasonable.

The United States Supreme Court outlined reasonable as follows:

First, there must be reasonable grounds to suspect the search will reveal evidence of violations of either the law or school rules. Second, the way in which the search is conducted must be reasonably related to the objectives of the search and must not be overly intrusive in light of the age and sex of the student and the nature of the infraction.

Reasonable suspicion does not mean absolute certainty. Reasonable suspicion means common-sense conclusion about human behavior upon which practical people are entitled to rely.

Standards and criteria developed by the Wisconsin Appeals Court in 1979 will be considered at the outset of student searches:

- the gender, age, history and school record of the student(s) to be searched;
- the prevalence and seriousness of the problem in the school to which the search is directed;
- any exigency requiring a search without delay;
- the probative value and reliability of the information used as justification for initiating search; and
- an educator's prior experience with the student.

The School District of Bayfield respects the rights to privacy of its students. The Administration is also charged with operating the District in an effective, efficient, and responsive manner. Rights of privacy will remain paramount if and when searches are conducted by the Administration or designee.

The District will conduct a student search if a school Administrator or designee has a reasonable suspicion that the student has obtained, or has in his/her possession, items in violation of school regulation, local ordinance or state law.

No school official will conduct a search unless he/she suspects, from reliable information or personal observation, that a student(s) is in violation. If a search is necessary on school premises during the school day, it is conducted by a school official or designee and one additional person. One of the two people must be of the same sex as the student(s) being searched. If a search is necessary on a field trip, during and extracurricular activity or on a school bus, any school official or designee, male or female, may conduct a search without an additional person.

Searches of students or their property will be conducted in accordance with established procedures. A school official will inform students of the reason for conducting a search and request students to give permission to conduct the search. The District proceeds with the search as follows, depending upon whether student cooperation is obtained:

Conducting a search with the student's consent

The Administrator or designee who is conducting the search may request a student to empty pockets, purses, backpacks or other articles used to carry personal effects, to remove hats, shoes and socks. He/she may also request a student(s) to remove outer garments, such as sweatshirts, sweaters, jackets or vests if worn over blouses, shirts or t-shirts. No school official has the right to request the removal of any other clothing or to conduct a strip search. The school official or designee will notify the student's parent/guardian of the reason of such search. Notification will take place as soon as it is practical. If telephone contact attempts are unsuccessful, written notification will follow. The individual doing the search will keep a written record of the search.

Conducting a search if a student refuses to cooperate

If a student(s) refuses to cooperate, the Administrator or designee has the authority to proceed, subject to the limitations such as the student's grade level and the seriousness of the situation.

- For students in grades PreK-8, an attempt is made to contact the student's parent/guardian in order to request him/her to encourage the student to cooperate. If the parent/guardian cannot be reached or if the student continues to refuse to cooperate, the school official or designee may turn the matter over to law enforcement.

- The student may be detained until the law enforcement official arrives. If the parent/guardian was unavailable, following one or more contact attempts, the Administrator or designee notifies the parent/guardian as soon as is practical, as to the reason for the search.
- For students in grades 9-12, the Administrator or designee has the right to involve a parent/guardian or to turn the matter over to law enforcement. The student may be detained until the law enforcement official arrives. If the matter is turned over to the law enforcement, the Administrator or designee notifies the parent/guardian as soon as practical, of the search and the reason for the search by law enforcement.
 - In potentially dangerous situations PreK-12, an Administrator or designee may search a student's pockets or belongings and conduct a pat-down search if he/she has reason to suspect that a student is carrying a dangerous or illegal item or substance and believes that an immediate search is necessary. The student may be detained until such time as a law enforcement official arrives.

A written record of the actions leading up to and including the search is required for each search of students who refuse to cooperate. This record will be maintained by the individual(s) doing the search.

If law enforcement personnel seek permission from School District of Bayfield authorities to search a student or the student's property to obtain evidence related to criminal activities, school officials require the law enforcement officer to obtain a valid search warrant unless:

- (1) there is uncoerced consent by the person(s) whose interests are involved;
- (2) there is probable cause and circumstances are such that taking the time to obtain a warrant would frustrate the purpose of the search; or
- (3) a valid arrest has been made and the search is incident to the arrest.

An Administrator or designee will make a good faith effort to notify the student's parent/guardian when a request is made by law enforcement officials to search a students or the student's property.

References: United States Supreme Court in New Jersey versus T.L.O (105 s. ct. 733, 1985).

Wisconsin Appeals Court. See L.L. -90 Wis. 2d 585, 280 N.W. 2d 343, 1979.

State Statutes 118.325, 948.50 and 968.225.

Safe Schools - Legal Resource Manual.

Wisconsin Department of Justice, August 2002.

Student Searches in the Schools, The Focus
A publication by the Wisconsin Association of School Boards Vol. 11, No. 2. August, 1993.

Searches in Public Schools
A published legal comment by the law firms of Lathrop & Clark; legal counsel to the Wisconsin Association of School Boards, September, 1997.

Note: Also reviewed were school district policies on student searches. Policies reviewed include School District of Janesville of April, 1991, Neenah Joint School District of October, 1985, School District of Marshfield of March, 1992, Sheboygan Area School District of June, 1985, School District of McFarland of October, 1998, School District of West Ellis of August, 1998 and the School District of Wisconsin Dells of August, 1999.

Prototype policies of the aforementioned policies are available through the District Office.

Mark A. Jansen

Approved: June 14, 2004

