



# Legal Issues Bulletin

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## Confiscation of student property

**Principals have the authority to maintain discipline in schools and provide safe, supportive and responsive learning environments for both students and staff. To give effect to this authority, if any property or item is being used inappropriately by a student principals and staff have the power of confiscation.**

### Can teachers confiscate the personal property of a student?

Yes. The test is whether the particular property or item is being used inappropriately by the student. "Inappropriate use" has a wide meaning and will include being used in a way that is –

- Contrary to any applicable school rules,
- Disruptive to the school's learning environment,
- A risk to the safety or wellbeing of students, staff or other people,
- Contrary to any reasonable direction given by school staff about the use of the item,
- Illegal or otherwise of a nature that causes significant concern for staff.

### Is there any limit on what can be confiscated?

Generally no. Examples of property or items that may be confiscated if used inappropriately by students include -

- Mobile devices such as phones, tablets, iPods or portable gaming devices,
- Laptops and other portable computers,
- Cameras, video cameras and similar recording devices,
- Collector cards, figurines, rubber bands (including e.g. Wacky bandz and loom bands) stickers or other items which may be popular from time to time,
- Toys, games or other play items,
- Clothing, such as towels, hats and belts, which is being used inappropriately, for example by striking other students or staff,
- Illegal material such as pornographic magazines or other publications.

If staff are aware of students possessing illegal drugs, suspected illegal drugs, prohibited weapons or dangerous weapons, they should immediately arrange for the matter to be reported to the police. Confiscation should only occur if the immediate safety of students or staff is at risk and action can be taken without risk to staff.

### What would amount to inappropriate use of a mobile device?

Inappropriate use of a mobile device such as a phone could include a wide range of behaviour such as –

- Bullying, intimidating or otherwise harassing others through SMS or text messaging or through photographic, video or other data transfer systems available on the phone,
- Recording of conversations, including lessons, without the knowledge and permission of the teacher or those involved in the conversation,
- Downloading or otherwise accessing inappropriate material on the internet such as child abuse or pornographic or other offensive material,
- Filming of fights or other criminal behaviour involving students that occur at school, during school activities or while on the way to or from school,
- Using it in a way that threatens or is likely to threaten the safety or wellbeing of any person,
- Using it in a way that disrupts an individual's learning or is likely to disrupt the learning environment for others or interfere with the operation of the school, or
- Use that is in breach of any law.

Principals should also refer to [Legal Issues Bulletin 35 – The use of mobile phones, portable computer games, recording devices and cameras in schools and TAFE NSW institutes](#) for advice on other issues related to the use of mobile phones.

### **Should the school implement a blanket ban on students bringing particular items to school?**

Generally blanket rules or policies that seek to ban students bringing items to school should be avoided. For example, mobile phones may provide students travelling to and from schools or institutes with a degree of security. For this reason, a student bringing a mobile phone into the school is usually not of itself enough to justify any action against the student providing it is not being used in a way that disrupts the educational environment.

Mobile devices may also be legitimately used by students at school for educational purposes in accordance with the Department's [Student Bring Your Own Device Policy](#).

Similarly collector cards, figurines or stickers are not of themselves inappropriate items to bring to school, particularly for younger students. They can however often be the cause of friction between students. They can also cause significant disruption in the classroom. Any decision by principals to impose a blanket ban should only be considered if other strategies to address the issue have been unsuccessful. Principals should also consult with the school community prior to implementing any blanket ban.

It is therefore important that schools have clear policies that address the possession and use of personal items while at school. They should be clearly communicated to students and parents, including the potential consequences for students arising from any breach.

### **Students with disabilities sometimes rely on personal items to de-escalate their behaviour and maintain a sense of wellbeing while at school. Do the same rules apply to those students?**

The Department has an obligation under Commonwealth and State disability discrimination legislation to ensure reasonable adjustments are made for students with disabilities. This includes those who are in special purpose schools as well as those who are integrated into mainstream settings. Sometimes a reasonable adjustment will include being allowed to possess personal items that other students are forbidden to have or use at school.

Confiscation in these circumstances should only occur if the safety of others at the school is at risk and only after other strategies or adjustments to address the problem are considered but deemed ineffectual in reducing the risk to an acceptable level. This should only occur if there has been consultation with the student or their parents about any alternative reasonable adjustment that might be suggested.

### **How should personal property be confiscated from students?**

Action must be taken to securely store any personal property confiscated from a student. Under no circumstances should the personal property of students be left in unlocked desk drawers, on teachers' tables or in staffrooms unless it can be locked away.

Arrangements must be made to return property to the student at the conclusion of the school day. If this is not possible, it should happen as soon as practicable.

## What if the student refuses to hand over the item or property in question?

Staff should not remove the item or property by force. Action should be taken to refer the student to the principal or other relevant school executive. A refusal to comply with a reasonable request to hand over any item or property will result in the matter being dealt with under the school's student discipline policy. This may result in detention or other forms of disciplinary action. If the circumstances warrant, parents may be asked to attend the school. In seeking to confiscate property from a student, staff should not put themselves at risk of injury.

## If a student's personal property is damaged or lost after being confiscated, is the school liable to pay any compensation?

Students and parents should be reminded on a regular basis that students bring personal property to the school at their own risk – schools will not accept any responsibility for loss or damage to personal property.

Once confiscated however, responsibility for the security and safe keeping of the student's personal property **does** rest with the school. If a student's confiscated personal property is lost, damaged or destroyed while not having been properly secured by staff, the school may be liable to compensate the student.

Principals should also refer to refer to [Legal Issues Bulletin 8 – Claims for loss of or damage to personal property and use of private motor vehicles by staff, parents and students](#).

## What reporting requirements may apply to this situation?

It may be necessary to notify the Safety & Security Directorate on 1300 363 778 or contact the Police in relation to an item or property that has been confiscated by staff. Principals should refer to the [Incident Reporting Policy and Procedures](#) (Intranet only) to confirm what reporting requirements may arise.

On rare occasions an item or property confiscated from a student may give rise to a reasonable suspicion that the student is at suspected risk of significant harm. School staff should inform their principal of any concerns about a student who may be at suspected risk of significant harm.

Principals need to consider whether a report to Community Services or contact with the Department's Child Wellbeing Unit or some other action is required. The [Mandatory Reporter Guide](#) can help with this decision. If in doubt or assistance is required the Child Wellbeing Unit can be contacted on telephone number (02) 9269 9400. The Department's [Protecting and Supporting Children and Young People Policy and Procedures](#) also provides guidance about responding to potential child protection issues.

## What record keeping requirements apply to this situation?

It is important to maintain appropriate records when confiscating property from students, particularly if the property is valuable and or the student has reacted badly to the confiscation. This includes details of:

- The property confiscated;
- Any prior warnings given to the student;
- Any action taken in relation to the property after it was confiscated;
- Any consideration given to making a reasonable adjustment for a student with disability.

Short term confiscation of property (e.g. for the balance of a lesson or for the duration of a recess or lunch break) does not ordinarily require a record to be kept.

Staff should contact the [Records Management Centre of Expertise \(CoE\)](#) (Intranet only) if they have specific records-related queries.

## About Legal Services Directorate

Legal Services Directorate provides legal support and advice to staff in schools, colleges, state office directorates, senior staff and specialist boards and authorities. It arranges for the Department and TAFE NSW to be represented before a range of courts and tribunals and assists with the preparation of legal documents. It is also available to provide legal advice in respect of any departmental policies or procedures that may have a legal complexion.

The Legal Services Directorate can provide legal advice to departmental staff only. It is not able to provide legal advice or assistance to parents, students or members of the public.

The Legal Services Directorate posts a large amount of information on the Department's intranet. This includes:

- all current Legal Issues Bulletins
- questions the Legal Services Directorate most frequently encounters
- announcements about what's new
- guidelines about family law and the school
- information about the Government Information (Public Access) Act
- information concerning the operation of NSW Privacy legislation, including Privacy Bulletins
- information about copyright
- links to other related legal web-sites
- other information for the use of schools and TAFE

The Legal Services Directorate continues to offer its telephone advice service to DEC and TAFE NSW personnel.

The service is available between **9.00am to 5.00pm** weekdays.