

# Board Policy

## Searches and Interrogations of Students

A student may be searched and prohibited items seized on ESBOCES grounds or in an ESBOCES facility by an authorized ESBOCES official only when he or she has reasonable suspicion to believe the student has engaged in or is engaging in activity which is in violation of the law and/or the rules of ESBOCES (i.e., the ESBOCES *Code of Conduct*). The reasonableness of any search involves a twofold inquiry: 1) ESBOCES officials must first determine whether the action was justified at its inception and 2) determine whether the search, as actually conducted, was reasonably related in scope to the circumstances which justified the interference in the first place.

Factors to be considered in determining whether reasonable suspicion exists to search a student include:

1. the age of the student;
2. the student's school record and past history;
3. the predominance and seriousness of the problem in the facility where the search is directed;
4. the probative value and reliability of the information used as justification for the search;
5. the ESBOCES official's prior knowledge of and experience with the student; and
6. the urgency to conduct the search without delay.

If reasonable suspicion exists to believe that a student has violated or is violating the law and/or ESBOCES rules, it is permissible for an authorized ESBOCES official to search that student's outer clothing, pockets, or property. The search may include, but is not limited to, the student's outer clothing such as a jacket or coat, pockets, backpack, and/or purse. Whenever possible, searches will be conducted by a staff member of the same sex as the student and another staff member will be present as a witness.

### **Searches and Seizure of ESBOCES Property**

Student desks, lockers, textbooks, computers, and other materials, supplies or storage spaces loaned by ESBOCES to students remain the property of ESBOCES and may be opened and inspected by ESBOCES employees at any time without prior notice and without their consent. The purpose of these searches, when they occur, is to ensure the safety of students, faculty, and staff, enhance security, and prevent disruptions of the learning environment. Students have no reasonable expectation of privacy with respect to ESBOCES property, and ESBOCES officials retain complete control over such property. However, a student's personal belongings contained within a locker, desk, etc. are subject to the reasonable suspicion standard for searches by an authorized ESBOCES official.

### **Parent/Person in Parental Relation Notification**

The student's parent/person in parental relation will be notified if any illegal, prohibited, or dangerous articles or materials are found in the student's locker, vehicle, or other property or possessions, or on the student's person, as a result of a search conducted in accordance with this policy.

### **Documentation of Searches**

The designated ESBOCES official conducting the search will be responsible for the custody, control, and disposition of any illegal, prohibited, or dangerous items taken from the student. The ESBOCES official or his or her designee must clearly label each item taken from the student and retain control of the item(s) until the item(s) is/are turned over to the police or secured by alternate means.

This ESBOCES official will also be responsible for promptly documenting information about the search including, but not limited to, the reasons for the search, the purpose of the search, the type and scope of the search, and the results of the search.

### **Questioning of Students by ESBOCES Officials**

ESBOCES officials have the right to question students regarding any violations of ESBOCES rules and/or illegal activity. In general, administration may conduct investigations concerning reports of misconduct, which may include, but are not limited to, questioning students, staff, parents/persons in parental relation, or other individuals as may be appropriate and, when necessary, determining disciplinary action in accordance with applicable due process rights.

Should the questioning of students by ESBOCES officials focus on the actions of one particular student, the student will be questioned, if possible, in private outside the presence of other students, by the appropriate ESBOCES administrator(s). The student's parent/person in parental relation may be contacted; the degree, if any, of parental or person in parental relation involvement will vary depending upon the nature and the reason for questioning and the necessity for further action which may occur as a result.

The questioning of students by ESBOCES officials does not preclude subsequent questioning/interrogations by police authorities as otherwise permitted by law. Similarly, the questioning of students by ESBOCES officials does not negate the right or responsibility of ESBOCES officials to contact appropriate law enforcement agencies, as may be necessary, with regard to statements given by students to ESBOCES officials.

ESBOCES officials acting alone and on their own authority, without the involvement of or on behalf of law enforcement officials, are not required to give the so-called "Miranda warnings" (i.e., advising a person, prior to any custodial interrogations as defined in law, of the right to remain silent; that any statement made by the individual may be used as evidence against him or her; and that the individual has the right to the presence of an attorney, either retained or appointed, prior to the questioning of students.

### **Law Enforcement Officials**

A cooperative effort will be maintained between ESBOCES administration and law enforcement agencies. Law enforcement officials may be summoned in order to conduct an investigation of alleged criminal conduct on ESBOCES premises or during an ESBOCES-sponsored activity, or to maintain the educational environment. They may also be summoned for the purpose of maintaining or restoring order when the presence of officers is necessary to prevent injury to persons or property.

Administrators have the responsibility and the authority to determine when the assistance of law enforcement officers is necessary within their respective jurisdictions.

### **Dissemination of Information**

Copies of this Policy will be distributed to students when they enroll at ESBOCES, and will be included in the ESBOCES *Code of Conduct* available to students and parents at the beginning of each school year.

### **Interrogation of Students by Law Enforcement Officials**

If a student is to be questioned by police authorities, it is the responsibility of ESBOCES administration to see that the interrogation takes place privately and in the presence of the parent/person in parental relation and the building Principal or designee. The building Principal or designee must be present with the student at all times during an interrogation.

In the event the police have a warrant for the arrest of a student, administrators should cooperate fully but, again, make every effort to notify the parent/person in parental relation and the home school officials.

### **Child Protective Services Investigations**

Occasionally, Child Protective Services (CPS) may desire to conduct interviews of students on ESBOCES property. These interviews generally pertain to allegations of suspected child abuse or neglect. The Board expects cooperation with CPS with respect to access to records and access to any child named as a victim, any of the victim's siblings, or any other child residing in the same home as the named victim, in accordance with applicable law, including the Family Education Rights and Privacy Act.

### **References:**

- Education Law §§1604(9), 1604(30), 1709(2), 1709(33), and 2801
- Family Court Act §1024
- Social Services Law §§411-428
- 8 NYCRR §100.2(l)
- Administrative Regulation 2410R.1 – Code of Conduct
- Administrative Regulation 6550R.1 – Child Abuse and Maltreatment

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