

SCHOOL SEARCH CHECKLISTS

*A Companion Reference Guide
to the
New Jersey School Search Policy Manual
1998*

TABLE OF CONTENTS

	<u>Page</u>
HOW TO USE THESE CHECKLISTS	1
SEARCH DEFINED	2
I. SEARCHES OF PARTICULAR STUDENTS OR LOCATIONS BASED ON INDIVIDUALIZED SUSPICION OF WRONGDOING	3
GENERAL RULE	3
A. Authority to Initiate the Search.	3
Factors Justifying a Search.	5
Other Relevant Factors.	5
Information Provided by Others.	6
Evidence Turned Over by Another Student.	7
Additional Information Learned Before Conducting the Search.	8
Additional Information Learned By Interviewing the Suspect Student.	8
B. Manner in Which Search Was Conducted.	9
Special Rules for Searches of Persons.	12
II. OBTAINING PERMISSION TO SEARCH	15
III. GENERAL SEARCH AND INSPECTION PROGRAMS	19
A. Locker Inspection Program (No Law Enforcement Involvement).	19
B. Use of Drug-Detection Canines.	20
C. Facts Justifying General Search Policies.	24

HOW TO USE THESE CHECKLISTS

The following school search checklists were developed to help school officials understand and comply with the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. These constitutional provisions impose strict limitations on the authority of public school teachers, principals and other administrators, coaches, and other public school staff members to conduct searches.

These checklists concisely restate some of the most important search and seizure rules, and are designed to help school officials identify and record appropriate facts that would justify a search of a student and his/her locker and possessions. This is done by presenting a series of questions that a school official should be prepared to answer to justify a search or seizure. Note that not all of these questions will be pertinent in any given situation.

Some questions will require more than a simple “yes” or “no” response, and when a more detailed answer is appropriate, the checklist will usually indicate in parentheses that the school official should be prepared to more fully “explain” or “describe” the relevant circumstances and/or why the school official drew the inference or reached the conclusion that he or she did.

These checklists do not by any means list all of the pertinent facts and observations that could conceivably occur during an investigation into suspected criminal activity or violation of school rules. It is simply not possible to anticipate every situation that could arise, and school officials should be prepared to record any additional pieces of information that might be relevant in determining the reasonableness of a search.

School officials should carefully document all of the facts that were known before conducting a search, as well as any information learned during the course of conducting a search. The timing and sequence of events is critical. School officials must be prepared to explain what they knew, and when they knew it. An investigation must be thought of as a step-by-step process where each step in the unfolding sequence of events is justified by the information learned in the preceding steps. Thus, for example, a school official must have “reasonable grounds” to believe an offense or infraction was committed *before* opening a locker or bookbag to search for evidence of the infraction. School officials should carefully document not only all relevant facts and observations, but also the reasonable, common sense inferences that can be drawn from the information at hand based upon the school official’s training and experience.

The Fourth Amendment only prohibits searches that are *unreasonable*, balancing the legitimate privacy rights of students against the legitimate need for school officials to maintain order, discipline, and safety. The key to meeting the reasonableness test, simply stated, is to document all of the *reasons* that justify the decision to undertake the search. When school officials think carefully about what they are doing and try consciously to minimize the intrusion upon students' privacy rights, they are far less likely to violate the Fourth Amendment. For school officials as for police officers, most Fourth Amendment violations are thoughtless ones. It is hoped that these checklists will help school officials to organize their thoughts.

The references in brackets [thus] are to sections of the *New Jersey School Search Policy Manual (1998)* and are designed to help school officials quickly locate relevant portions of that Manual. Note, however, that these checklists refer to some but not all of the rules and principles that are described in much greater detail in the *New Jersey School Search Policy Manual*.

These checklists are meant only to enhance the knowledge of school officials about the law of search and seizure, and they do not create any rights beyond those established under the Constitutions, statutes, and regulations of the United States and the State of New Jersey.

SEARCH DEFINED

A search entails a "peeking," "poking," or "prying" by a teacher, principal, or other school official into a private area or an enclosed opaque container, such as a locker, desk, purse/handbag, knapsack, backpack, briefcase, folder, book, or article of clothing. The act of opening a locker or container to inspect its contents constitutes a search, as does the act of reading a journal or handwritten notes. Ordering a student to open a locker or container, or to empty his/her pockets, also constitutes a search.

A search may be based on suspicion of either a criminal offense or a violation of school rules. A search can be for *contraband* (e.g., drugs, alcohol, explosives or fireworks, and/or prohibited weapons); an *instrumentality* used to commit an offense or school rule violation (e.g., a weapon used to assault or threaten another or burglar tools); the *fruits or spoils* of an offense or school rule violation (e.g., the cash proceeds of a drug sale, gambling profits, or a stolen item) or *other evidence* of an offense or school rule violation (e.g., gambling slips, hate pamphlets, records of drug or illegal gambling debts, "crib" notes or other evidence of cheating or plagiarism, etc.).

I. SEARCHES OF PARTICULAR STUDENTS OR LOCATIONS BASED ON INDIVIDUALIZED SUSPICION OF WRONGDOING

GENERAL RULE

In order for a search to be reasonable, a school official must satisfy two separate inquiries: First, was the search justified at its inception? Second, was the search conducted in an appropriate manner, that is, was the actual search reasonable in its scope, duration, and intensity? [3.3]

A search is constitutionally permissible at its inception where the school official has reasonable grounds — based on the totality of the known circumstances — for suspecting that the search will reveal evidence that the student has violated or is violating either the law or the rules of the school. Reasonable grounds is more than a mere hunch or unsubstantiated rumor. [3.2]

A search will be reasonable in its scope and intensity where it is reasonably related to the objectives of the search and is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction. [3.2B]

Note: If the search is conducted in concert with police officers, stricter rules will usually apply, and the school official should defer to the police officer in conducting the search. [2.5]

A. Authority to Initiate the Search.

To initiate a lawful search, a school official must have *reasonable grounds* to believe that:

- (1) a law or school rule has been or is being broken;
 - (2) a particular student(s) has committed the violation or infraction;
 - (3) the suspected violation or infraction is of a kind for which there may be physical evidence (i.e., contraband, instrumentality, fruits or spoils, or other evidence); and,
 - (5) the sought-after evidence would be found in a particular place associated with the student(s) suspected of committing the violation or infraction.
- [3.2]

“Reasonable grounds” means a suspicion that is based on reasons that can be articulated. It is more than a mere hunch or supposition, but much less than the level of proof that would be required to impose a disciplinary sanction. [3.2A(9)]

Indicate the specific offense(s)/school rule infraction(s) suspected:

Indicate the name of the student(s) suspected of committing the offense(s)/infraction(s):

Indicate the exact place(s) or object(s) to be searched/opened:

- Did the student deny owning the object to be searched? (Explain.) (If yes, the student has no legitimate expectation of privacy in the object and cannot later complain that the search was improper.) [8.10]
- Did the student abandon the object to be searched (i.e., dropped it while running from a school official or while fleeing the scene of the suspected offense)? If yes, the student has no legitimate expectation of privacy in that object and cannot later complain that the search was improper. [3.2A(5)] (*Note:* An object placed in a trash receptacle is usually *not* considered to be abandoned property under New Jersey law.)
- Did the search involve more than one student? If so, were there reasonable grounds to believe that each individual to be searched would be in possession of the item(s) being sought? (*Note:* In some situations, the number of suspects may be so small that the entire group may be searched. Courts will consider (1) the size of the group, (2) the strength of the grounds to believe that one of them is the person who committed the offense, (3) the seriousness of the offense, and (4) whether the sought-after evidence could harm others.) [3.2A(10)]
- What investigative steps were taken before searching a group of students to narrow the field of suspects? (Explain.)

The following factors and circumstances may be used in determining whether reasonable grounds exist to initiate a search. Each factor in the right-hand column is relevant, but is generally not enough, by itself, to justify a search.

Factors Justifying a Search.

- Observed infraction/offense in progress.
- Observed item believed to be stolen. (Explain.) [3.2A(7)]
- Observed weapon or portion thereof.
- Observed contraband.
- Smell of burning tobacco or marijuana. [3.2A(6)]
- Student appears to be under influence of alcohol/drugs. (Explain.)
- Student admits violation.
- Student appears to be lying. (Explain.) [3.2A(4)]
- Student fits description of suspect of recently-reported offense.
- Student(s) flee from vicinity of recent offense.
- Student(s) flee upon approach of school official [3.2A(5)]
- Information provided by others. (See *Information Provided by Others*, below.)
- Threatening words or behavior. (Explain.)
- Incriminating evidence was found during a lawful consent search. (See *Obtaining Permission to Search* checklist.)
- Incriminating evidence was discovered by a teacher/administrator. (If this discovery entailed a “search,” that search must have been lawful.)
- Incriminating evidence was turned over by another student. (See *Evidence Turned Over by Another Student*, below.)
- Other suspicious conduct (Must fully explain.)

Other Relevant Factors.

- Extent of particular disciplinary problem in school.
- Reputation of student to be searched.
- Student to be searched has history of previous similar violations.
 - Student was previously disciplined for a similar offense/infraction.
 - Student was already subject of pending investigation for similar offense/infraction.
- Report of stolen item.
- Student seen leaving area where infractions are often committed (i.e., location where students congregate to smoke).
- Student became nervous or excited when you approached. (Explain.) [3.2A(4)]
- Student refused to make eye contact with you. [3.2A(4)]
- Student made a suspicious or “furtive” movement. (Must describe the exact conduct and why it was suspicious.) [3.2A(4)]
 - Did the student try to conceal an object from your view?
 - Did the student deny making the suspicious movement you observed? (*Note:* Lying is always relevant in deciding whether there are reasonable grounds to believe that the student committed an offense/infraction.)
- Student is part of a group known to have committed similar offenses/infractions. (Explain.) [3.2A(12)]

Information Provided by Others.

Note: All source information should be carefully documented, explaining why the source is credible and why the information is reliable. The record should indicate when, during the course of the investigation, each particular piece of information was learned, and from what source. An anonymous “tip” standing alone will usually not justify a search unless the information provided is corroborated by independent investigation or observation, or by some other source of information.

- Was the information provided by a school staff member?
- Was the information provided by a student?
- Was similar or corroborative information provided by multiple sources?
- Was the information provided by a victim of an offense?
- How recent or “fresh” is the information? If there was a delay in reporting the information, why? [3.2A(8)]
- Was the information provided by an eyewitness to an offense/infracton? Did the source actually see the offense and offender? (Describe the circumstances and the likelihood that the person could be mistaken, e.g., poor lighting, observation from a substantial distance, obstructed view, etc.). [3.2A(3); 5.2]
- Was the information provided by a person who had *personal knowledge* of the offense/infracton, or instead by someone who only learned of the incident from yet another person? (Explain.) [3.2A(3); 5.2]
- How did the person learn of or know about the offense/infracton and the existence and location of the evidence (e.g., he/she was present when the offense/infracton was committed; he/she saw (or smelled) the evidence and saw where it was being kept, etc.)?
- Was the information provided by a person who heard the suspect admit to or boast about the offense/infracton? (Explain the circumstances of the overheard admission and the likelihood that the suspect was lying or exaggerating to impress others.)
- Was the information provided by a person with a reputation for veracity? Did the source of the information have a motive to lie or exaggerate? [5.1]

- Was the information provided anonymously? If so, describe the steps taken to verify/corroborate the information before conducting the search.
- Were similar anonymous “tips” obtained from two or more separate sources? [5.3]
- Was the anonymous tip consistent with information you were already aware of? (Explain.) [5.3]
- Was the information provided by someone known to be involved in unlawful activity? If so, explain why this source of information is credible. [5.1]
 - Has this source provided reliable information in the past?
 - Did the source make a statement against his or her own interests?
 - Does the source have a motive to lie or to minimize his/her own culpability by falsely accusing another?
 - Did the source provide information only in exchange for leniency?

Evidence Turned Over by Another Student.

- Was the physical evidence turned over anonymously (i.e., left in a teacher’s box or on a teacher’s desk)?
- Who found/handled the evidence? (Describe the complete “chain of custody.”)
- Where exactly was the evidence first found?
- Describe all indications as to who owned/controlled the evidence and/or the place where it was found before it was turned over.
- If a student first found or turned over the evidence, was that student asked by a staff member to conduct a search or retrieve the object? (If yes, the student was acting as an agent of the school, and the school official who directed the student’s conduct must have had reasonable grounds to conduct the search.)

Additional Information Learned Before Conducting the Search.

- Did you find and question other persons who may have witnessed the violation/infracton or who may have relevant information. If yes, with what results? If not, why not?
- Did the student suspected of the infracton/violation make an admission to other students? [6.2]
- Did you observe conduct or circumstances that would tend to corroborate the suspicion (e.g., student appeared to have been in recent fight, student appeared to be under influence of drugs, student observed congregating with other persons suspected of committing offense, etc.) (Explain.)

Additional Information Learned By Interviewing the Suspect Student.

- Did you confront the student about the violation before conducting the search? If so, describe the student's reaction (e.g., admitted offense, denied offense, became nervous, excited, belligerent, was evasive, etc.). [3.2A(4); 6.2]
- Describe the student's attitude to your questions (e.g., evasive, hostile, uncooperative, etc.). [3.2A(4); 6.2] (*Note:* A student's refusal to consent to a search may *not* be used as evidence that the student is guilty or has something to hide.) [8.3]
- Did the student provide an implausible explanation for his/her conduct? (If so, explain.) [3.2A(4); 6.2]
- Did the student make any statement that you knew to be false or misleading? (If so, explain.) [3.2A(4); 6.2]
- Were there any discrepancies/inconsistencies in the student's story? (If so, explain.) [3.2A(4); 6.2]
- Was the suspected offense/infracton committed by more than one student? If so, did you question each one separately?
- Did two or more suspect students give conflicting stories/explanations?

- Did the student(s) make any furtive or unusual movements? (Describe the actions and why they were suspicious.) [3.2A(4)]
- Did you ask the student to explain these furtive or unusual movements?
- Did the student deny making any suspicious movements that you observed?
- Did the student refuse to comply with any instructions (e.g., refused to remove hands from pockets, refused to put down package, etc.)? *Note:* Ordering a student to empty his/her pockets constitutes a search that must be justified by school officials.
- Did you smell tobacco/alcohol/drugs on the student's person? [3.2A(6)]
- Did the suspect appear intoxicated (e.g., dilated pupils, red eyes/nose, sluggish, hyperactive, etc.)?
- Did the student have difficulty in responding or standing?
- Did another school staff member question the student about the incident? If so, did the student give answers different from the ones given to you? (Explain.)

B. Manner in Which Search Was Conducted.

School officials are generally expected to use the least intrusive means available to accomplish the legitimate objectives of the search. The search should be no broader in scope, nor longer in duration than is reasonably necessary to locate the specific object(s) being sought.

A school official conducting a search should therefore follow a logical *plan* designed to minimize the intrusiveness of the search and complete the search as quickly and easily as possible.

For example, the plan might be to: (1) tell the student what you are looking for and give him/her a chance to surrender the item; (2) conduct any search away from other students; (3) have another school official present as a witness; (4) start any search in the place where the sought-after item is most likely to be; (5) look to see if you can visually identify the item(s) you are looking for before touching or rummaging through personal belongings; (6) feel the outside of a soft-bodied container to determine whether the

sought-after object is inside before opening the container and exposing all of its contents; and (7) stop searching when the sought-after item is found unless at that moment there are reasonable grounds to believe that additional evidence would be found if the search were to continue. [3.2B(1)]

Describe the object(s) you expected to find before the search was initiated:

- Was there a logical and reasonable connection between the thing or place to be searched and the item expected to be found there (i.e., why did you think that the evidence of the suspected offense/infraction would be found at this location)? (Explain.) [3.2B]
- Were there reasonable grounds to believe that the sought-after evidence would still be at this location? [3.2A(8)]
 - When was the last time the evidence was seen or reported to be at this location?
 - Was the suspected offense/infraction of an ongoing nature (i.e., drug possession or distribution), or was it a “one-time” incident? [3.2A(8)]
 - When was the last time that the suspect committed the offense/infraction?
- Did anyone report actually seeing the sought-after evidence at the location to be searched?
- Was the container/place to be searched physically capable of concealing the evidence you were looking for?
- Was the container/place to be searched of a kind commonly used to store or conceal the type of evidence that you were looking for? (Explain.) [3.2B(3)]
 - Have previous searches of such containers/places resulted in the discovery of this kind of evidence?
- Did you feel or examine the container to determine whether the sought-after object was inside before opening the container and exposing all of its contents to view? [2.2; 3.2B(1)]

- Was the actual search (i.e., the opening of the locker, backpack, etc.) conducted out of the presence of other students? If not, why not? [2.8; 3.2B(4)]
- Was the search conducted in the presence of the student suspected of committing the offense/infracton? If so, was the student given an opportunity to assist in the search (i.e., to open the bookbag and to produce only the sought-after item)? [2.8; 3.2B(1)]
 - Was there reason to believe that the student would resist or interfere in the search, try to conceal or destroy evidence, or reach for and use a concealed weapon? (Explain basis for concern.) (*Note:* If the search was based upon the consent doctrine, then the student granting consent may have the right to be present unless he/she knowingly gives up that right. See *Obtaining Permission to Search* checklist.)
- Was at least one other school official present to serve as a witness? (Identify the witness.) [10.1]
- How long did the search take to complete?
- Did the search cause any damage to student property? If so, describe the damage and why this was necessary? [3.2B(7)]
- Did you threaten to use force against a student? (Must explain.) [3.2B(8)]
- Did you use actual force against a student (i.e., physical restraint)? (Must fully explain.) [3.2B(10)]
 - Did the student resist or attempt to interfere with the search or threaten anyone with violence? If so, were the police called?
- Did the search cease when the particular item(s) being sought was found and taken into custody? [3.2B(10)] If not, explain the reasonable grounds to believe that additional evidence of an offense/infracton would be found.

- Did you find evidence of a school rule infraction or violation of law that you did not initially expect to find? [11]
- If yes, when you discovered this other item(s), were you looking in a place and in a manner likely to find the item that you were originally looking for? If not, you must explain why you expanded the scope of your initial search. [11]
- When you discovered this other item(s), was it *immediately apparent* to you that this object was contraband or evidence of an offense/infraction? (Explain.) [11]

Special Rules for Searches of Persons.

School officials should be especially cautious before undertaking a search of a student's person. The scope of the search must not be excessively intrusive in light of the age of the student and the *nature of the suspected infraction*. Students therefore should not ordinarily be subjected to a physical touching to find evidence of comparatively minor infractions of school rules. Rather, a physical search of a person is more likely to be sustained where the object of the search poses a direct threat to students, such as weapons (and especially firearms) and illicit drugs. [10.2] School officials must be especially cautious in touching a student's crotch area or female breasts.

As with any search, a school official should follow a logical plan that minimizes the degree of intrusion to the greatest extent possible and that reduces the likelihood that a student would resort to violence. [10.1]

For example, the plan might be to: (1) bring the student to the principal's office or other location away from other students; (2) make certain that at least one other school official is present to assist and serve as a witness; (3) clearly identify the specific object(s) being sought and provide the student an opportunity to surrender it unless to do so would create an unreasonable risk; (4) separate the student from any handbag that he/she is carrying and require the student to remove an outer garment so that it could be searched without touching the student; (5) make certain that any physical touching of the student is done by a staff member of the same sex as the student; (6) begin any touching of the student in the place where the object(s) is most likely to be; (7) conduct a limited "patdown" of the student's clothing before reaching into a pocket or waistband; (8) require the student to empty his/her pockets when a patdown reveals something that could be the sought-after evidence unless it would be dangerous to do so (i.e., where the item is a weapon that the student might reasonably use to commit an assault); and (9) stop searching immediately upon finding and securing the sought-after item unless there

are reasonable grounds to believe that the student is carrying additional evidence that would justify a further search of the person. [10.1]

- How old is the student to be searched?
- What is the gender of the student to be searched?
- Was the student brought to the principal's office or other location away from other students? If not, why not? [2.8; 3.2B(4); 10.2]
- Was another school employee present as a witness? (Recall that *all* searches should be conducted in private and away from other students. It is strongly recommended that another school staff member attend to serve as a witness.) [10.2]
- Did the student at any time resist or threaten to resist the search? If yes, were the police called? If not, why not? (While school officials are authorized by statute to use force in conducting a search, the better practice is to call the police for assistance.) (Explain.) [3.2B(8)]
- Did you tell the student exactly what you were looking for? [10.2]
- Was the student given an opportunity to remove the sought-after item from his/her pocket before being physically touched? [10.2] If not, why not? (i.e., the sought-after item was a weapon that the student could have used to commit an assault)
- Did you separate the student from any handbag or container he/she was carrying? [10.2]
- Did you ask the student to take off any coat or jacket so that it could be searched without touching the student? [10.2]
- Was any touching of the student done by a staff member of the same sex as the student? If not, why not? [10.2]
- Was any touching of the student first done at the location most likely to be concealing the sought-after evidence? [10.2]

- Was the student “frisked” (i.e., a limited patdown of the outer clothing) to feel for the sought-after object before reaching into a pocket or waistband? [10.3]
- Did the frisk reveal an object that could have been the item being sought?
- Did the frisk unexpectedly reveal an object immediately believed to be a weapon or other contraband? [11]
- Did you ask the student to empty a pocket to reveal any object felt during a patdown that could reasonably have been the sought-after item? [10.3] If not, why not?
- Did the object appear to be a weapon that could have been used to assault you?
- Did the student comply with this request?
- Did the search at any time expose the student’s undergarments or naked body? (Must fully explain.) [10.3]

Note: N.J.S.A. 18A:37-6-1 expressly prohibits any teaching staff member, principal, or other educational personnel from conducting any strip search or body cavity search of a pupil under any circumstances. A strip search would include the removal or re-arrangement of clothing for the purpose of visual inspection of the person’s undergarments, buttocks, anus, genitals, or breasts. The term does not include any removal or re-arrangement of clothing reasonably required to render medical treatment or assistance, or the removal of articles of outer clothing, such as coats, ties, belts, or shoelaces. A sweater or sweatshirt worn under another sweatshirt, jacket, or vest should not be deemed to be an undergarment unless it is in direct contact with the student’s skin. The statutory prohibition would also not preclude a school official from ordering a student to produce an object concealed on his or her person, even if the object is located in the crotch area or in a brassiere, provided that there is no touching by a school official of the student nor significant exposure to view of the student’s undergarments or nude body. (Note that ordering a student to produce the sought-after evidence does constitute a search, although not necessarily a “strip” search.) [10.3]

II. OBTAINING PERMISSION TO SEARCH

A school official may always ask for permission to conduct a search, even if the official does not have reasonable grounds to believe that the search would reveal evidence of an offense/infraction. Note that if you do already have reasonable grounds to believe that evidence of an offense/infraction will be found in a particular place, you need not rely on the consent doctrine and may conduct a search of that location even over a student's objection. [8.2]

To be valid, permission to search must be clear and unequivocal and must constitute a knowing and voluntary waiver of constitutional rights. The better practice is to obtain consent that is express and in writing. [8.4] A student's mere acquiescence to your request to search does not constitute a valid consent if the student reasonably believed that you would conduct the search whether he/she agreed to the search or not, and you must be certain that the student knew that he/she had the right to decline your request and prevent you from going ahead with the search. A student's refusal to give permission may not be considered as evidence of guilt. [8.3]

- Where did the waiver of rights take place (e.g., principal's office, crowded hallway, etc.)?
- Was a Permission to Search form used? [8.4]
 - Did the student read and sign the form?
- Did the person giving consent appear to have the authority to consent to search the area or object to be searched? [8.7]
 - Did the person giving consent claim or appear to *own* the property/area?
 - Did the person giving consent appear to *control* the property/area?
 - Was the place to be searched a locker assigned to that student? (Note: Special care should be taken in obtaining consent to search an area under joint control, such as a locker assigned to two students. In that event, the search must be limited to the belongings of the person giving consent.)
- Did the student deny ownership of the object to be searched? [8.10] (If so, the student has no expectation of privacy and that particular student cannot later complain that you went ahead and searched that object. However, the student would also have no authority to grant permission to search that object/place.)

- Was the person giving consent mature enough to be able to understand his/her rights? (Explain.) [8.1]
- Describe the person's state of mind and appearance (e.g., calm, trembling, protesting his/her innocence, anxious, etc.). [8.5]
- Was the student familiar to you (i.e., did you have any prior interaction with the student that would put him/her at ease)?
- Was he/she accustomed to being brought to the principal's office?
 - Had the student ever before been asked to give consent to search? (Describe the prior incident.)
- Were any threats or promises made by you or anyone else to obtain consent? [8.5]
- If the student giving consent is under the age of eighteen, was a parent or legal guardian given the opportunity to participate in the waiver process? If not, why not? Was the student told that he/she could withhold consent until a parent or guardian could be consulted? [8.6]
- Did you tell the student/parent why you were asking for permission to search and describe what you were looking for? [8.3]
- Was the student/parent advised of the right to refuse to give consent and that there would be no recriminations for doing so? [8.3]
- Did the student reasonably believe that you would proceed to conduct the search whether he/she consented or not? (Explain.) [8.3]
- Was the student/parent advised of the right to limit the scope of the consent search to particular places or things to be searched, and of the right to withhold consent as to particular places and things? [8.12] (*Note:* You may not use a student's refusal to consent to search a particular object or location as evidence that the student is hiding something at that location.)
- Was the student/parent advised that they may terminate consent at any time without having to give a reason for doing so?

- Was the student/parent present during the execution of the search? If not, did the student/parent knowingly give up the right to be present during the execution of the search? [8.11]

- How did you know that the student was aware that he/she could watch the search being conducted? (e.g., did you advise the student of this right?) [8.11]

- Was the execution of the consent search limited to the scope of the consent that was given (i.e., limited to places/objects specifically described in the signed form)? [8.12]

- Did the signed consent form authorize the search of the student's *entire* locker, including any backpacks or other closed containers stored therein)

- Did the student/parent at any time revoke or withdraw permission to search? If yes, did you immediately stop searching? [8.11] (*Note:* You may not use a withdrawal of consent as evidence that you were getting close to uncovering an incriminating object.)

- If you continued to search after consent was withdrawn or revoked, did you at that point have reasonable grounds to believe that a further search would reveal evidence of an offense/infraction? (See *Authority to Initiate the Search* checklist.)

III. GENERAL SEARCH AND INSPECTION PROGRAMS

These checklists refer to generalized or suspicionless searches that are not limited to a single or specific location and that are not based upon a particularized suspicion that a specific, identified student has committed an offense or an infraction of the school rules. General searches and inspection programs are *planned* events that are designed to respond to serious security and discipline problems and that serve to discourage students from bringing or keeping dangerous weapons, drugs, alcohol, and other prohibited items on school grounds. Because these inspections are planned events, school officials should carefully read and follow the provisions of Chapter 4 of the *New Jersey School Search Policy Manual* and should also be familiar with the provisions of Chapter 2 of the Manual.

A. Locker Inspection Program (No Law Enforcement Involvement). [4.4]

- Were students and members of the school community afforded notice in writing of the nature and purpose of the locker inspection program? [4.4B]
- Were students advised that evidence of a crime discovered during an inspection program would have to be turned over to appropriate law enforcement authorities? [4.4B and F]
- Did appropriate school officials make findings concerning the scope and nature of the security and discipline problems to be addressed by the locker inspection program? (See *Facts Justifying General Search Policies*.) [4.4A]
- Was the principal goal of the program to prevent and discourage students from bringing or keeping prohibited items on school property, and not to apprehend or prosecute students who violate the law or school rules? [4.4A]
- Was the locker inspection program described in a *written* plan that clearly spells-out the procedures to be followed? [4.4C]
- Was the plan approved by the local board of education, school district superintendent and building principal? [4.4C]
- Did the written plan provide objective criteria designed to reduce the discretion of school officials in selecting those lockers that would be searched? [4.4C]
 - Did the plan provide that all lockers in the school would be opened and searched at roughly the same time?

- If only certain lockers would be opened, did the plan provide for a random drawing method to select those lockers to be opened?
- Did the plan provide that all inspections would be conducted by persons who are specifically “designated by the local board of education”? [4.4D]
 - Were those designated persons thoroughly familiar with the neutral plan?
- Did the plan provide assurances that inspections would be conducted in a manner that minimizes the degree of intrusiveness? [4.4D]
 - Did the plan provide that inspections would be limited to looking for items that do not belong on school property or in a locker?
 - Did the plan provide that personal possessions would not be damaged?
 - Did the plan provide that school officials conducting the inspections would not read personal notes or entries in diaries or journals?
- Did the plan provide that all persons conducting inspections would be thoroughly familiar with the procedures to be followed in the event of the discovery of a firearm? [4.4D; 14.1A]
- Did the plan provide that all persons conducting inspections would be familiar with the requirements of state law and regulations concerning when evidence of a crime must be turned over to law enforcement authorities? [4.4D; 14.1A to G]
- Did the persons conducting the inspections receive training on how to recognize drugs, drug paraphernalia, and weapons? [4.4E]
- Did the plan limit the inspection program to lockers, desks, or similar storage facilities provided by the school for use by students? [4.4H] (*Note:* School officials would be authorized and permitted to open and inspect any closed containers or objects stored in a locker that had been selected and opened pursuant to the neutral plan.)

B. Use of Drug-Detection Canines.

The use of scent dogs is a dramatic tactic designed to convey to students in the strongest possible terms that neither school authorities nor law enforcement agencies will

tolerate illicit drugs on school property. These operations require careful planning. School officials and law enforcement officers involved in the planning or execution of any canine school search must read and follow the provisions of Chapter 4.5 of the *New Jersey School Search Policy Manual* and should also be familiar with the provisions of Chapter 2 of that Manual.

The use of a law enforcement drug-detector dog to sniff the exterior surface of a locker does not constitute a “search” for purposes of the Fourth Amendment or Article I, Paragraph 7 of the New Jersey Constitution. [4.5B] However, the act of opening a locker in response to a dog’s alert *does* constitute a search. Where any law enforcement officer or canine is involved, it is strongly recommended that a search warrant be obtained before opening a locker or any other container or object in response to a dog’s positive alert. [4.5D(1)]

- Were students and parents given written notice of the intention and authority of school officials to invite drug-scent dogs to conduct suspicionless sweep inspections on school property? [4.5F(1)]
- Did this notice refer to all places or items that might be subject to such canine inspection (e.g., lockers, desks, handbags/purses, backpacks, outer clothing removed from students, and vehicles brought on school property)? [4.5F(1)]
 - Did the notice advise students and parents that students may be ordered to vacate a room and to leave behind their outer clothing or other possessions so that they could be examined by scent dogs? [4.5E1 and 2; 4.5F(1)]
- Did school officials solicit input from parents, teachers, and other members of the school community before conducting a canine operation (e.g., host a parent input night to discuss the proposed policy)? [4.5F(2)]
- Was the canine operation conducted in accordance with a written plan of operation? [4.5F(3)]
- Did the plan provide objective criteria to minimize the discretion of a dog handler and school official in selecting places to be inspected? [4.5F(3)]
- Did the plan specify procedures designed to minimize the degree of intrusion and inconvenience to students and faculty? [4.5F(11)]

- Did the plan make certain that all persons involved in the execution of the operation would keep the timing of the specific operation *strictly confidential* up to the moment that the canine units would come on to school grounds and begin to conduct their sweep? [4.5F(7)]
- Was a room set aside in the school to serve as a command center from which to coordinate all activities? [4.5F(3)]
- Did the plan provide that a school official would be assigned to the command center and bring with him/her a master list of all locker assignments and a roster of enrolled students, as well as a list of parents or legal guardians so that they could be contacted promptly in the event that a dog alerts to a locker assigned to their child? [4.5F(3)]
- Did the plan provide that all canine units and support teams would be thoroughly briefed on the layout of the school, the areas to be inspected, and any areas that are “out of bounds”? [4.5F(3)]
- Did the plan provide that at all times while canines are present on school grounds, students would be restricted to their classrooms or to locations that would not be swept? [4.5F(3)]
- Did the plan include provisions to ensure that drug-detection dogs do not come into direct contact with students? [4.5F(9); 2.8; 3.2B(4)]
 - Did the operational plan provide that students would not be present during an actual sweep or otherwise be able to know whether a dog has alerted to a particular locker?
- Did appropriate school officials carefully document their findings to demonstrate why it is necessary and appropriate to use drug-detection dogs? [4.5F(4)]
 - Did these findings spell out the nature and scope of the problem that exists in the school, and why the proposed use of drug-detection canines will help to address the problem? (See *Facts Justifying General Search Policies.*)
- Did the County Prosecutor or the Director of the Division of Criminal Justice approve the use of the canine to conduct a suspicionless sweep of the school? [4.5F(6)]

- Was the plan approved by appropriate education officials (i.e., the school board, district superintendent and/or building principal)? (*Note:* The board of education should not be advised of the exact date and time when inspections will occur; the number of people aware of the exact time of these planned operations should be kept to an absolute minimum.) [4.5F(7)]
- Was the local police department aware of the operation and given adequate opportunity to prepare for any disturbance that might result from the operation? [4.5F(8)]
- Did the plan provide steps to facilitate obtaining a search warrant from a Superior Court judge? [4.5D(1); 4.5F(8)]
 - Did the plan provide for a prompt, in-person appearance before the judge to present the facts establishing probable cause?
 - Was the track record of the animal(s) fully documented and stored on a wordprocessing system so that a written search warrant application could be quickly prepared, sworn to, and presented to the judge for review and approval?
 - Was an assistant prosecutor or deputy or assistant attorney general present to review and approve the warrant application before it is submitted to a judge?
 - Did school officials have on hand a master list of locker assignments so that the identity of a student whose locker was alerted to could be quickly determined and included in the warrant application?
- Were steps taken to secure and stand guard over the locker while a warrant was obtained? [4.5D(1)]
- Did the plan provide steps to minimize disruption of the educational environment? (Explain.) [4.5G(11)]
- Was the plan limited to the examination of lockers and the contents of lockers? [4.5E]
 - Did the plan provide that students would be required to vacate their classrooms and leave behind backpacks, handbags, and articles of outer clothing to be inspected by drug-detection dogs? (If yes, police and school officials must pay

special attention to the provisions of Chapter 4.5E of the *New Jersey School Search Policy Manual*.)

- Did the plan provide for a public awareness follow-up seminar to discuss the results of the operation? [4.5F(13)]

C. Facts Justifying General Search Policies.

The following facts and circumstances have been held to be relevant by courts in deciding whether suspicionless search policies are an appropriate and reasonable response to a school's drug, alcohol, or weapons problem. Note that the facts and circumstances demonstrating the nature and scope of the problem should be spelled-out for each separate school building and/or grade level that will be subject to the suspicionless search policy. Furthermore, these facts and circumstances should be incorporated into written findings by the school board, superintendent and/or building principal *before* the search policy is implemented. [2.9; 4.4A; 4.5F(4); 13.3D; 13.3F(2)]

- empirical studies/surveys of student drug and alcohol use and attitudes;
- recent incidents where drugs/alcohol were found on school property;
- increase in the number of incidents of violence, vandalism, or weapons-related offenses;
- increase in the incidence of disciplinary problems and disruptions;
- increase in number of students suspended/expelled for disciplinary infractions involving drugs, alcohol, or weapons;
- information received from students (explain);
- information received from parents (explain);
- information received from teachers and staff members (explain);
- observations by teachers of suspicious activity by students, such as passing small packages amongst themselves in hallways;
- increase in the number of students referred to or participating in substance abuse programs;
- increase in number of students found to be under the influence of an intoxicating substance;
- observation of students in possession of large amounts of money; and,
- increase in use of pay phones by students.