

Searching and Confiscation Policy and Procedure

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Date of next review: August 2024
Responsible person: Deputy Head (Pastoral)

References: The Education Act (1996)
The Education and Inspections Act (2006)
[DfE Searching, screening and confiscation \(July 2022\)](#)
European Convention on Human Rights
Coroners and Justice Act 2009
Criminal Justice and Immigration Act 2008
Health and Safety at Work etc. Act 1974
The Schools (Specification and Disposal of Articles) Regulations 2012

Other School policies: Behaviour, Rewards, Sanctions and Discipline (includes School Rules) (9a)
Drugs, Tobacco, Alcohol and Controlled Substances (9c)
Theft (9e)
Restrictive Physical Intervention Policy and Procedure (B3b)

Policy Number: **9d**

1. Purpose of the policy

Ensuring staff and pupils feel safe and secure is vital to establishing calm and supportive environments conducive to learning. Using searching, screening and confiscation powers appropriately is an important way to ensure pupil and staff welfare is protected and helps the School establish an environment where everyone is safe.

Before searching or screening takes place, it is vital that staff consider the obligations under the European Convention on Human Rights (ECHR), pupils have the right to expect a reasonable level of personal privacy¹ and any interference with this by the School must be justified and proportionate.

2. SEARCHING

Only the Head, Deputy Head (Pastoral), Deputy Head (Academic) and Deputy Head (Co-curricular and Logistics) have the Head's permission to carry out a search. The Head may authorise other individual members of staff to conduct a search depending on the circumstances.

The Designated Safeguarding Lead (or Deputy) should be informed of any searching incidents where the member of staff had reasonable grounds to suspect a pupil was in possession of a prohibited item

Location of a search

Searches may be carried out on School premises or elsewhere where the member of staff has lawful control or charge of the pupil, e.g. a sports match, school trip or visit. Staff should give consideration to an appropriate location to conduct the search and where possible, it should be away from other pupils.

Searching with consent

School staff can search a pupil for any item if the pupil agrees. This search should be authorised by the Head or the Deputy Head (Pastoral).

If a pupil is suspected of carrying an item (for example cigarettes/vapes) the best approach is to ask him/her, in the presence of a second adult witness, to turn out his/her pockets or bag. If he/she refuses to cooperate, the School will have the option of sanctioning him/her as they would in any case where the pupil refused to comply.

¹ ECHR Article 8: Right to respect for private and family life

If the pupil refuses, his/her housemaster/mistress and the Deputy Head (Pastoral) and Designated Safeguarding Lead should be informed immediately.

Establishing grounds for a search without consent²

1. A search without consent may only occur if the member of staff believes there are reasonable grounds for suspecting that the pupil may have a prohibited item in their possession.
2. 'Reasonable grounds' may be decided in each case by the staff on the scene. This might be suspicious behaviour, a report from another pupil, or overhearing pupils talking.
3. With the Head's permission, staff may view CCTV footage in order to make a decision as to whether to conduct a search for an item.

Searching without consent

Staff should make every effort, in the presence of a second adult witness, to persuade the pupil to hand over the prohibited item to staff voluntarily.

If the pupil is not willing to co-operate with the search, the member of staff should consider why this is. Reasons might include that they:

- are in possession of a prohibited item;
- do not understand the instruction;
- are unaware of what a search may involve; or
- have had a previous distressing experience of being searched.

If the member of staff still considers a search to be necessary, but is not required urgently, they should seek the advice of the Head, Designated Safeguarding Lead (or deputy) or pastoral member of staff who may have more information about the pupil. During this time the pupil should be supervised and kept away from other pupils.

However, the Head (and staff authorised by him/her) 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 and weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images, and any article that a member of staff reasonably suspects has been, or is likely to be, used to commit an offence or to cause personal injury or damage to the property of any person (including the pupil).

The Head and authorised staff can use 'such force as is reasonable given the circumstances' to conduct a search for prohibited items as defined above.

Force **cannot** be used to search for items banned under the School Rules. See DfE advice [Use of reasonable force \(July 2013\)](#). However, they can search personal spaces such as lockers and desk spaces without consent for items banned by the School Rules.

Conditions for searching without consent (see footnote for limited exception³)

- The member of staff conducting the search must be the same sex as the pupil being searched.
- There must be a second staff member as witness, preferably also the same sex as the pupil being searched.

Boundaries

Whether with consent or without, staff should not in any search:

- Use excessive force (reasonable force may be used when conducting a search for prohibited items listed above).
- Require the pupil to remove any clothing – other than outer clothing (i.e. clothing not worn immediately against the skin or against underwear including coats, hats, shoes, boots, gloves etc.) - for the purpose of searching it.

² Powers to search without consent only apply in England.

³ There is a limited exception: A member of staff can carry out a search of a pupil of the opposite sex and / or without a witness present, **only** where there is reasonable belief that there is a risk that serious harm will be caused to a person if search is not conducted immediately and where it is not reasonably practicable to summon another member of staff.

Extent of the search

Schools are able to search bags, rooms, lockers or desks for any item provided the pupil agrees. If the pupil does not consent then it is possible to conduct a search but only for the prohibited items listed above.

If the pupil objects (which he/she has the right to do), staff should inform the pupil's housemaster/mistress, Deputy Head (Pastoral) and Designated Safeguarding Lead immediately.

In such cases the pupil may then be told that the Police will be called. The Police may then conduct a search if they believe that a crime has been committed, or to prevent harm to themselves or others following an arrest.

Strip searching

A strip search is a search involving the removal of more than outer clothing. Strip searches on school premises can only be carried out by Police Officers under the Police and Criminal Evidence Act 1984 (PACE). While the decision to undertake the strip search itself and its conduct are police matters, school staff retain a duty of care to the pupil(s) involved and should advocate for pupil wellbeing at all times.

Before calling Police into School, staff should assess and balance the risk of a potential strip search on the pupil's mental and physical wellbeing and the risk of not recovering the suspected item. Staff should consider whether introducing the potential for a strip search through police involvement is absolutely necessary, and should always ensure that other appropriate, less invasive approaches have been exhausted. Once the Police are on School premises, the decision on whether to conduct a strip search lies solely with them, and the role of the school is to advocate for the safety and wellbeing of the pupil(s) involved.

Unless there is an immediate risk of harm and where reasonably possible, staff should inform a parent of the pupil suspected of concealing an item in advance of the search, even if the parent is not acting as the appropriate adult. Parents should always be informed by a staff member once a strip search has taken place. Schools should keep records of strip searches that have been conducted on school premises and monitor them for any trends that emerge

Mobile phones and other electronic devices

Electronic devices, including mobile phones, can contain files or data which relate to an offence, or which may cause harm to another person. This includes, but is not limited to, indecent images of children, pornography, abusive messages, images or videos, or evidence relating to suspected criminal behaviour. If the School reasonably suspects that a pupil's mobile phone (or other electronic device) has been, or is likely to be, used to commit an offence⁴, they may examine any data or files on the device where there is a good reason to do so.

Staff may also delete data or files if they think there is a good reason to do so, unless they are going to give the device to the police.

If the member of staff conducting the search suspects they may find an indecent image of a child (sometimes known as nude or semi-nude images), the member of staff should never intentionally view the image, and must never copy, print, share, store or save such images. When an incident might involve an indecent image of a child and/or video, the member of staff should confiscate the device, avoid looking at the device and refer the incident to the Designated Safeguarding Lead (or deputy) as the most appropriate person to advise on the School's response.

Secretary of State guidance:

This power applies to all schools and there is no need to have parental consent to search through a young person's mobile phone if it has been seized in a lawful 'without consent' search and is prohibited by the school rules or is reasonably suspected of being, or being likely to be, used to commit an offence or cause personal injury or damage to property.

⁴ or cause personal injury or damage to property

Staff must have “good reason” for examining or erasing the contents of an electronic device, i.e. they should 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.

In exceptional circumstances members of staff may dispose of the image or data if there is a good reason to do so.

In determining a ‘good reason’ to examine or erase the data or files, the member of staff must have regard to the below:

- In determining whether there is a ‘good reason’ to examine the data or files, the member of staff should reasonably suspect that the data or file on the device has been, or could be used, to cause harm, undermine the safe environment of the school and disrupt teaching, or be used to commit an offence.
- In determining whether there is a ‘good reason’ to erase any data or files from the device, the member of staff should consider whether the material found may constitute evidence relating to a suspected offence. In those instances, the data or files should not be deleted, and the device must be handed to the police as soon as it is reasonably practicable. If the data or files are not suspected to be evidence in relation to an offence, a member of staff may delete the data or files if the continued existence of the data or file is likely to continue to cause harm to any person and the pupil and/or the parent refuses to delete the data or files themselves.

If a staff member does not find any material that they suspect is evidence in relation to an offence, and decides not to give the device to the police, they can decide whether it is appropriate to delete any files or data from the device or to retain the device as evidence of a breach of school discipline.

All school staff should be aware that behaviours linked to sharing nudes and semi-nudes (formerly referred to as ‘sexting’) put a child in danger. See the School’s [Safeguarding and Protecting Children Policy and Procedures](#), specifically section 25, Sharing nudes and semi-nudes: Guidance for staff responding to incidents.

After the search

The Designated Safeguarding Lead should be informed and they will consider whether pastoral support, an early help intervention or a referral to children’s social care is appropriate. If any prohibited items are found during the search, the member of staff should follow the guidance set out below.

Senior House Staff should always contact the affected pupil’s parents after any search, regardless of the outcome.

A proper record should also be kept by the Deputy Head (Pastoral), including details of the person searched, the reason for the search, the time and place, who was present, what items were found (if any) and noting any outcomes and follow-up action.

3. CONFISCATION OF PUPILS’ PROPERTY

It is accepted that there may be occasions when it will be necessary for staff to confiscate pupils’ property in the interests of the smooth running of the School. In particular, members of staff may judge that an item of property needs to be confiscated on grounds of health and safety or where there has been a clear breach of School rules.

The School’s 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.

Where any article is reasonably suspected to be an offensive 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.

Confiscation Procedure

The member of staff should make a judgment as to whether confiscation of the item is the appropriate action. If in doubt, the member of staff should consult the Deputy Head (Pastoral).

The member of staff should ask the pupil to hand over the item concerned and explain to him/her why it is being confiscated. The member of staff should also explain that the item will be handed to the pupil's Senior House Staff.

The member of staff should personally hand the item to the appropriate Senior House Staff at the earliest possible opportunity and explain the background to the confiscation. Where this is not possible, the item should be handed to the Deputy Head (Pastoral).

The Senior House Staff should log the confiscation in the House Sanctions Log and ensure the item is held securely until it is returned to the owner.

The period of confiscation will depend on the nature of the item and the related offence. Generally, items should not be held for more than 24 hours; with mobile phones, for instance, it will usually be appropriate to return these at the end of the School day. It may be deemed appropriate to return the items to the parents rather than the pupil (e.g. if cigarettes have been confiscated); in these circumstances, contact should be made by Senior House Staff with the parents as soon as possible after the confiscation. If in doubt about the period of confiscation, Senior House Staff should consult the Deputy Head (Pastoral).

Confiscation of drugs

If staff are unable to identify the legal status of a drug, it should be treated as a controlled drug.

In taking temporary possession and disposing of suspected controlled drugs schools are advised to:

- ensure that a second adult witness is present throughout
- seal the sample in a plastic bag and include details of the date and time of the seizure/find and witness present
- store it in a secure location, such as a safe or other lockable container with access limited to senior members of staff
- notify the police without delay, who will collect it and then store or dispose of it in line with locally agreed protocols.

The law does not require a school to divulge to the police the name of the pupil from whom the drugs were taken but it is advisable to do so. The School will:

- record full details of the incident, including the police incident reference number
- inform parents/carers, unless this is not in the best interests of the pupil
- identify any safeguarding concerns and develop a support and disciplinary response.

Obligations under the European Convention on Human Rights (ECHR)

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.

Complaints

Complaints about searching and confiscation should be dealt with through the normal school complaints procedures.

Training

There is no legal requirement for a member of staff carrying out a search to receive training beforehand. However, Senior House Staff have the responsibility of ensuring that all their house tutors are aware of, and understand, the guidelines set out in this document.