

Monroe 2-Orleans BOCES Policy
Series 6000 – Students
Policy #6230 – SEARCHES AND INTERROGATIONS

Students are protected by the Constitution from unreasonable searches and seizures. A student may be searched and contraband seized on BOCES-owned or leased property or in a school building by a school administrator/designee only when the administrator/designee has reasonable suspicion to believe the student is engaging in an activity which is in violation of school rules, including but not limited to the Code of Conduct, and/or the law.

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

- a) The age of the student;
- b) The student's record and past history;
- c) The predominance and seriousness of the problem in the school where the search is directed; and
- d) The urgency to conduct the search without delay.

A student does not need to consent to a search of his person (pat down) or of their belongings. However, an authorized BOCES official may search a student and/or student's belongings or the belongings on the student and/or in the student's possession. Prior to that search, the authorized BOCES official will first initiate a conversation with the student in an effort to have the student admit to their behavior that is violating the law or the Code of Conduct and/or turn over the contraband in lieu of having to perform a search. A student who refuses to be searched can be suspended for insubordination.

An authorized BOCES official may conduct a search of a student's belongings that is minimally intrusive, such as touching the outside of a book bag or the like, without reasonable suspicion, so long as the BOCES official has a legitimate reason for the very limited search.

An authorized BOCES official may search a student or the student's belongings (including but not limited to shoes/footwear, car, purse, cell phone, book bag, electronic device) based upon reasonable suspicion or information received from a reliable informant. Individuals will be considered reliable informants if they have previously supplied information that was accurate and verified, or they make an admission against their own interest, or they provide the same information that is received independently from other sources, or they appear to be credible and the information they are communicating relates to an immediate threat to safety. BOCES staff will be considered reliable informants unless they are known to have previously supplied information that they knew was not accurate.

Whenever practicable, searches will be conducted in the privacy of administrative offices and students could be present when their possessions are being searched, and two adults will be present if possible. If possible one adult should be of the same gender of the student's preference, biological gender, or the gender the student identifies as.

A strip search will not be conducted unless a number of factors have been evaluated. If a strip search is conducted, two BOCES adults will be present, one of the gender of the student's preference,

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biological, or the gender the student identifies as. A student being asked to lift a pant leg, turn over a waistband, or lift a shirt forward is not considered a strip search.

Lockers

Lockers are provided by the school for student use and the administration has the right to search lockers. A student may have exclusive use of a locker as far as other students are concerned but they do not have such exclusivity over the locker as it relates to the school authorities.

Privacy Rights

As part of any investigation, the BOCES has the right to search all school property and equipment including district computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by the BOCES for the use of students, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

Questioning of Students by School Officials

School officials have the right to question students regarding any violations of school 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/legal guardians, 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 school officials focus on the actions of one particular student, the student will be questioned, if possible, in private by the appropriate school administrator. The student's parent/legal guardian may be contacted; the degree, if any, of parent/legal guardian 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 school officials does not preclude subsequent questioning/interrogations by police authorities as otherwise permitted by law. Similarly, the questioning of students by school officials does not negate the right/responsibility of school officials to contact appropriate law enforcement agencies, as may be necessary, with regard to such statements given by students to school officials.

School officials acting alone and on their own authority, without the involvement of or on behalf of law enforcement officials (at least until after the questioning of students by school authorities has been conducted) 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 themselves; and that the individual has the right to the presence of an attorney, either retained or appointed) prior to the questioning of students.

If deemed appropriate and/or necessary, the District Superintendent/designee may also review the circumstances with BOCES legal counsel so as to address concerns and the course of action, if any, which may pertain to and/or result from the questioning of students by school officials.

Law Enforcement Officials

It shall be the policy of the BOCES that a cooperative effort shall be maintained between the school administration and law enforcement agencies. Law enforcement officials may be summoned in order

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to conduct an investigation of alleged criminal conduct on BOCES owned or leased premises or during a school-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 such 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. BOCES administrators shall at all times act in a manner that protects and guarantees the rights of students and parents/legal guardians.

Police Involvement in Searches and Interrogations of Students

Authorized BOCES officials are committed to cooperating with police officials and other law enforcement authorities to maintain a safe school environment. Police officials, however, have limited authority to interview or search students in BOCES or at BOCES functions, or to use BOCES facilities in connection with police work. Police officials may enter BOCES property or a BOCES function to question a student or to conduct a formal investigation involving students only if they have:

1. A search or an arrest warrant; or
2. Probable cause to believe a crime has been committed on school property or at a BOCES function; or
3. Been invited by BOCES.

Removal of students by police authorities will be allowed only when:

- Written permission from a parent or legal guardian is obtained; or,
- The officer has a warrant; or,
- The parent or legal guardian is present and gives consent; or,
- The officer has cause to make an arrest.

Before police officials are permitted to question or search any student, the authorized BOCES official or police or home school district representative shall first try to notify the student's parent/legal guardian to give the parent/legal guardian the opportunity to be present during the police questioning or search. If the parent/legal guardian can't be contacted, the police will still question the student. The authorized BOCES official will also be present during any police questioning or search of a student on BOCES property or at a BOCES function.

Students who are questioned by police officials on BOCES property or at a BOCES function will be afforded the same rights they have outside the BOCES. This means:

1. They must be informed of their legal rights;
2. They may remain silent if they so desire;
3. They may request the presence of an attorney.

Family Court Act Section 1024

Education Law Sections 1709(2) and (33) and 2801

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8 New York Code of Rules and Regulations (NYCRR) Section 100.2(l)

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