

## Search and Confiscation

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This College-wide guidance applies to all pupils including those in the EYFS. Care and consideration will be given to the age of the child when following this guidance.

This guidance applies to all staff, volunteers and contractors, paid and unpaid, working in the College, including governors.

This guidance is mindful of advice taken from *Searching, Screening and Confiscation: Advice for Headteachers, School Staff and Governing Bodies* (DfE January 2018). The College acknowledges its legal duty to make reasonable adjustments for disabled children and children with special educational needs (SEN) as per the Equality Act 2010. The College also acknowledges its obligations under the European Convention on Human Rights (ECHR) to ensure that pupils are provided a reasonable level of personal privacy.

### SEARCH WITH CONSENT

- College staff can search a pupil for any item if the pupil agrees. Staff are not required to have formal written consent from the pupil for this sort of search – it is enough for the staff member to ask the pupil to turn out their pockets or if the staff member can look in the pupil's bag or locker and for the pupil to agree. The College will take into account the age of the child when considering consent.
- The College makes clear in the *Expected Pupil Behaviour Policy* and in communications to parents and pupils what items are banned.
- If a member of staff suspects a pupil has a banned item in their possession, they can instruct the pupil to turn out their pockets or bag and if the pupil refuses, the teacher can apply an appropriate sanction as set out in the *Expected Pupil Behaviour Policy*.
- A pupil refusing to co-operate with such a search raises the same kind of issues as where a pupil refuses to stay in a detention or refuses to stop any other unacceptable behaviour when instructed by a member of staff – in such circumstances, the College can apply an appropriate sanction as described in the *Expected Pupil Behaviour Policy*.
- If a pupil refuses to co-operate with a search, a member of staff should remain with the pupil at all times until the Headmaster or Deputy Head Pastoral can meet with the pupil and initiate a search without consent if they deem this course of action appropriate.

## **SEARCH WITHOUT CONSENT**

- The Headmaster (or Deputy Head Pastoral or other senior staff authorised by the Headmaster) 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
  - Indecent images of a child (under the age of 16)
  - 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 the property of, any person (including the pupil)
- The staff member conducting the search must be the same sex as the pupil being searched; and there must be a witness (also a staff member) and, if at all possible, they should be the same sex as the pupil being searched.
- There is a limited exception to this rule. Staff can carry out a search of a pupil of the opposite sex without a witness present, but only where the staff member reasonably believes 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.

## **ESTABLISHING GROUNDS FOR A SEARCH**

- Staff can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have in their possession a prohibited item. The staff member 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 College 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.
- College staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item.
- Searches without consent can only be carried out on the College 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.

## DURING THE SEARCH

- 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 good 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 enable 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.

## CONFISCATION

- College staff can use their discretion to confiscate, retain and/or any item found as a result of a ‘with consent’ search so long as it is reasonable in the circumstances. Where any article is reasonably suspected to be an offensive weapon, it must be passed to the police.
- Any seized item should be reported to the Headmaster or Deputy Head Pastoral as soon as possible.
- 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.
- 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 may retain or dispose of it. This means that schools can dispose of alcohol as they think appropriate but this should not include returning it to the pupil.
- Where they find controlled drugs, these must be delivered to the police as soon as possible but may be disposed of if the person thinks there is a good reason to do so.
- 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 (or may be retained or

disposed of if returning them to their owner is not practicable) if the person thinks that there is a good reason to do so.

- Where a member of staff finds tobacco or cigarette papers they may retain or dispose of them. As with alcohol, this means that schools can dispose of tobacco or cigarette papers as they think appropriate but this should not include returning them to the pupil.
- Fireworks found as a result of a search may be retained or disposed of but should not be returned to the pupil.
- If a member of staff finds a pornographic image, they may dispose of the image unless they have reasonable grounds to suspect that 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.
- Where an article that has been (or is likely to be) used to commit an offence or to cause personal injury or damage to property is found it may be delivered to the police or returned to the owner. It may also be retained or 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.
- Any weapons or items which are evidence of an offence must be passed to the police as soon as possible.

## **DISPOSAL OF CONTROLLED DRUGS AND STOLEN ITEMS**

- It is up to the teachers and staff authorised by them to decide whether there is a good reason not to deliver stolen items or controlled drugs to the police. In determining what is a “good reason” for not delivering controlled drugs or stolen items to the police the member of staff must have regard to the following guidance issued by the Secretary of State:
- In determining what is a ‘good reason’ for not delivering controlled drugs or stolen items to the police, the member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of a seized article.
- 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.
- With regard to stolen items, it would not be reasonable or desirable to involve the police in dealing with low value items such as pencil cases. However, school staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks).

## DEALING WITH ELECTRONIC DEVICES

- 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 offence or cause personal injury or damage to property, they may examine any data or files on the device where there is a good reason to do so. They 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. 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.
- 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 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.
- If an electronic device that is prohibited by the school rules has been seized and the member of staff has reasonable grounds to suspect that it 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. Governing bodies should ensure sexting and the school's approach to it is reflected in the child protection policy. The UK Council for Child Internet Safety (UKCCIS) Education Group has recently published the advice *Sexting in schools and colleges - responding to incidents and safeguarding young people*.

## USE OF FORCE

- See Use of Reasonable Force (P3RD05).

## INFORMING PARENTS

- There is no requirement for the College to inform parents or seek their consent to search their child.
- The College will inform the individual pupil's parents where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
- Parent complaints about search and confiscation should be dealt with through the normal College complaints procedure.

## RECORD KEEPING

- There is no legal requirement for the College to keep records of searches or confiscation. However as part of St Dunstan's normal procedures, any such event will be recorded on the pupil's MyConcern record.

<b>Search and Confiscation</b>			
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