



Serenity School

Searching, Screening and Confiscation Policy

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Approved by / on	01.09.2018
Next Review	01.09.2023
Publication Method	Website, Staff Handbook

This policy has been written using the DfE's Searching, Screening and Confiscation guidance document February 2014. It states very clearly the powers our schools are able to exhibit in terms of screening and searching pupils, to ensure all pupils and staff are safe at all times whilst on site.

Searching with consent

Schools' common law powers to search state that School staff can search pupils with their consent for any item.

We are not required to have formal written consent from the pupil for this sort of search – it is enough for the teacher to ask the pupil to turn out his or her pockets or if the teacher can look in the pupil's bag or locker and for the pupil to agree.

If a member of staff suspects a pupil has a banned item in his/her possession, they can instruct the pupil to turn out his or her pockets or bag and if the pupil refuses, the matter will be escalated to the Senior Leadership Team of the school.

Searching without consent

What the law says:

Headteachers and staff authorised by them have a statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that the pupil may have a prohibited item. Prohibited items are:

- Knives or weapons
- Alcohol and illegal drugs
- stolen items
- Tobacco and cigarette papers
- Fireworks
- pornographic images
- Any article that the member of staff reasonably suspects has been, or is likely to be, used to commit an offence, or to cause personal injury to, or damage to property
- Any item banned by the school rules which has been identified in the rules as an item which may be searched for.

Staff should be the same sex as the pupil being searched; and there must be a witness (also a staff member). There is a limited exception to this rule where staff can carry out a search of a pupil of the opposite sex and without a witness present, only where they reasonably believe that there is a risk that serious harm will be caused to a person if they do not conduct the search immediately and where it is not reasonably practicable to summon another member of staff.

Headteachers of each provision need to decide who to authorise to use these powers. There is no requirement to provide authorisation in writing. When designating a member of staff to undertake searches under these powers, the headteacher should consider whether the member of staff requires any additional training to enable them to carry out their responsibilities.

Teachers can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have in his or her possession a prohibited item. The teacher must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard other pupils talking about the item or they might notice a pupil behaving in a way that causes them to be suspicious.

In the exceptional circumstances when it is necessary to conduct a search of a pupil of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a pupil's expectation of privacy increases as they get older.

The powers allow school staff to search regardless of whether the pupil is found after the search to have that item. This includes circumstances where staff suspect a pupil of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.

School staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item.

Searches for items banned by the school rules

An item banned by the school rules may only be searched for if it has been identified in the school rules as an item that can be searched for. With THSG this means mobile phones and other electronic devices, as we believe these impact on the safeguarding of both other pupils and staff.

Location of a search

Searches without consent can only be carried out on the school premises or, if elsewhere, where the member of staff has lawful control or charge of the pupil, for example on school trips in England or in training settings. The powers of searching only apply in England.

During the search

Extent of the search – clothes, possessions, desks and lockers

What the law says:

The person conducting the search may not require the pupil to remove any clothing other than outer clothing. 'Outer clothing' means clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear but 'outer clothing' includes hats; shoes; boots; gloves and scarves.

'Possessions' means any goods over which the pupil has or appears to have control – this includes desks, lockers and bags. A pupil's possessions can only be searched in the presence of the pupil and another member of staff, except where there is a risk that serious harm will be caused to a person if the search is not conducted immediately and where it is not reasonably practicable to summon another member of staff.

The power to search without consent enables a personal search, involving removal of outer clothing and searching of pockets; but not an intimate search going further than that, which only a person with more extensive powers (e.g. a police officer) can do.

Lockers and desks

Under common law powers, schools are able to search lockers and desks for any item provided the pupil agrees. Schools can also make it a condition of having a locker or desk that the pupil consents to have these searched for any item whether or not the pupil is present. If a pupil does not consent to a search, then it is possible to conduct a search without consent but only for the "prohibited items" listed above.

Use of force

Members of staff can use such force as is reasonable given the circumstances when conducting a search for knives or weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images or articles that have been or could be used to commit an offence or cause harm. Such force cannot be used to search for items banned under the school rules.

After the search

The power to seize and confiscate items

What the law allows:

Schools' general power to discipline, as set out in Section 91 of the Education and Inspections Act 2006, enables a member of staff to confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so.

Members of staff should use their discretion to confiscate, retain and/or destroy any item found as a result of a 'with consent' search so long as it is reasonable in the circumstances. Where any article is thought to be a weapon it must be passed to the police.

Staff have a defence to any complaint or other action brought against them. The law protects members of staff from liability in any proceedings brought against them for any loss of, or damage to, any item they have confiscated, provided they acted lawfully.

Items found as a result of a 'without consent' search

What the law says:

A person carrying out a search can seize anything they have reasonable grounds for suspecting is a prohibited item or is evidence in relation to an offence.

Where a person conducting a search finds alcohol, they will dispose of it and should not return it to the pupil.

Where they find **controlled drugs**, these must be delivered to the police as soon as possible and locked in the safe until they are collected by the police. Where they find **other substances**, which are not believed to be controlled drugs these can be confiscated where a teacher believes them to be harmful or detrimental to good order and discipline. This would include, for example, so called 'legal highs'. Where staff suspect a substance may be controlled, they should treat them as controlled drugs as outlined above.

Where they find **stolen items**, these must be delivered to the police as soon as reasonably practicable – but may be returned to the owner.

Where a member of staff finds **tobacco or cigarette papers** during a search, they will dispose of them and should not return them to the pupil.

Fireworks found as a result of a search will be disposed of and should not be returned to the pupil.

If a member of staff finds a **pornographic image**, they may dispose of the image unless its possession constitutes a specified offence (i.e. it is extreme or child pornography) in which case it must be delivered to the police as soon as reasonably practicable. Images found on a mobile phone or other electronic device can be deleted unless it is necessary to pass them to the police.

Where an **article that has been (or could be) used to commit an offence or to cause personal injury or damage to property** is found it may be delivered to the police. It may also be disposed of.

Where a member of staff finds **an item which is banned under the school rules** they should take into account all relevant circumstances and use their professional judgement to decide whether to return it to its owner, retain it or dispose of it. In the case of mobile phones, if these are found during a search then they should be returned at the end of the week at the earliest.

Where staff are unsure as to the legal status of a substance and have reason to believe it may be a controlled drug they should treat it as such.

Statutory guidance for dealing with electronic devices

Where the person conducting the search finds an electronic device they may examine any data or files on the device if they think there is a good reason to do so. Following an examination, if the staff member decides to return the device to the owner, or to retain or dispose of it, they may erase any data or files, if they think there is a good reason to do so. The member of staff must have regard to the following guidance issued by the Secretary of State when determining what is a “good reason” for examining or erasing the contents of an electronic device. In determining a ‘good reason’ to examine or erase the data or files the staff member must reasonably suspect that the data or file on the device in question has been, or could be, used to cause harm, to disrupt teaching or break the school rules.

If inappropriate material is found on the device it is up to the staff member to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of school discipline) or whether the material is of such seriousness that it requires the involvement of the police.

Staff members should also take account of any additional guidance and procedures on the retention and disposal of items that have been put in place by the school.

Telling parents and dealing with complaints:

Staff are not required to inform parents before a search takes place or to seek their consent to search their child. There is no legal requirement to make or keep a record of a search. Staff should inform the individual pupil’s parents or guardians where alcohol, illegal drugs or potentially harmful substances are found.

Complaints about screening or searching should be dealt with through the normal school complaints procedure.

Confiscation

Staff can seize any prohibited item found as a result of a search. They can also seize any item, however found, which they consider harmful or detrimental to school discipline.

Screening

What the law allows:

Schools can require pupils to undergo screening by a walk-through or hand-held metal detector (arch or wand) even if they do not suspect them of having a weapon and without the consent of the pupils. Schools’ statutory power to make rules on pupil behaviour and their duty as an employer to manage the safety of staff, pupils and visitors enables them to impose a requirement that pupils undergo screening.

Any member of school staff can screen pupils.

If a pupil refuses to be screened, we may refuse to have the pupil on the premises. Health and safety legislation requires a school to be managed in a way which does not expose pupils or staff to risks to their health and safety and this would include making reasonable rules as a condition of admittance.

If a pupil fails to comply, and the school does not let the pupil in, we have not excluded the pupil and the pupil's absence should be treated as unauthorised. The pupil should comply with the rules and attend. This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

Schools' obligations under the European Convention on Human Rights

Under article 8 of the European Convention on Human Rights pupils have a right to respect for their private life. In the context of these particular powers, this means that pupils have the right to expect a reasonable level of personal privacy. The right under Article 8 is not absolute, it can be interfered with but any interference with this right by a school (or any public body) must be justified and proportionate.

The powers to search in the Education Act 1996 are compatible with Article 8. A school exercising those powers lawfully should have no difficulty in demonstrating that it has also acted in accordance with Article 8. This advice will assist schools in deciding how to exercise the searching powers in a lawful way.