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To: Members of the Board of Education
From: Doug Larson
Re: First Reading
Date: November 13, 2014

Policy and Legal Services will present one First Reading of a proposed policy modification during the next Board of Education meeting:

Article IX.A.1.m Search and Seizure

State law requires a search and seizure policy. Our policy was tucked away as part of a larger policy and it needed to be updated. This search and seizure policy is up-to-date with current case law on this issue and is intended to provide practical direction to administrators, student resource officers, and police as they address this issue in circumstances where searches and seizures may be needed. The policy also balances student privacy with search and seizure and attempts to mitigate the disruption and other potential problems searches and seizures can produce.

First Reading

Article IX.A.1.m Search and Seizure

A. Statement of Purpose

Granite School District has a responsibility to safeguard students in addition to a responsibility to protect the individual rights of students and guard against excessive intrusion. Therefore, pursuant to Utah Code 53A-11-1301 *et. seq.*, this policy is intended to govern searches and seizure that occur on District property.

B. Definitions

1. “Appropriate Official” means the most appropriate District employee or law enforcement officer authorized to conduct a search. In most instances, the Appropriate Official will be the school principal or a Granite District Police Officer.
2. “Contraband” is defined broadly for the purpose of this policy to mean property, materials, substances, data, and other items or information obtained, possessed, distributed, used, or intended to be distributed or used in violation of state or federal law and/or school or District policy.
3. “Electronic Device” means any device that is used to electronically communicate, store, send, receive, or reproduce audio, video, text, or other electronic data.
4. “Probable Cause” means sufficient knowledge of articulable facts or circumstances that would lead a reasonable person to conclude that another person has committed, is committing, or is about to commit a crime or violate a legally enforceable rule. Probable Cause is the standard required before law enforcement can legally conduct a search.
5. “Reasonable Suspicion” is a standard lower than Probable Cause and means an individualized, particularized, and objective basis supported by articulable facts for suspecting a person of criminal activity or a policy violation; reasonableness considers the totality of the circumstances and extends to the appropriateness and the scope of the search. Reasonable Suspicion is the standard required before school personnel can legally conduct a search.

B. General Search and Seizure Principles

1. In the course of any search, student privacy and property rights shall be respected under the parameters of this policy, and all searches shall be related to the Reasonable Suspicion and not excessively intrusive in light of the and seriousness of the circumstances, the student's age, and the student's discipline history.

2. A student's personal property, effects, or belongings (i.e., coats, hats, backpacks, book bags, purses, notebooks, gym bags, Electronic Devices, etc.) and vehicles located on District property shall be subject to search when school personnel have a Reasonable Suspicion of criminal conduct or conduct that would constitute a violation of a school or District policy. Appropriate Officials have authority to require students to relinquish personal property, effects, or belongings to be searched or to facilitate searches.
3. All Contraband is subject to seizure by an Appropriate Official. Contraband shall be seized in a reasonable manner according to the urgency and seriousness of the circumstances, the student's age, and the student's discipline history.
4. Students subject to search pursuant to this policy are students under the jurisdiction of the Granite School District Board of Education including all students enrolled in District schools and programs (including dually enrolled students) and students participating in or attending school-sponsored events and extracurricular activities.

C. Search and Seizure Procedures

1. Whenever possible, a search will be conducted by an Appropriate Official of the same gender as the student being searched in a private area of the school with a separate staff member present as a witness.
2. The Appropriate Official shall attempt to obtain consent from the student prior to conducting a search. However, provided Reasonable Suspicion of criminal activity or a violation of school or District policy exists, consent is not required.
3. Searches of a student or a student's property, effects, or belongings may include, but shall not be limited to the following:
 - a. asking a student to turn out his/her pockets and/or remove contents;
 - b. inspecting backpacks, book bags, gym bags, purses, briefcases, or any other objects in the possession of the student;
 - c. asking a student to remove an article or layer of outer, extraneous clothing such as a coat, hoodie, jacket, hat, or shoes for inspection;
 - d. inspecting a student's Electronic Device if warranted; and/or
 - e. asking a student to open his/her vehicle located on District property and inspecting the interior of the vehicle (searches of vehicles owned by District employees or visitors shall be conducted by law enforcement personnel).

4. All Contraband seized by a school official shall be immediately turned over to law enforcement officers if school officials have reason to believe the Contraband is related to the commission of, or intent to commit a criminal act. For violations of policy that do not rise to the level of a criminal act, school personnel shall be responsible for the custody of all Contraband and/or other that may constitute evidence of misconduct or that may cause disruption at school. Such property shall be returned to parents of the student as appropriate.
5. The Appropriate Official shall promptly make a written record detailing each search and seizure providing at minimum the following information:
 - a. the purpose of the search and the facts supporting a Reasonable Suspicion (or Probable Cause) justifying the search;
 - b. the location of the search and individuals present when the search was conducted;
 - c. whether the student offered consent to the search;
 - d. the names of any informants;
 - e. an inventory and chain of custody of all Contraband seized;
 - f. a description of any subsequent action taken.
6. A search involving the potential of a health and safety threat shall be conducted as expeditiously as possible.
7. A school official may arrange for a medically accepted drug or alcohol test as defined in Utah Code § 34-41-104 for District employees. Field sobriety and/or field breath tests may also be arranged for students or District employees whenever the official has Reasonable Suspicion to believe the student or employee has consumed or is under the influence of illegal drugs or alcohol (*see* Article IX.A.1.b. Drugs, Alcohol, and Tobacco Testing and Prohibitions). Granite District Police or a local law enforcement agency shall conduct or administer the field sobriety and/or breath test where Probable Cause exists.
 - a. Field sobriety and/or breath tests shall be administered in a private administrative or instructional area on school property and at least one other member of the administrative staff or teaching staff shall be present as a witness.
 - b. If a student or employee refuses to submit to a drug or alcohol test, the Appropriate Official shall inform him/her that refusal to participate leaves the observed evidence of the alcohol or drug use unrefuted, which will likely lead to disciplinary action.

D. Searches of District Property

District-owned Electronic Devices and storage areas (including lockers, desks, etc.) remain under the exclusive control of the District and are subject to search at any time— with or without Reasonable Suspicion. Students and District employees shall have no expectation of privacy with respect to District-owned Electronic Devices or storage areas. Students and staff shall provide passwords used to protect data on any District-owned Electronic Devices. Locks may be destroyed while searching District-owned storage areas.

E. Canine Searches

Inspections of District property using trained canine for the detection of drugs, explosives, etc. is not considered a search. Any search based on a dog's alert must follow the requirements and procedures for searches of a student's person or property as set forth herein. Canine detection must be conducted in collaboration with law enforcement. Where a canine search is otherwise appropriate, it is acceptable to detain students or restrict their movement to facilitate the search.

F. Invasive Searches

Invasive searches of a student, including "pat downs," removal of base layers of clothing, or touching intimate areas of the body, shall *not* be conducted by school personnel. Such searches shall be conducted by law enforcement under law enforcement protocols, unless extreme and unusual circumstances exist.

G. Scope of Search

The scope of any search should be limited by the Reasonable Suspicion that motivated the search. If an item or data is found that leads to Reasonable Suspicion that additional, relevant Contraband, data, or other evidence may also exist, the search may be extended. If the initial search produces no evidence of illegal activity or a violation of school or District policy, there shall be no extension of the search to satisfy curiosity or for any other reason.

H. Parent Notification

School personnel have no obligation to contact parents before detaining and questioning students. Best practices dictate, however, that a parent or guardian be notified when a student is questioned about any serious allegations and/or subjected to a search.

References:

Utah Code, §53A-11-1305

New Jersey v. T.L.O., 469 U.S. 328 (1985)

O'Connor v. Ortega, 480 U.S. 709 (1987)

City of Ontario v. Quon, 130 S.Ct. 2619 (2010)