

Searching and Confiscation Policy and Procedure



Date of Issue:	May 2018
Date of Review:	August 2019
Responsible Person:	Deputy Head
References:	The Education Act (1996) The Education and Inspections Act (2006) DfE Searching, screening and confiscation (January 2018) European Convention on Human Rights
Other School policies:	Drugs, Tobacco, Alcohol and Controlled Substances Theft (9c) Physical Intervention and Restraint (B3b)
Policy Number:	9d

1. SEARCHING

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.

Searching with consent

School staff can search a pupil for any item if the pupil agrees.

If a pupil is suspected of carrying an item (for example cigarettes) 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 obey.

If the pupil refuses, his/her housemaster/mistress and the Deputy Head should be informed immediately.

Establishing grounds for a search without consent¹

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. However, the Head (and staff authorised by 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.

¹ Powers to search without consent only apply in England.

Prohibited items are: knives or 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 also search for any item banned by the School which has been identified in the School's rules and handbooks² as an item which may be searched for.

Conditions for searching without consent

- 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.

See footnote for limited exception³.

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.

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 and the Deputy Head 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.

Electronic devices (including mobile phones)

Where the person conducting the search finds an electronic device that is prohibited by the school rules or that they reasonably suspects 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.

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.

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.

² Or items which might be added from time to time, notified by the Head or Deputy Head by email to all pupils, parents and staff.

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.

⁴ or cause personal injury or damage to property
Searching and Confiscation Policy and Procedure, 9d, 1819v1

If staff have reasonable grounds to suspect that a mobile phone or electronic device contains evidence in relation to an offence, they must give the device to the police as soon as it is reasonably practicable.

Material on the device that is suspected to be evidence relevant to an offence, or that is a pornographic image of a child or an extreme pornographic image, should not be deleted prior to giving the device to the police.

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 sexting put a child in danger. See the School's Safeguarding and Protecting Children Policy and Procedure, specifically section 13.7, Sexting.

After the search

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, including details of the person searched, the reason for the search, the time and place, who was present and noting any outcomes and follow-up action.

2. 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.

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.

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.

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 procedure.

Training

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