

KNOW YOUR RIGHTS

SEARCH, SEIZURE, AND SCHOOL-BASED ARRESTS



A Community Education Pamphlet

Prepared by
The Youth Law Project
Of
New Hampshire Legal Assistance
www.nhla.org



**NEW HAMPSHIRE
BAR FOUNDATION**
Strengthening Justice for All



QUESTIONED AT SCHOOL

DO I HAVE TO ANSWER IF A SCHOOL OFFICIAL ASKS ME ABOUT CRIMINAL ACTIVITY?

School officials are not required to inform you of your rights before questioning you. However, you always have the right to remain silent. While your silence may be used against you in a school disciplinary hearing, it cannot be used against you in a delinquency or criminal case. If you are ever confused about whether to answer questions, you should ask to speak with a parent, a lawyer, or another trusted adult before agreeing to answer questions.

DO I HAVE TO ANSWER IF A POLICE OFFICER ASKS ME ABOUT CRIMINAL ACTIVITY?

Generally, police officers will not ask you questions about a crime at school. But if they do, you may not know whether they are investigating you or someone else. Police officers are only required to read you your rights if they ask you questions while you are “in custody.”

You are only “in custody” if you are not allowed to leave. If you are confronted by a police officer, you may always ask, “Am I free to leave.” If the officer says yes, you may politely walk away. If the officer says no, you should immediately ask to speak with a lawyer. If you ask for a lawyer, the police officer can ask your name and for identification (which you should provide), but the officer cannot ask you any further questions or ask to search you.

If you meet with a police officer voluntarily you are not in custody and police officers probably will not read you your rights even if you are the target of the investigation. You should always ask to speak with a parent, a lawyer, or another trusted adult before agreeing to answer questions by a police officer.

SEARCHED AT SCHOOL

IS IT OKAY FOR SCHOOL OFFICIALS TO SEARCH ME OR MY BELONGINGS?

When you go to school you have privacy rights, but those privacy rights are not as strong as when you are at home. Generally, school officials need “reasonable suspicion” that you have something that is illegal or prohibited before they can search your pockets, your backpack, or your locker. “Reasonable suspicion” is not well defined in our state laws, but generally school officials can search you if another student says you have something illegal or prohibited in your possession. You should not physically resist a search, even if you think the school official doesn’t have reasonable suspicion to search you.



WHAT IF SCHOOL OFFICIALS ASK ME FOR PERMISSION TO BE SEARCHED?

If a school official asks to search you, it’s okay to say no. You always have the right to refuse to be searched and you should make it clear that you are refusing. If a principal asks to search you and you say yes, you will turn what may be an illegal search into a legal one. That means that anything the principal finds can be used against you in a disciplinary or criminal proceeding.

CAN EVIDENCE THAT SCHOOL OFFICIALS FIND IN AN ILLEGAL SEARCH BE USED AGAINST ME IN COURT OR BY THE SCHOOL?

Evidence discovered in an illegal search cannot be used against you in a criminal or juvenile proceeding, regardless of whether the search was conducted by a school official or the police. However, it's possible that the evidence from an illegal search can be used against you at a school disciplinary hearing. You should consult with an attorney if you are facing a long-term suspension or expulsion.



DO POLICE OR SCHOOL RESOURCE OFFICERS HAVE THE SAME RIGHT TO SEARCH STUDENTS AS SCHOOL OFFICIALS?

No. In order for a police officer or the school resource officer to search you, they must have a warrant or “probable cause” that you have something illegal in your possession. This is a higher standard than “reasonable suspicion.” If the officer asks permission to search you, your bag, your car, your room, or anything else, you should politely say no, unless you feel comfortable with the search and are 100% confident that nobody, including your friends or family, inadvertently left something illegal in the area to be searched. If the police officer decides to search you after you have refused consent, you should not physically resist. It's most important that prior to the search you state very clearly that the officer does not have permission to search you or your belongings.

ARRESTED AT SCHOOL

CAN I BE ARRESTED FOR SOMETHING I DID AT SCHOOL?

Yes. While New Hampshire law requires schools to try school-based interventions and collaborate with parents before referring children to court in most instances, court referrals are permitted for serious threats to school safety and when you repeatedly commit crimes at school.

WHAT IS A SCHOOL-BASED ARREST?

In New Hampshire, typically police do not arrest children by handcuffing them and taking them away in a police cruiser, although that sometimes happens. Instead, police officers will usually file a juvenile delinquency petition with the court after someone reports a crime and the police department completes its investigation. Once the court assigns a court date, the police officer will serve the petition on the child and parent(s) at their home. A school-based arrest or referral to law enforcement means that the delinquency petition resulted from a report by someone who works at the school or a school resource officer.



WHAT IS DELINQUENT BEHAVIOR?

Delinquent behavior means a crime that could result in jail time if committed by an adult. It also includes possession of small amounts of marijuana or hashish. In order to find you delinquent a court must determine that you committed delinquent behavior and that you need counseling, supervision, treatment, or rehabilitation as a consequence.

WHEN CAN I BE ARRESTED FOR THINGS I DO ON SCHOOL GROUNDS OR AT SCHOOL EVENTS?

As long as your behavior is not a “serious threat to school safety,” the school must do the following things before arresting you or referring you to court:

- Try to use educational approaches to address your behavior, including the school discipline process, if appropriate;
- Work with your parents to address the problem, or demonstrate that your parents are unable or unwilling to work with the school;
- Provide information that the school’s approaches have not worked and that you continue to engage in delinquent behavior; and
- Demonstrate why court intervention is needed.



If you are getting into trouble a lot at school, you should consider speaking with a parent or a trusted adult about why you are struggling and what you think might help. Talking about the problem will help school staff better understand what you need so you don’t get suspended or referred to the court.

There are no restrictions on school-based arrests or referrals to law enforcement for “serious threats to school safety.”

WHAT IS A SERIOUS THREAT TO SCHOOL SAFETY?

“Serious threats to school safety” include acts involving weapons, drugs, serious bodily injury to students or staff, credible threats to cause bodily injury to students and staff, most sexual offenses, arson, robbery, and destruction of property valued over \$100.

WHAT IF I HAVE A DISABILITY?

Schools can refer students with disabilities to court for delinquent behavior, but there are certain steps the school must take before doing so. Most importantly, the school must hold a meeting to determine whether your behavior was a “manifestation” of your disability.

A manifestation of your disability means the behavior was caused by or related to your disability, or happened because the school did not properly implement your individualized education plan (IEP). If your IEP team determines your behavior was a manifestation of your disability, the school must take steps to make sure it’s providing you appropriate programming and services. This includes:

- conducting an evaluation to determine the factors contributing to your behaviors,
- creating a behavior intervention plan, and
- reviewing and revising your IEP to make sure it’s appropriate and is meeting your needs.

You should be a part of this process! If something is going on in school that’s making it hard for you, either academically or socially, the best thing you can do is talk to a trusted adult.



If you become court involved, it’s very important that you, your family, and the school work together to address your disability related needs. If you are not receiving appropriate supports and services at school, you are unlikely to do well on juvenile probation.

New Hampshire Legal Assistance Youth Law Project

New Hampshire Legal Assistance provides free legal help to low-income and elderly persons who cannot afford a private attorney. The Youth Law Project is a special project of New Hampshire Legal Assistance that provides advocacy and legal services to:

- Youth facing repeated or lengthy school exclusions;
- Foster youth in need of educational services;
- Homeless youth in need of educational stability; and
- System involved youth with unaddressed educational needs.

PLEASE NOTE: This is general information for students at public elementary, middle, and high schools in New Hampshire and their parents/guardians. It is not legal advice. Students and families are encouraged to seek legal counsel about their specific situations.

Contact Us

Apply for free help online at

www.nhlegalaid.org

or call

603-224-3333 or

1-800-639-5290

“Know Your Rights” pamphlet series includes:

Disciplinary Protections for Students with Disabilities
Search, Seizure and School-based Arrests
School District Obligations to Kids in Court



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