



## Search and Seizure Procedure

This procedure is intended to assist St Bede's College House Boarding staff and St Bede's College Board of Proprietors to deal with situations where the safety of students, staff or the school is compromised. There can be no definitive way of dealing with each and every scenario and staff and Director's will most often be required to look to their own experience and judgement. Often the circumstances will be straightforward and responses will be routine, but there will be occasions when the best course of action is not obvious.

Where a range of responses is available, Director's and staff are encouraged to exercise judgment that is based on what is *reasonable* in the circumstances.

There are, however, some fundamental principles on which this procedure is built:

### Principles:

- To provide a safe physical and emotional environment for students and staff.
- Parents, students and the public will have a legitimate expectation that the boarding environment will be free from drugs, weapons, alcohol and cyber bullying.
- The Boarding House staff act reasonably, in good faith and in the least intrusive manner to achieve a safe environment.
- Students are protected under Section 21 of the New Zealand Bill of Rights Act 1990, which states "Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property or correspondence or otherwise". This section does not prohibit searches or seizure of student property, and the latest Search and Seizure MoE guidelines do not apply to Hostels, but the Boarding House must be able to justify their actions as reasonable and necessary to maintain a safe environment.

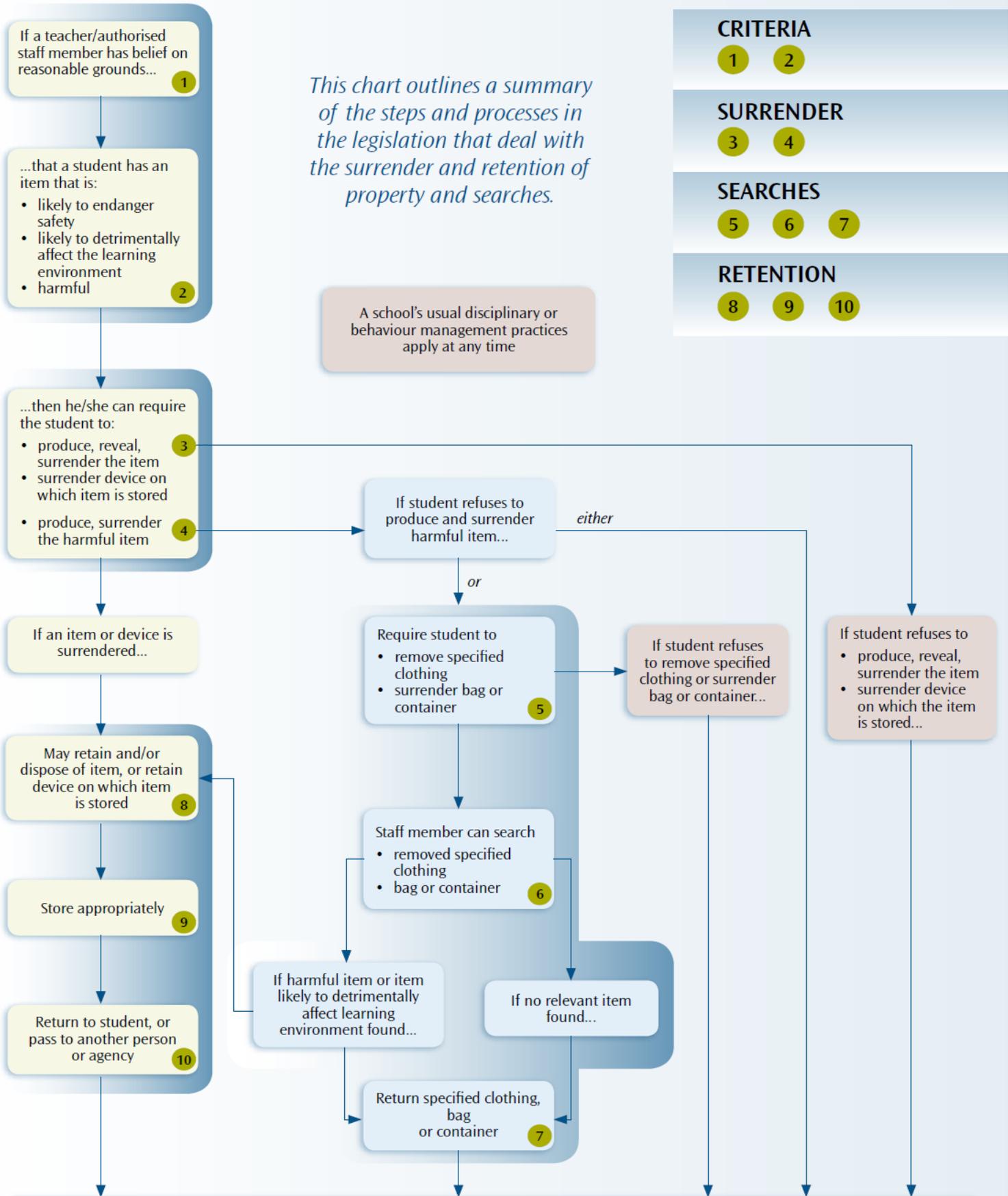
### Supporting Documents/Legislation:

- Guidelines for the surrender and retention of property and searches – Ministry of Education – January 2014, including Rules as at Appendix Two
- New Zealand Bill of Rights Act 1990
- Privacy Act 1993

### Authorised Staff

- All staff at St Bede's Boarding House are entitled to act in accordance with the procedure, and other relevant legislation as outlined above
- Where possible, the Deputy Rector – Teaching and Learning, or the Director of Boarding should be present when an issue pertaining to this procedure is being investigated.

# St Bede's College Boarding House Surrender and Retention Flowchart



St Bede's College and/or other relevant Policy/Procedures apply

## Criteria

**Criteria** -Steps 1 and 2 on the chart summarise the criteria for requiring a student to produce or reveal an item, or to surrender an item or electronic device.

Before acting under the legislation, staff need to form a belief *on reasonable grounds* that a student has an item that is

- a. likely to endanger safety, or is
- b. likely to detrimentally affect the learning environment, or is
- c. harmful.

It is important to note that an item does not have to be a physical thing. It can include information (for example, text, graphics) stored in electronic form on, say, a mobile phone.

### Belief on Reasonable Grounds

“Belief on reasonable grounds” does not mean “absolutely certain.” What is reasonable depends on context and the nature of the item in question.

Reasonable grounds could be based on specific information about a student. This may be circumstantial in some cases, and may be based on information provided by others. As always, care should be taken to consider and weigh up the strength of statements made by students, including the credibility of the students themselves.

#### a. Likely to Endanger Safety

In making a judgement about the potential threat of an item, staff will need to consider the particular circumstances, rather than relying solely on the nature of the item itself. Almost any object could be used as a weapon but in the circumstances at the time, is that object likely to endanger safety?

It is impossible to provide a comprehensive list of items in this category. A staff member is free to use reasonable judgement about what is likely to endanger safety in a particular set of circumstances. Examples of items in this category could include such things as bullying texts, drugs, laser pens, steel rulers, a compass, a craft knife, scissors, guns of various types, alcohol and spray cans.

#### b. Likely to detrimentally affect the learning/boarding environment

This is a very broad category of item. Anything that disrupts the flow of supervision/teaching and learning has a detrimental effect on the learning/boarding environment. The judgement call belongs to the staff member. A belief on reasonable grounds is all that is required before the steps of the legislation may be applied.

Examples range from the comparatively innocuous (but extremely annoying) persistent tapping of a ruler in prep, through to beeping mobile phones & electronic devices and theft of a wallet or craft knife, as well as inappropriate use of a vehicle.

Depending on the circumstances, a mobile phone/electronic device can be either:

- an item in itself (affecting the learning environment by beeping or distracting students from the task in hand), or
- a device that stores an item that is likely to endanger safety (such as a bullying or inappropriate text or image).

#### c. Harmful

*This is the only category of item for which a search may be conducted.* The legislation defines a harmful item as something that a teacher or authorised staff member has reasonable grounds to believe poses an immediate threat to the physical or emotional safety of any person.

Sometimes, a judgement will have to be made about whether an item is harmful or is likely to endanger safety. Staff are free to apply professional judgement and common sense in deciding into which category an item falls – they need to have reasonable grounds for belief. Firearms, including BB Guns, for example, do not have to be real or functioning in order to pose an immediate threat. Other examples of harmful items may include text messages, drugs, weapons, gang colours or insignia, and sexually explicit photographs of a student.

## **Surrender - steps 3 & 4**

- When a student is *required* by a staff member to surrender, produce or reveal something, this Procedure is triggered and applies.

A staff member may require students to produce, reveal and surrender items in their possession or control if the staff member has reasonable grounds to believe that a student has an item that is likely to endanger safety or detrimentally affect the learning environment, or is harmful. If such an item is stored on an electronic device, staff may require the student to reveal the item and/or may require the device to be surrendered.

If the item is believed to be harmful, the staff member also has the option of conducting a search for the device. If a student refuses a staff member's request, the House's usual disciplinary or behaviour management practices may apply.

A relatively benign object can be used by a student inappropriately or unsafely and in such instances, staff can quickly and easily resolve the situation by applying usual behaviour management practices. The reasons for seeking confiscation of an item may not be as obvious to a student as they will be to a staff member. It is good practice to explain the reasons for confiscation to the student. An explanation may also help if a student is not willing to follow an instruction to hand over an item.

## **Search – steps 5,6 & 7**

A search is an examination of a person or property for something that is hidden. A search may include situations where a person is required to remove items of clothing or to empty out his or her pockets. It can also involve a student's 'correspondence' including written and electronic material (for example, in a diary, on a mobile phone or on a laptop).

Searches may be conducted only for an item that is considered to be harmful. A harmful item is an item that a teacher or an authorised staff member has reasonable grounds to believe poses an immediate threat to the physical or emotional safety of any person.

### Search Powers

The Boarding House can search its own property at any time, for any reason and in any way.

A house's property includes buildings, grounds and vehicles – as well as any locker, desk, bed or other receptacle provided to students for storage purposes.

### Conducting a Search

It is not mandatory to conduct a search. At any time, the House may apply its usual disciplinary or behaviour management practices.

The teacher or authorised staff member, upon forming a belief on reasonable grounds that a student has an item that is harmful, may require a student to:

- remove any outer clothing, except where the student has no other clothing, or only underclothing
- remove any head covering, gloves, footwear or socks (NB some students may object to removing a head covering on religious grounds)
- surrender a bag or other container.

Note that outer clothing includes a coat, jacket, jumper or cardigan – and that socks does not include tights or stockings.

If the student removes any clothing or footwear, or surrenders any bag or other container, then the staff member may search it. Even if a student asks a teacher or authorised staff member to do so, the clothing *must not* be

searched while the student is wearing it. When searching a student's bag, the student could be asked to hold the bag open and move the contents around so that they can be more easily viewed by the staff member conducting the search.

If during the search for a harmful item, an item that is likely to detrimentally affect the learning/boarding environment is found, then the staff member may retain it. The retention steps in the chart then apply. Whether an item is found or not, the clothing or footwear or bag or other belongings must be returned to the student immediately.

#### Restrictions and Limitations

- A search should be carried out in a manner that gives the student the greatest degree of privacy and dignity consistent with the purpose of the search.
- The Boarding House has students from many different nationalities. It is important for staff to be aware of relevant sensitivities when considering a search.
- Unless impracticable, a search must be carried out by a staff member who is of the same sex as the student, and in the presence of the student and another staff member who is of the same sex as the student.
- Unless impracticable, a search must not be carried out in the view of any person other than the person carrying out the search, the student and another staff member.
- It is unlawful to search a student's person.
- A staff member cannot use physical force against a student, other than in an emergency situation where staff are acting to defend themselves or others against immediate harm.
- A search of the property of two or more students together cannot be initiated unless the staff member has reasonable grounds to believe that each student has a harmful item.

#### Written Records

The Board must have a written record of all searches.

The written record is to be stored with the Deputy Rector – Teaching and Learning, and include:

- (a) the date of the search
- (b) the name of the student
- (c) the name of the staff member who conducted the search
- (d) if applicable, an explanation of why any of the "if practicable" requirements could not be fulfilled (re sex of person searching, presence of second staff member of same sex as student, presence of student)
- (e) any other details specified by the Board.
- (f) records are to be kept for seven years, this covers the period for the statute of limitations for civil matters

#### Safety

If you begin a search and it becomes unsafe to continue, stop. Ensure the student and the belongings in question are under supervision in a safe place, and contact the Director of Boarding who will liaise with parents and/or the Police.

## Retention – steps 8,9 & 10

There are general principles that apply to storage, return, passing on to another person or agency, and disposal. The following have to be considered:

- the health and safety of people
- the apparent value of any item or device retained
- the person believed to be entitled to the possession of the item or device concerned. These considerations should guide Board decision-making, as well as the actions of staff.

### Actions

Having had an item surrendered, or having retained an item as a result of a search, the first decision by a staff member is whether the item should be retained or disposed of.

### Retaining and Storage

Reasonable care must be taken of the item. The teacher or authorised staff member may:

- keep the item or device in his or her possession; or
- give the item or device to another teacher or to another authorised staff member; or
- arrange for the item or device to be placed in secure storage. If an item/device is to be retained overnight or longer it must be held in secure storage. "Secure storage" means any container (drawer, safe) or area (office) which is locked and which cannot be accessed without authority.

### Returning or Passing On

When deciding to return an item or device to a student or to pass it to another person or agency, the following considerations need to be borne in mind:

- the health and safety of people
- the apparent value of the item or device concerned
- the person believed to be entitled to the possession of the item or device concerned. If it is appropriate to return the item to the student from whom it was taken, the item or device must be made available to the student as soon as practicable.

In some circumstances, it could be appropriate to pass the item or device to another person (such as a parent or caregiver or the person believed to be entitled to possession of it), or to an agency. Agencies to which items may be passed include the Police, the department of Internal Affairs (for certain types of pornography, for example), and the New Zealand Customs Service (for certain types of contraband, for example).

In the great majority of cases, retained items/devices would be returned either on the same day or in the short term. Keeping an item, in itself, should not be used as a form of punishment.

The House is able to continue with long-standing practices such as: first occasion, item returned to student; second occasion, parents or caregivers asked to pick the item up.

If it is not appropriate to return the item to the student (for example, because of the student's age), the item may be returned to the student's parents or caregivers.

Unless otherwise instructed by the Police, stolen property should be returned to the rightful owner

### Disposal

An item may be disposed if the Director of Boarding considers it appropriate.

An item that has been retained may not be sold. Other forms of disposal are permissible (for example, unclaimed items may be donated to charity). Disposal may include destruction, if appropriate. In some circumstances, it may be possible to dispose of an electronic item (such as a photo or text message) by deleting it. Note that an electronic device cannot be disposed of.

### Written records

There must be a record of every item or device retained under the legislation and retained for two or more school nights. The reference to school nights is to avoid triggering the need for a record when an item is retained on a Friday with the intention of returning it on the Monday. This is to be completed in the Boarding Management System.

The record must include the following:

- the date on which the item or device was taken
- the name of the student from whom the item or device was taken
- the name of the teacher or authorised staff member who took the item or device.

November 2017

*Signed:*

For review: Term 4 2018