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## Carmel College Operational Policy 17: Search and Retention

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### Special Character statement

*Our college is the Catholic Church in action, an authentic expression of the Church's mission. Therefore, our role as a Catholic college, is, above all, to be a place where every member of this learning community can encounter the living God and our focus is on helping to form Christ in the lives of others. We do this through the Catholic and Mercy traditions.*

### Outcome statement

**Principle 1:** All schools are required to provide a safe physical and emotional environment for students and staff. A safe environment for students and staff is of paramount importance and therefore must be given primacy when applying the guidelines. National Administration Guideline 5 and other legislation clearly establish this.

**Principle 2:** Parents, students and the public will have a legitimate expectation that the school environment will be free from drugs, weapons, alcohol and cyber bullying. They will expect schools to develop a written policy and procedure on surrender and retention and to advise them accordingly. Schools must be mindful of these expectations.

**Principle 3:** Parliament has given new powers and clarified the law in relation to searches and retaining student property. In exercising these powers, schools must act reasonably, in good faith and in the least intrusive manner to achieve a safe environment.

**Principle 4:** 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 but schools must be able to justify their actions as reasonable and necessary to maintain a safe environment.

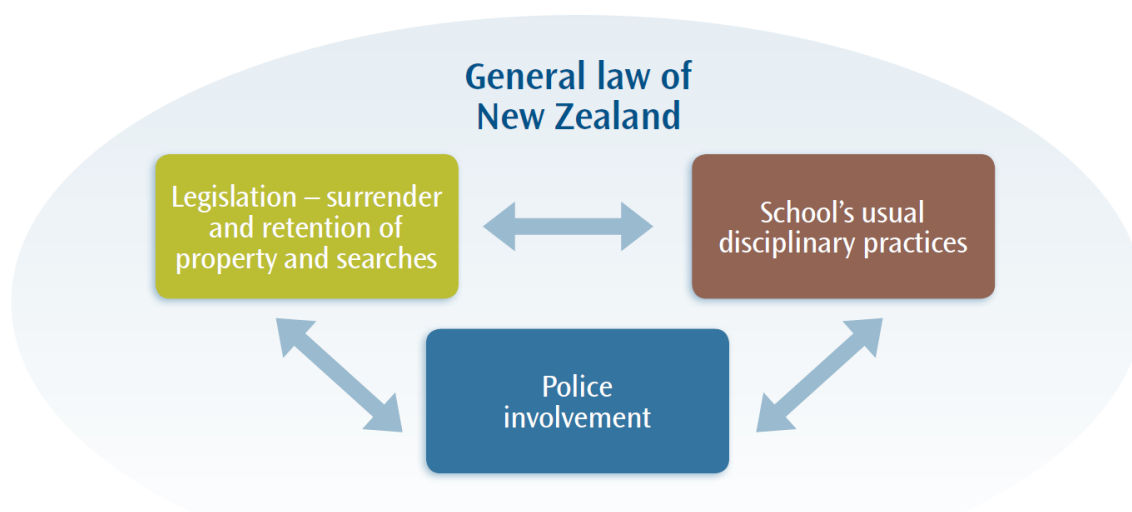
The legislation applies from 1 January 2014.

### Scoping

The legislation deals with three key types of items, covering things that are:

1. likely to endanger the safety of others
2. likely to detrimentally affect the learning environment
3. harmful (poses an immediate threat to the physical or emotional safety of any person).

While all three allow a staff member to *require* students to produce, reveal, and surrender items in their possession, only a belief that a student has something that is *harmful* allows a staff member to conduct a search. It is for this reason that a robust investigation process is important since the more evidence you have the greater the justification for any search.



Health and Safety obligations: Boards and Principals have legal obligations arising from NAG 5, legislation and the common law to ensure the health and safety of employees, students and visitors.

Effective teaching and learning cannot take place in an unsafe school environment.

## Delegations

1. All teachers are automatically authorised to act under the legislation. This includes a school's Principal, Associate Principal, deputy Principal, a person with a Limited Authority to Teach, and a relief teacher employed by the Board.
2. The Board does not authorise anyone other than a teacher to use powers under the legislation.

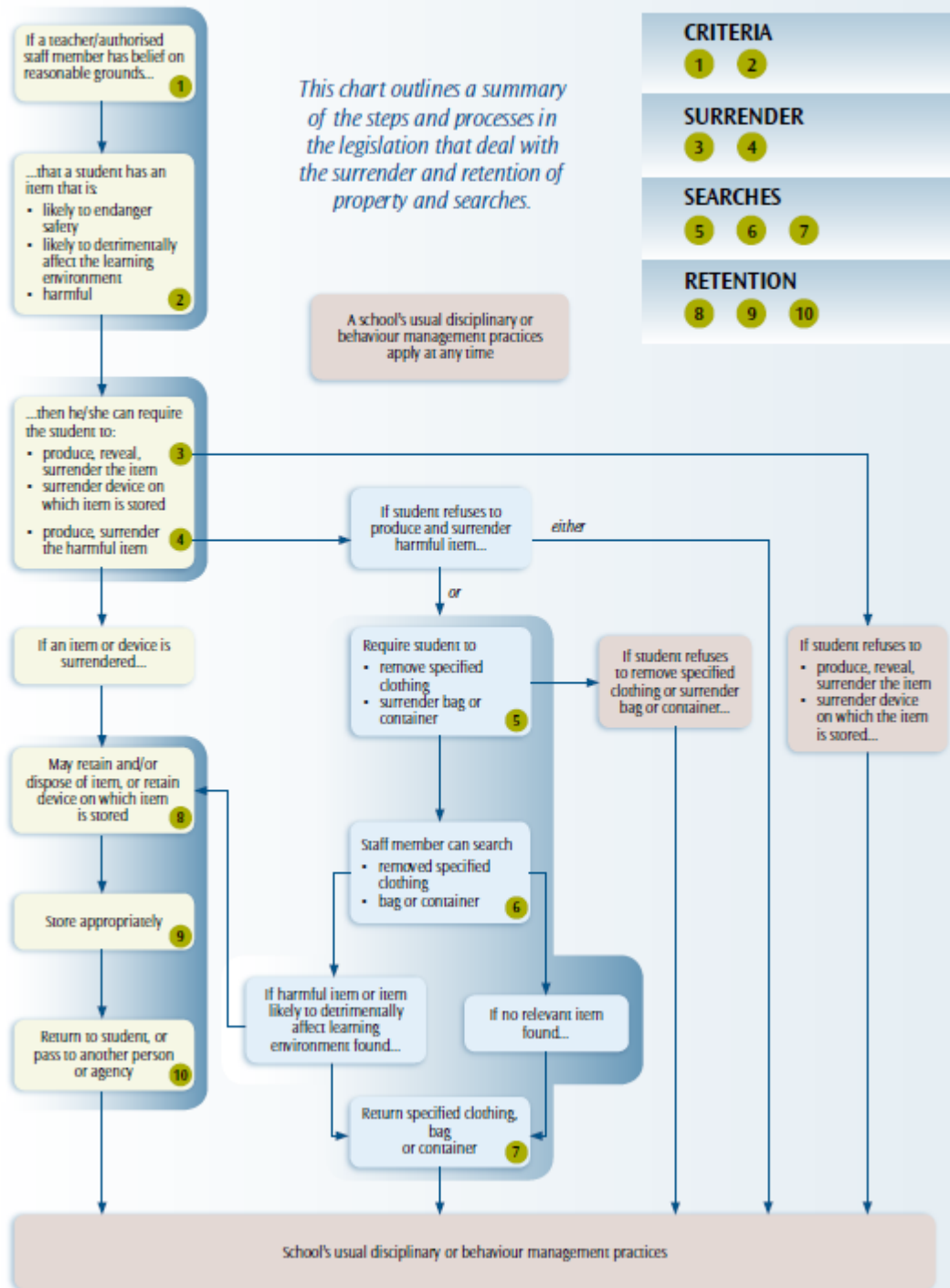
## Expectations and limitations

1. A search can be initiated only if a student refuses to produce or surrender a *harmful* item. 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.
2. Searches may be conducted only for an item that is considered to be harmful. Searches cannot be conducted for an item that is likely to endanger safety only, or for an item that is likely to detrimentally affect the learning environment only.
3. It is unlawful to search a student's person.
4. A school can search its own property at any time, for any reason and in any way. A school's property includes buildings, grounds and vehicles - as well as any locker, desk or other receptacle provided to students for storage purposes.
5. General principles for retention that apply to storage, return, passing on to another person or agency, and disposal. When acting under the Rules, 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.
6. 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.

7. An item may be disposed of if a teacher or an authorised staff member considers it appropriate. Disposal may include destruction, if appropriate. For some items, such as drug paraphernalia, the best course of action is to pass them to the Police. In some circumstances, it may be possible to dispose of an electronic item (such as a photo or text message) by deleting it.
8. 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).
9. Refer to the summary chart on the following page which outlines the process. Refer to P 10-17 of the Guidelines [Link to Guidelines](#) for further explanations of this process.
10. If referred to police, we will co-operate with the police under the Search and Surveillance Act.

# Summary Chart

## Surrender & retention of property and searches



## Procedures/supporting documentation

Document Link:

Ministry of Education Appendix 2 Education Amendment Bill 2012 – Surrender And Retention

[Link to Guidelines](#)

## Monitoring

| Checklist for review of this policy  | Yes / No |
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| 1. Relevant policies and procedures have been reviewed and are consistent with these Guidelines.   |          |
| 2. Authorised staff (other than teachers) are designated.  |          |
| 3. Names and positions of authorised staff members are available to school community.  |          |
| 4. Procedures are in place to deal with retention and storage of items or devices that have been surrendered.  |          |
| 5. Terms and conditions for use of school lockers make clear that the school reserves the right to search the lockers and any bag or container stored in them. |          |
| 6. Requirements for written records are established.   |          |
| 7. Teachers and authorised staff members are familiar with these Guidelines.   |          |
| 8. These Guidelines are available for inspection at the school.  |          |

## Legislative compliance

1. New Zealand Bill of Rights Act 1990
2. Human Rights Act 1993.
3. Education and Training Act 2020
4. Privacy Act 1993
5. Co-operation as lawfully required by any law enforcement agencies for any search and seizure undertaken pursuant to legislation, including but not limited to, Search and Surveillance Act 2012, Misuse of Drugs Act 1975

Refer to Appendix 1 of Guidelines for further information regarding legislation (p.23-28) and Appendix 3 of Guidelines for further information, advice and links to related resources (p.29).

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| Date reviewed: | October, 2020 | Next Review: | October, 2023 |
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