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## INTERVIEWS, INTERROGATIONS OR SEARCHES

### - POLICY -

The Board recognizes that it may become necessary, on occasion, for school or police authorities to interview or interrogate a student or search a student's locker or property.

Principals, standing *in loco parentis* (in the position of a parent) have power over students by virtue of their delegated parental role, and, as such, would be expected to cooperate fully with police authorities in such matters while, at the same time, ensuring that the rights and interests of the student are protected.

If it should be considered necessary to interview or interrogate a student or search a student's locker or property, the following regulations shall apply.

Note that the content of this policy and regulation is appropriate for interviews, interrogations and searches conducted by school or police authorities. Different considerations may be appropriate for interviews by other outside agencies.

### – REGULATION –

There may be times when it will be necessary for school or police authorities to interview or interrogate students on school premises or search a student's locker or property.

#### 1. INTERVIEWS OR INTERROGATIONS BY SCHOOL PERSONNEL

Interviews and interrogations by persons in authority of students who are less than eighteen years old are governed by section 146 of the Youth Criminal Justice Act, which has been reprinted and appended to these regulations for your information.

The term “interviews” includes the questioning of students who are potential victims or potential witnesses to a crime, whereas the term “interrogations” refers to the questioning of a suspect of a crime.

In accordance with the School Act and its Regulations, Principals shall exercise paramount authority within the school in matters concerning the maintenance of order and protection and discipline of students.

### 1.1 Preliminary Investigation

Where a serious breach of school rules has taken place, but it is not obvious that criminal activity may be involved, or when a potential criminal offence is of a relatively minor nature, it is appropriate for a principal or principal in charge to conduct a *preliminary* investigation prior to involving the police in a student matter.

### 1.2 Potential Criminal Offence

When the school principal/vice-principal has *reasonable* grounds to believe that a criminal offence may have been committed by a student, or when criminal activity is so obvious that police participation is inevitable, the school principal/vice-principal may conclude that the RCMP should be involved in the *initial* questioning of the students and it is appropriate to turn the investigation over to the police.

## 2. INTERVIEWS OR INTERROGATIONS BY POLICE

### 2.1 Police Interview or Interrogation on School Premises

When the RCMP wish to talk to a student who is a minor at school, Principals should cooperate as much as possible with the RCMP. However, there may be circumstances when the school principal/vice-principal is of the view that the RCMP should not be allowed to talk to students on school premises. Each case needs to be considered individually.

Where the RCMP have the legal authority to interrogate, that legal authority must be respected at all times by school principals/vice-principals. This would be when the RCMP have a warrant of arrest, a search warrant, or are in hot pursuit in the investigation of an offence. Where no legal authority exists and where the RCMP make a request of the school principal/vice-principal to be permitted to come onto school premises to talk to a student who is a minor, the school principal/vice-principal should attempt to accommodate the RCMP but may, in certain instances, decide that it is not appropriate for the RCMP to talk to the student or students on school premises.

### 2.2 Parental Involvement in Police Interview or Interrogation

Section 146 (2)(iv) of the Youth Criminal Justice Act provides that any statement made by a young person must be made in the presence of the person consulted by the young person unless the young person desires otherwise. Be advised that the court has recognized that the Act provides a young person with the right to *exclude* persons from an interview. The statement to the police would then be required to be made *in the absence* of a parent or other person. If the school principal/vice-principal has allowed the RCMP to

interview a young person on school premises and the young person does not want a parental or school board representative in attendance at the interview, then the wishes of the young person should be respected.

### 2.3 Role of the Principal in Police Involvement

In the absence of a parent, the principal or designate should ensure that the young offender warning is given to the young person, and the principal or designate should also witness the choice made by the young person with regard to the presence of another person at the interview. If the young person chooses to waive their right to consult with parent or counsel, the Principal should ensure that such waiver is made in writing. (See section 146(4) of the Youth Criminal Justice Act.)

## 3. SEARCH OF STUDENT LOCKERS BY SCHOOL PERSONNEL

### 3.1 Maintenance of Safe School Environment

The Board believes that school lockers remain the property of the school district even when they are used by students. Lockers are subject to administrative search in the interests of school safety, sanitation, and discipline. Students will be informed of this policy when lockers are assigned.

### 3.2 Reasonable Grounds to Conduct Search

A student's locker or property may be searched by school or district officials when there is *reasonable* cause to believe that the student is concealing evidence of an illegal act or rule violation, or that illegal or prohibited substances or objects are present.

Under no circumstances will a search be conducted based solely upon an anonymous tip and/or rumour that contraband is present.

### 3.3 Student Consent to Conduct Search

Section 8 of the Charter of Rights and Freedoms provides that “Everyone has the right to be secure from unreasonable search or seizure.” In order that the search not be conducted in an excessively intrusive manner, it is advisable to seek the student’s consent before conducting the search. However, consent obtained through threat of contacting police authorities is not considered to be freely and voluntarily given. The student should be present, if at all possible, and the search should be conducted by the Principal or designate. The search should also be witnessed by one other staff member.

If tested in a court of law, three key questions in determining the constitutionality of a student locker search are:

- Was the locker search justified at its inception?
- Was the type of search conducted reasonably related to the objectives of the search, or was it excessively intrusive?
- Does such a search require prior police authorization?

#### 4. SEARCH OF STUDENT LOCKERS BY POLICE

Student lockers and/or personal property on school premises may be subjected to search by police officers upon presentation to school authorities of a proper search warrant.

#### 5. SEARCH OF PHYSICAL PERSON

Before a search of the young person can be conducted, the Principal must have *reasonable* grounds to believe that the young person is concealing illegal or prohibited substances or objects. The principles that apply to the search of a student's locker should be applied to the search of the physical person.

#### 6. OUTSIDE INVOLVEMENT IN SEARCHES

##### 6.1 Parental Permission

It is not recommended that parental permission be sought prior to a search. Parents should be *informed of* searches. Parents have no authority to permit or prohibit the searching of a student or student's property by a school principal/vice-principal.

##### 6.2 Police Involvement

The Principal and/or Vice-Principal may wish to consult with police officers before a search of any kind is conducted.

#### 7. SEIZURE

Illegal items (firearms, weapons, etc.) or items prohibited by school or district regulations, or other possessions *reasonably* determined to be a threat to the safety or security of the possessor or others, may be seized by the Principal or designate.

Items used to disrupt or interfere with the educational process may be removed from the student's possession.

All items seized or removed will be returned to the rightful owner or given to the proper authorities at the discretion of the Principal. Illegal drugs that are seized by school personnel should be turned over to the police, as it is an offence for school personnel to be in possession of illegal drugs.

Please note that the standard of *reasonableness* applies to both the reasonableness of the *suspicion* prompting an investigation or search and the reasonableness of the *scope* of such investigation or search.

Any actions taken by the school principal, vice-principal or district administration in regard to student offences must be in accordance with **policy 2-230 – Student Rights and Responsibilities** and **policy 2-330/R – Student Suspension**.

## Appendix I

### YOUTH CRIMINAL JUSTICE ACT, S. 146

146. (1) Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.

(2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless

- (a) the statement was voluntary;
- (b) the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that
  - (i) the young person is under no obligation to make a statement,
  - (ii) any statement made by the young person may be used as evidence in proceedings against him or her,
  - (iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and
  - (iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;
- (c) the young person has, before the statement was made, been given a reasonable opportunity to consult
  - (i) with counsel, and
  - (ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and
- (d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

(3) The requirements set out in paragraphs (2)(b) to (d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person

in authority before that person has had a reasonable opportunity to comply with those requirements.

- (4) A young person may waive the rights under paragraph (2)(c) or (d) but any such waiver
  - (a) must be recorded on video tape or audio tape; or
  - (b) must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.
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(5) When a waiver of rights under paragraph (2)(c) or (d) is not made in accordance with subsection (4) owing to a technical irregularity, the youth justice court may determine that the waiver is valid if it is satisfied that the young person was informed of his or her rights, and voluntarily waived them.

(6) When there has been a technical irregularity in complying with paragraphs (2)(b) to (d), the youth justice court may admit into evidence a statement referred to in subsection (2), if satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected.

(7) A youth justice court judge may rule inadmissible in any proceedings under this Act a statement made by the young person in respect of whom the proceedings are taken if the young person satisfies the judge that the statement was made under duress imposed by any person who is not, in law, a person in authority.

- (8) A youth justice court judge may in any proceedings under this Act rule admissible any statement or waiver by a young person if, at the time of the making of the statement or waiver,
- (a) the young person held himself or herself to be eighteen years old or older;
  - (b) the person to whom the statement or waiver was made conducted reasonable inquiries as to the age of the young person and had reasonable grounds for believing that the young person was eighteen years old or older; and
  - (c) in all other circumstances the statement or waiver would otherwise be admissible.
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(9) For the purpose of this section, a person consulted under paragraph (2)(c) is, in the absence of evidence to the contrary, deemed not to be a person in authority.