

**Reprint
as at 1 August 2020**



**Education (Surrender, Retention, and Search) Rules 2013
(SR 2013/469)**

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.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the Ministry of Education.

3 Interpretation

In these rules,—

Act means the Education and Training Act 2020

authorised staff member has the same meaning as in section 105 of the Act

board means a board constituted under subpart 5 of Part 3 of the Act or a delegate of that board

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 106 of the Act applies or that is a harmful item as defined in section 105(1) 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 106(2) or (3) of the Act or seized under section 107(4) of the Act

Rule 3 **Act**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 3 **authorised staff member**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 3 **board**: replaced, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 3 **item**: replaced, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 3 **taken under the Act** or **taken**: replaced, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 3 **teacher**: revoked, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

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 114 of the Act; and
- (b) the names and positions of authorised staff members.

Rule 4(a): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

5 Authorisation of staff members who are not teachers

- (1) Every authorisation, under section 105 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 106 of the Act; or
 - (b) under section 107 of the Act; or
 - (c) under both sections 106 and 107 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.

Rule 5(1): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 5(2)(a): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 5(2)(b): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 5(2)(c): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

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 107 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 108(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.

Rule 11(1): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Rule 11(2)(d): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Dated at Wellington this 22nd day of November 2013.

P S Hughes,
Secretary for Education.

Issued under the authority of the Legislation Act 2012.
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Reprints notes

1 *General*

This is a reprint of the Education (Surrender, Retention, and Search) Rules 2013 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Education and Training Act 2020 (2020 No 38): section 668