

## **SCHOOL DISTRICT OR CHARTER SCHOOL SEARCH AND SEIZURE MODEL POLICY**

The Utah State Legislature and the Utah State Board of Education have charged school authorities with the responsibility of safeguarding the safety and well-being of the students in their care. Utah Code Ann. § 53G-8-509 directs the Utah State Board of Education and local boards of education to have rules in place to protect individual student rights and guard against excessive intrusion. In the discharge of that responsibility, school authorities of [School District/Charter School] ("School") may search school property such as lockers used by students, or the person or property, including backpacks, purses and belongings, electronic devices, and vehicles of students, in accordance with the following policy:

### **Definitions**

- A. "Appropriate school official" means the most appropriate school employee, considering all the circumstances, who should search a student. Usually, the appropriate school official will be the school principal or school director. Generally, the more intrusive the search, the higher the level the appropriate school official should be who conducts the search. Other factors may include age of the student, gender of the student, if the student has an IEP, the student's background, seriousness of the item(s) being searched for, which appropriate school official is reasonably available, and the urgency of the situation.
- B. "Electronic cigarette" means:
- (a) an electronic device used to deliver or capable of delivering vapor containing nicotine or another substance to an individual's respiratory system;
  - (b) a component of the device described in Subsection (a); or
  - (c) an accessory sold in the same package as the device described in Subsection (a).
- "Electronic cigarette" includes an e-cigarette as that term is defined in Utah Code Ann. § 26-38-2.
- C. "Electronic cigarette product" means an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.
- D. "Electronic cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.
- E. "Electronic device" means a privately-owned device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.
- F. "Local school board" means the [\_\_\_\_\_ Board of Education/ Governing Board].
- G. "Reasonable suspicion" means a particularized and objective basis, supported by specific articulable facts, for suspecting a person of criminal activity; reasonableness extends to both the reason for the search and the appropriateness of the scope of the search.
- H. "Reasonable suspicion for a search" means grounds sufficient to cause an adult of normal intellect to believe that the search of a particular person, place, or thing will lead to the discovery of evidence that the student:
- has violated or is violating a rule or behavioral norm provided in school policy;
  - has violated or is violating a particular law;
  - possesses an item or substance which presents an immediate danger of physical harm or illness to students, staff or school/district property;

### **Searches of School-Owned Property**

School-owned electronic devices and storage areas (including lockers, desks, etc.) remain under the exclusive control of the School and are subject to search at any time— with or without reasonable suspicion. Students shall have no expectation of privacy with respect to School-owned electronic devices or storage areas. Students shall provide passwords used to protect data on any school-owned electronic devices. Locks may be destroyed while searching School-owned storage areas.

- A. All lockers and other storage areas provided for student use remain the property of the School. These lockers and storage areas are subject to inspection, access for maintenance, and search pursuant to this policy. A student using the locker or storage area has no expectation of privacy in that locker or storage area or the contents contained therein. In the course of any search, students' privacy rights will be respected regarding any items that are not illegal or against local school board policy. No student shall lock or otherwise impede access to any locker or storage area except with a lock provided by or approved by the teacher or School administrator. Unapproved locks may be removed and destroyed.
- B. An appropriate School official may search student lockers and storage areas and the contents contained therein at any time for any justifiable reason.
- C. An appropriate School official may, at any time, request assistance of the appropriate law enforcement agency having jurisdiction over the facilities of the School. The law enforcement officer must have probable cause, however, to personally orchestrate or conduct a search of the lockers and storage areas and their contents.

### **Using Dogs in Searching School Property**

School also authorizes the use of canines, trained in detecting the presence of drugs or devices, when the appropriate school official has reasonable suspicion that illegal drugs may be present in a school. This means of detection shall be used only to determine the presence of drugs in locker areas, student desks, and other places in the School where such substances could be concealed. Canine detection must be conducted in collaboration with law enforcement authorities or other certified organizations and will not be used to search students personally unless either a warrant or parental permission has been obtained prior to the search.

Where a dog sniff search is otherwise appropriate, it is acceptable to detain students or restrict their movement to facilitate the search. Also, School has authority to require students to relinquish personal items from their possession (backpacks, book bags, gym bags) to facilitate searches.

### **Student Person and Possessions**

School recognizes that the privacy of students or their belongings may not be violated by unreasonable search and seizure and directs that no students are searched without reasonable suspicion or in an unreasonable manner. The extent of the search will be governed by the urgency and seriousness of the alleged infraction, the student's age, and the student's disciplinary history.

### **Personal Search of a Student and Student Consent to Search**

Except as provided below, a request for the search of a student or a student's possessions will be directed to the appropriate School official. The appropriate School official shall attempt to obtain the freely offered consent of the student to the inspection; however, provided there is reasonable suspicion, the appropriate School official may conduct the search without such consent.

Whenever possible, a search will be conducted by the appropriate School official in the presence of the student and a staff member in addition to the appropriate school official. A search prompted by the reasonable belief that health and safety are immediately threatened will be conducted with as much speed and dispatch as may be required to protect persons and property.

Search of a student's person or intimate personal belongings shall be conducted by a person of the student's gender, in the presence of another staff member of the same gender, and only in exceptional circumstances when the health or safety of the student or of others is immediately threatened.

The personal search of a student may be conducted by the appropriate School official when the appropriate School official has reasonable suspicion for a search of that student. Authorized searches of the student's person are as follows:

- A. the student's pockets;
- B. purses, backpacks, or any objects in the possession of the student;
- C. a "pat down" of the exterior of the student's clothing and the removal of any identified item;
- D. removal of an article of exterior clothing such as a jacket, watch, or hat;
- E. a student's electronic device if warranted and to the extent warranted.

### **Searching Students and Property While at School-sponsored Activities**

This authorization to search shall also apply to all situations in which the student *is under* the jurisdiction of the School—including all students participating in extracurricular activities and athletics, dual-enrolled students and students taking online courses, when applicable.

### **Documentation of Search**

The appropriate School official shall be responsible for the prompt recording in writing of each student search, including the reasons for the search; information received that established the need for the search and the name of the informant, if any; the persons present when the search was conducted; any substances or objects found, and the disposition made of them; and any subsequent action taken. The appropriate School official shall be responsible for the custody, control, and disposition of any illegal or dangerous substance or objects taken from a student. The appropriate school official shall report a student's possession of a dangerous weapon consistent with Utah Code Ann. § 53G-8-510.

The appropriate School official may prepare administrative guidelines to further implement this policy of documentation, maintenance, and disposal of items.

### **Search Procedures**

Pursuant to this policy, appropriate school officials shall use the following steps when appropriate school officials have reasonable suspicion that a student possesses evidence that a rule or law has been violated:

- A. All requests or suggestions for the search of a student or student's possessions shall be directed to the appropriate School official or the person in charge of the students if students are out of the district or School.
- B. Wherever possible, before conducting the search, the appropriate School official shall notify the student, request the student's consent to the inspection and inform the student that she/he may withhold consent. Such consent, if offered, shall be

- voluntary. The appropriate School official shall conduct the search, however, with or without the consent.
- C. Wherever possible, an adult third party shall be present at any search of a student or student's possessions.
  - D. The appropriate School official may conduct a student search upon reasonable suspicion of the presence of an illegal or dangerous substance or object, or anything contraband under school rules.

### **Health/Safety of Students**

Whenever the search is prompted by the reasonable suspicion that possession of a substance or object immediately threatens the safety and health of the student or others, the appropriate School official shall act with as much speed and dispatch as is required to protect persons and property in the School while keeping clearly in mind the student's rights and the potential consequences of inappropriate or hasty action.

### **Method and Scope of Search**

The scope of any search should be limited by the reasonable suspicion that motivated the search. If an item is found that leads to reasonable suspicion that additional, related items may also exist, the search may be extended. If the initial search produces no evidence of contraband, there should be no extension of the search based on simple curiosity or *unreasonable* teacher/administrator suspicion.

### **Items Found**

Anything found in the course of a search which is evidence of a student violation of School rules or federal/state laws may be seized and admitted as evidence in any suspension or expulsion proceeding if it is tagged for identification at the time it is seized and kept in a secure place by the School official until it is presented at the hearing. It may also be turned over to any law enforcement officer after proper notation and receipt.

### **Vehicles**

Vehicles in the possession of students and parked on school premises may be searched, based on reasonable suspicion, by the appropriate School official. Searches of vehicles of staff members or visitors shall be conducted by law enforcement personnel.

### **Use of Breath - Test Instruments**

The appropriate School official may arrange for a test to be conducted on a student whenever the School authority has individualized reasonable suspicion to believe the student has consumed an alcoholic beverage or an illegal unprescribed substance.

The appropriate School official shall attempt to contact a local law enforcement agency and arrange for it to conduct the test.

The following procedure should be used if the test is conducted by a School official:

- A. Take the student(s) to a private administrative or instructional area on School property and have at least one other member of the teaching or administrative staff present as a witness to the test. If the student refuses to take the test, inform him that

refusal to participate leaves the observed evidence of the alcohol or drug use unrefuted, thus leading to disciplinary action.

- B. Allow the student a second opportunity to be tested, and if the student refuses again, ask the student to sign a refusal statement. Regardless of whether or not the student signs a refusal statement, prepare a written report of the incident.

### **Electronic Cigarette Products**

Students are prohibited from possessing or using electronic cigarette products while on School property and electronic cigarette products will be confiscated. School officials will properly store and arrange for disposal of any confiscated electronic cigarette product. Because electronic cigarette products are hazardous waste in accordance with Title 19, Chapter 6, Hazardous Substances, school officials must follow the proper disposal as outlined by the Utah Department of Environmental Quality. (Utah Admin Code R315-260 through 262).

School officials will avoid accumulating more than 1kg/2.2 lbs. of liquid nicotine or empty containers that held nicotine e-liquids (e.g., cartridges or pods) at any given time and will follow the Utah Department of Environmental Quality's administrative rules for waste management which, including:

- A. Identifying the waste; and
- B. Ensuring the delivery of the hazardous waste to an offsite treatment or disposal facility permitted to manage hazardous waste, municipal or industrial waste, or a facility that recycles nicotine waste.

Prior to delivery to a designated site, School officials will store any confiscated electronic cigarette products in the following manner:

- A. Using appropriate PPE, place the e-liquids, cartridges, and pods in a container that is in good condition and has a lid that can be securely closed. Label the container with the words, "Hazardous Waste Nicotine" and "Danger-Toxic in contact with skin."
- B. Keep a spill kit stocked with binders (sand/diatomaceous earth/sawdust) and gloves nearby. Have a Safety Data Sheet for e-liquids available (This can be found on the internet).
- C. Keep a log of the amount of waste as it is generated.
- D. Make arrangements with a disposal company to take the waste before accumulating 1 kg/2.2 lbs.
- E. Maintain records to show that the hazardous waste nicotine (e-liquids, cartridges, and pods) was disposed of at a permitted facility.
- F. Place damaged lithium batteries in a plastic bag and then place the bag in an inert material like sand. Lithium batteries that have an odor, are discolored, deformed, bulging, or swollen are damaged and have the potential to catch fire when they absorb moisture.
- G. Store lithium batteries away from heat and direct sunlight. Prevent terminals from touching by storing each battery in a plastic bag or cover the terminals.

If a School official has reason to believe the confiscated electronic cigarette product contains an illegal substance, the school may release the confiscated electronic cigarette product to local law

enforcement.

**Parent Notification**

School officials have no legal obligation to contact parents before detaining and questioning students. However, it is good practice when a student is questioned about serious allegations of the student's own misbehavior that another responsible adult should be notified to protect the interest and well-being of the student. Parents will be advised of all student searches and seizures of property.

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