



Education (Surrender, Retention, and Search) Rules 2013

Pursuant to section 139AAH of the Education Act 1989, the Secretary for Education makes the following rules.

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Rules

- 1 Title**
These rules are the Education (Surrender, Retention, and Search) Rules 2013.
- 2 Commencement**
These rules come into force on 1 January 2014.

3 Interpretation

In these rules,—

Act means the Education Act 1989

authorised staff member has the same meaning as in section 139AAA(9) of the Act

board means—

- (a) a board of trustees constituted under Part 9 of the Act or a delegate of that board; or
- (b) the sponsor of a partnership school kura hourua or a delegate of that sponsor

device means a computer or other electronic device that is not, in itself, an item but on which an item is stored

item means an item to which section 139AAA(1) of the Act applies or that is a harmful item within the meaning of section 139AAB(6) of the Act

taken under the Act or **taken**, in relation to any item or device, means any item or device that has been surrendered under section 139AAA(2) or (3) of the Act or seized under section 139AAB(4) of the Act

teacher means—

- (a) a person employed at a State school or at a partnership school kura hourua in a teaching position (within the meaning of section 120 of the Act); or
- (b) a person to whom the sponsor of a partnership school kura hourua has assigned any of the functions of the principal.

4 Information to be made available

Every board must ensure that the following documents are available for inspection at the school:

- (a) any guidelines issued by the Secretary under section 139AA1 of the Act; and
- (b) the names and positions of authorised staff members.

5 Authorisation of staff members who are not teachers

- (1) Every authorisation, under section 139AAA of the Act, given by a board to a staff member who is not a teacher must be in writing.

- (2) The authorisation must specify whether the staff member is authorised to exercise the powers—
 - (a) under section 139AAA of the Act; or
 - (b) under section 139AAB of the Act; or
 - (c) under both sections 139AAA and 139AAB of the Act.
- (3) The board must give the staff member a copy of the authorisation.
- (4) As soon as practicable after the staff member receives the authorisation, the staff member must give the board a written acknowledgment of its receipt.
- (5) The board may, by written notice to the staff member, revoke an authorisation at any time.

6 Considerations to be taken into account in dealing with items or devices taken under Act

- (1) A person must take into account the considerations specified in subclause (2) when the person decides, under the Act or these rules, whether—
 - (a) an item or a device taken under the Act is to be retained, returned to a student, passed to another person, or passed to another agency; or
 - (b) an item taken under the Act is to be disposed of.
- (2) The considerations are—
 - (a) the health and safety of people;
 - (b) the apparent value of the item or device concerned;
 - (c) the person believed to be entitled to the possession of the item or device concerned.

7 Retention and storage of items or devices taken under Act

- (1) This rule applies to any item or device that has been taken under the Act and is to be retained.
- (2) Every teacher and every authorised staff member who is in possession of the item or device must take all reasonable care of the item or device while it is in his or her possession or under his or her control.
- (3) The teacher or authorised staff member who takes the item or device may—
 - (a) keep the item or device in his or her possession; or

- (b) give the item or device to another teacher or to another authorised staff member; or
 - (c) arrange for the item or device to be placed in secure storage.
- (4) A teacher or other staff member of a school who is in possession of an item or a device that is to be retained overnight or for a longer period must ensure that the item or device is placed in secure storage.

8 Returning items or devices to students or passing them to other persons or agencies

- (1) If a teacher, an authorised staff member, or the board determines that, in light of the considerations specified in rule 6(2), an item or a device taken under the Act can be appropriately returned to the student from whom it was taken, the item or device must be made available to the student as soon as practicable after that determination.
- (2) A teacher, an authorised staff member, or the board may, if satisfied that it is appropriate to do so in light of the considerations specified in rule 6(2), pass the item or device to—
 - (a) another person, such as a parent or caregiver or the person believed to be entitled to the possession of the item or device; or
 - (b) an agency, such as the New Zealand Police or the New Zealand Customs Service.

9 Disposal of items

- (1) An item taken under the Act may be disposed of if a teacher or an authorised staff member considers that it is appropriate to do so in light of the considerations specified in rule 6(2).
- (2) No item taken under the Act may be disposed of by selling the item.

10 Record of retentions

- (1) Each board must ensure that a record is made and kept of every item or device taken under the Act that is retained—
 - (a) for 2 nights, each of which follows a day on which the school is open for instruction; or

- (b) for a longer period.
- (2) Every record must contain the particulars that the board prescribes from time to time, which must include the following:
 - (a) the date on which the item or device was taken:
 - (b) the name of the student from whom the item or device was taken:
 - (c) the name of the teacher or authorised staff member who took the item or device.

11 Record of searches of students' clothing, bags, or other containers

- (1) The board of each school must ensure that a record is made and kept of every search that is carried out, under section 139AAB of the Act, of a student's clothing, bags, or other containers.
- (2) Every record must contain the particulars that the board prescribes from time to time, which must include the following:
 - (a) the date on which the search was conducted:
 - (b) the name of the student whose belongings were searched:
 - (c) the name of the teacher or authorised staff member who conducted the search:
 - (d) where applicable, why it was not practicable to comply with the relevant requirements stated in section 139AAC(2) and (3) of the Act in any case where the search-
 - (i) was not carried out by a teacher or an authorised staff member of the same sex as the student:
 - (ii) was not carried out in the presence of another teacher or authorised staff member of the same sex as the student:
 - (iii) was carried out in the view of any person other than the teacher or authorised staff member carrying out the search, the student, and another teacher or authorised staff member.
- (3) Any record must be kept for a minimum period of 7 years after it is made.

Dated at Wellington this 22nd day of November 2013.

P S Hughes,
Secretary for Education.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 1 January 2014, are made by the Secretary for Education and set out the practice to be followed by schools in respect of things that are dealt with by schools because they are items that endanger the safety of persons or detrimentally affect the learning environment (**items**) or because they are computers or electronic devices (**devices**) on which items are stored. The rules also require records to be made and kept of searches undertaken to locate items that are believed to pose an immediate threat to the physical or emotional safety of persons. The powers to deal with items and devices and to undertake searches are conferred on schools by sections 139AAA and 139AAB of the Education Act 1989 (the **Act**), which also come into force on 1 January 2014.

The rules—

- require boards to keep certain documents for inspection at the school. These are guidelines issued by the Secretary for Education in relation to the retention of items and devices and searches, and also lists of staff members, other than teachers, who are authorised to deal with items and devices or to undertake searches:
- provide for the manner in which staff members who are not teachers may be authorised to deal with items and devices or to undertake searches:
- set out the considerations that must be taken into account by persons deciding how an item or a device is to be dealt with. These considerations (the **relevant considerations**) are the health and safety of people, the apparent value of the item or device concerned, and the person believed to be entitled to the possession of the item or device:

- require every teacher and every authorised staff member who is in possession of an item or a device that is to be retained to take all reasonable care of the item or device while it is in his or her possession or under his or her control and to place the item or device in secure storage if it is to be retained overnight or for a longer period:
- require an item or a device to be returned to the student from whom it has been taken as soon as practicable after a teacher, an authorised staff member, or the board determines, in light of the relevant considerations, that the item or device can be appropriately returned to the student:
- provide that, if satisfied that it is appropriate to do so in light of the relevant considerations, a teacher, an authorised staff member, or the board may pass the item or device to another person, such as a parent or caregiver or the person believed to be entitled to the possession of the item or device, or to an agency, such as the New Zealand Police or the New Zealand Customs Service:
- provide that, if satisfied that it is appropriate to do so in light of the relevant considerations, a teacher or an authorised staff member may dispose of an item, but no item may be disposed of by sale:
- require each board to make and keep a record of every item or device taken under the Act that is retained for 2 nights (each of which follows a day on which the school is open for instruction) or for a longer period. The record must contain the particulars that the board prescribes, including those set out in *rule 10(2)*:
- require each board to make and keep a record of every search that is carried out under section 139AAB of the Act. The record must contain the particulars that the board prescribes, including those set out in *rule 11(2)*.

Issued under the authority of the Legislation Act 2012.

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These rules are administered by the Ministry of Education.