

## A Summary of Use of Screening & Searching: Advice for headteachers, staff and governing bodies

This guidance has been prepared by Vanessa Nice, Head of Halton Behaviour Support Service. It is intended as a summary of the DfE advice published in January 2018. The full document can be read [here](#). This advice sets out the powers schools have to seize and then confiscate items found during a search. It includes statutory elements which schools must have regard to.

This document applies to all schools in England, regardless of designation.

### **Key points**

- School staff can search a pupil for any item if the pupil agrees.
- Headteachers and staff authorised by them have a statutory power to search pupils of their possessions, without consent, where they have reasonable grounds for suspecting that the pupil may have prohibited item. Prohibited items are:
  - knives or weapons
  - alcohol
  - 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 the property of, any person (including the pupil).
  - Headteachers and authorised staff can also search for any item banned by the school rules which has been identified in the rules as an item which may be searched for.
- School staff can seize any prohibited item or any item they consider harmful or detrimental to school discipline.
- Under article of the European Convention on Human Rights (ECHR), pupils have the right to expect a reasonable level of privacy while the search takes place unless not doing so is 'justified & proportionate' (basically, in an emergency where there is no option for privacy).

### **Screening**

- Schools can use walk-through and hand-held metal detectors on any/all pupils without suspicion of wrongdoing and without consent.
- Schools can impose a requirement that pupils undergo screening in order to fulfil their duties on managing pupil behaviour and their duties as an employer with regard to managing the safety of staff, pupils and visitors.
- Any member of staff can screen pupils.
- If a pupil refuses to be screened, the school may refuse to have the pupil on the premises. This is not exclusion, it is unauthorised absence.

### **Searching with consent**

- Staff can search pupils for any item **with their consent**. This consent can be oral and does not need to be written.
- Schools should list prohibited items in their behaviour policy and/or in communications to parents.
- If a member of staff suspects that a pupil has a prohibited item about their person or in their bag and the pupil refuses to co-operate with a search, this 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, schools can apply an appropriate disciplinary penalty.

## Searching without consent

### What can be searched for?

- Knives or weapons, alcohol, illegal drugs and stolen items;
- Tobacco and cigarette papers, fireworks and 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, 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.

### Under what circumstances?

- You can search if you have reasonable grounds for suspecting that a pupil is in possession of a prohibited item.
- The member of staff must be the Headteacher or authorised to carry out searches by the headteacher. This authorisation does not need to be given in writing.
  - Members of staff (except security staff) can refuse to undertake searches and cannot be *required* to undertake them.
  - Different members of staff can have different searching rights.
  - If a security guard who is not a member of school staff searches a pupil, the witness should ideally be a permanent member of school staff.
  - There is no statutory duty to provide training in searching but headteachers may consider doing so.
- As far as [possible, the searcher must be the same gender as the pupil being searched and there should be a witness who is also of the same gender if possible.
- **\*Transgender pupils\* Unless they have a Gender Recognition Certificate (GRC) they should be searched by a person of their birth gender. However, it may be best to ask them which gender they identify with or are living as. It would be advisable to have 2 members of staff present in such cases.**
- You can carry out a search of a pupil of the opposite gender and can search without a witness present but only if you believe that there is a risk that serious harm will be caused to a person if you do not conduct the search immediately and where it is not reasonably practicable to summon another member of staff. In this case, the searcher should bear in mind that a pupil's expectation of privacy increases as they get older.

## Searches for items banned by the school rules

- An item banned under the school rules may only be searched for under these powers if it has been identified in the school rules as an item that can be searched for.
  - The school rules must have been determined and publicised by the headteacher. See guidance [here](#).
  - The school behaviour policy must be publicised in writing to staff, parents and pupils at least annually.

## Location of the search

- Searches without consent can take place on the school premises or elsewhere if the member of staff has lawful control or charge of the pupil (for example, on school trips).
- The powers only apply in England so schools should give consideration to trips which take place outside of England and be explicit about such cases in their policy and pre-trip information.

## During the search

- Pupils cannot be asked to remove any clothing other than outer clothing such as coats, hats, shoes, boots, gloves and scarves. No clothing that is next to the skin or immediately over underwear can be removed.

- A pupil's possessions (desks, lockers, bags, pockets) can only be searched in the presence of the pupil and another member of staff (except where there is a serious risk of immediate harm to a person if the search is not conducted immediately)
- Nobody within the school setting (except a police officer) has the authority to carry out an intimate search.
- Schools can search lockers or desks for any item with the permission of the pupil. Schools can make it a condition of having a desk or locker that the pupil consents to have it searched for any item whether or not the pupil is present.
- If a pupil withdraws consent during a search, you can only continue without consent if it is for a prohibited item. Otherwise, you have to stop and impose disciplinary sanctions in line with your behaviour policy.

### Use of force

Guidance on the use of reasonable force can be found [here](#).

- Staff can use *reasonable force* when conducting a search for prohibited items (knives or weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images or articles that have been used or could be used to commit an offence or cause harm.)
  - You cannot use force to search for items banned under the school rules.

### After the search

#### The power to seize & confiscate items

- Schools have the right to confiscate, retain or dispose of a pupil's property as a disciplinary penalty when it is reasonable to do so. This includes items found as a result of a 'with consent' search.
- If any item is reasonably suspected to be an offensive weapon, it **must** be passed on to the police.
- The law protects staff from liability in any proceedings brought against them for any loss of or damage to any item they have confiscated provided that they have acted lawfully.

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

- Staff can seize anything they have reasonable grounds for suspecting is a prohibited item or is evidence in relation to an offence.
- If alcohol is found, schools may retain or dispose of it but **should not** return it to the pupil.
- If controlled drugs are found, they **must** be delivered to the police as soon as possible **but may be disposed of if the searcher thinks there is a good reason to do so. I would recommend that any decision not to refer this to the police is documented by the school and retained.**
- If other substances (not controlled drugs) are found, they can be confiscated and destroyed if the searcher believes them to be harmful or detrimental to good order and discipline. This would include 'legal highs'. If the searcher is unsure about what a substance is, it should be treated as a controlled drug.
- If stolen goods are found, they **must** be delivered to the police as soon as possible **but may be returned to the owner (or retained or disposed of if returning them to their owner is not reasonably practicable) if the searcher thinks there is good reason to do so.** In the case of low-value items it may not be desirable to contact the police and the school should utilise its own behaviour sanctions in such cases. **In the case of high-value items which the school decide not to refer to the police, I would recommend that any decision is documented by the school and retained.**
- If tobacco or cigarette papers are found, schools may retain or dispose of it but **should not** return it to the pupil.
- Fireworks may be retained or destroyed but **should not** be returned to the pupil.
- If a pornographic image is found, searchers may dispose of the image unless they have reasonable grounds to suspect that its possession constitutes a specified offence in which case it **must** be delivered to the police as soon as possible.
- If a weapon, article that has been used to commit an offence or items which are evidence of an offence are found, they **must** be delivered to the police as soon as possible.

- If an item that is banned under the school rules is found, the searcher should take into account all relevant circumstances and use professional judgement to decide whether to return it to its owner, retain it or dispose of it.

### **Statutory guidance for dealing with electronic devices**

- If an electronic device is found during a search and the searcher suspects that it 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. They may also delete data or files if there is a good reason to do so **unless they are going to give the device to the police.**
- There is no need to have parental consent to search a pupil'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.
- 'Good reason' to erase data or files means that the searcher should reasonably suspect that the data or file 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 there is reasonable grounds to suspect that it contains evidence in relation to an offence, it **must** be given to the police as soon as possible. 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. Governors should ensure that the school's approach to sexting is reflected in the child protection policy.

### **Telling parents and dealing with complaints**

- Schools 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.
- Schools **should** inform an individual's parents where alcohol, illegal drugs or potentially harmful substances are found but there is no legal requirement to do so.
- Complaints about screening or searching should be dealt with through the normal school complaints procedure.