

# **Searching, Screening and Confiscation Policy**

<b>Start Date:</b>	<b>Summer 2022</b>
<b>Date of Next Review:</b>	<b>Summer 2023</b>
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<b>Responsible Committee:</b>	<b>Education Committee</b>

## Purpose of the Policy

- The purpose of this policy is to explain the use of the school's power to search students and to seize and confiscate items. Under Article 8 of the European Convention on Human Rights, students have the right to a reasonable level of personal privacy. However, this right is subject to the school being able to carry out searches of persons or electronic devices when justified and proportionate.

## Searching

- School staff can search a student for any item if the student agrees.<sup>1</sup>
- The Principal and staff authorised by them have a statutory power to search students or their possessions, without consent, where they have reasonable grounds for suspecting that the student may have a 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 student).
- The Principal 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.

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<sup>1</sup> The ability to give consent may be influenced by the child's age or other factors

## Confiscation

- Under staff can seize any prohibited item found because of a search. They can also seize any item they consider harmful or detrimental to school discipline.

## Schools' obligations under the European Convention on Human Rights (ECHR)

- Under article 8 of the European Convention on Human Rights students have a right to respect for their private life. In the context of these powers, this means that students 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. Staff, when exercising these powers will act in accordance with this policy and therefore in accordance with Article 8.

## Screening

- Haileybury Turnford can require students to undergo screening by a hand-held metal detector (wand) even if they do not suspect them of having a weapon and without the consent of the students.
- Any member of Haileybury Turnford school staff can screen students.

### Also note:

- If a student refuses to be screened, the school may refuse to have the student on the premises. Health and safety legislation requires the school to be managed in a way which does not expose students or staff to risks to their health and safety and this would include making reasonable rules as a condition of admittance.
- If a student fails to comply, and the school does not let the student in, the school has not excluded the student and the student's absence would be treated as unauthorised. The student should comply with the rules and attend.

## Searching with consent

### Schools' common law powers to search:

- School staff can search students with their consent for any item.

### Also note:

- Schools are not required to have formal written consent from the student for this sort of search – it is enough for the teacher to ask the student to turn out their pockets or if the teacher can look in the student’s bag or locker and for the student to agree.
- It is clear in the school’s communications to parents and students what items are banned. This is set out in the school’s Rewards, Behaviour and Discipline Policy.
- If a member of staff suspects a student has a banned item in their possession, they can instruct the student to turn out their pockets or bag and if the student refuses, the teacher can apply an appropriate punishment as set out in the school’s Rewards, Behaviour and Discipline Policy.
- A student refusing to co-operate with such a search raises the same kind of issues as where a student 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 school can apply an appropriate disciplinary penalty.

## Searching without consent

- The school can legally carry out searches for knives or weapons, alcohol, illegal drugs and stolen items; and
- Tobacco and cigarette papers, fireworks, and pornographic images; and
- 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; and
- Any item banned by the school rules which has been identified in the rules as an item which may be searched for.
- The Principal or a member of school staff authorised by the Principal can carry out a search without consent.
- The member of staff carrying out the search must be the same sex as the student being searched; and there must be a witness (also a staff member) and, if possible, they should be the same sex as the student being searched.
- A member of staff may carry out a search of a student of the opposite sex to the member of staff, with or without a witness present, but 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.

- A staff member will carry out a search on a student when they have reasonable grounds for suspecting that a student is in possession of a prohibited item.
- The requirement that the searcher is the same sex as the student and that a witness is present will continue to apply in nearly all searches. Where it is practicable to summon a staff member of the same sex as the student and a witness then the teachers wishing to conduct a search will do so.
- The Principal will decide who to authorise to carry out searches on students. There is no requirement to provide authorisation in writing.
- Staff can refuse to undertake a search and staff can be authorised to search for some items but not others; for example, a member of staff could be authorised to search for stolen property, but not for weapons or knives.

## **2. Establishing grounds for a search**

- Teachers can only undertake a search without consent if they have reasonable grounds for suspecting that a student may have in their possession a prohibited item. The teacher must decide in each case what constitutes reasonable grounds for suspicion. For example, they may have heard other students talking about the item or they might notice a student behaving in a way that causes them to suspect that the student is concealing a prohibited item.
- In the exceptional circumstances when it is necessary to conduct a search of a student of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a student's expectation of privacy increases, as they get older.
- The powers allow school staff to search regardless of whether the student is found after the search to have that item. This includes circumstances where staff suspect a student of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.
- School staff may consider utilising CCTV footage to make a decision as to whether to conduct a search for an item.

## **3. 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 student, for example on school trips in England or in training settings.
- The powers only apply in England.

## During the search

### 9. Extent of the search – clothes, possessions, desks, and lockers

- The person conducting the search may not require the student 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 student has or appears to have control – this includes desks, lockers, and bags.
- A student’s possessions can only be searched in the presence of the student 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.

### 10. Lockers

- Under common law powers, staff can search for any item only if the student agrees.
- If a student does not consent to a search then it is possible to conduct a search without consent but only for the “prohibited items” listed above.

### 11. 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.

## After the search

### 12. The power to seize and confiscate items – general

- Schools’ general power to discipline, as circumscribed by Section 91 of the Education and Inspections Act 2006, enables a member of staff to confiscate,

retain or dispose of a student's property as a disciplinary penalty, where reasonable to do so.

- The member of staff can 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 reasonably suspected to be an offensive weapon, it will 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.

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

#### What the law says:

- Staff 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 member of staff conducting a search finds alcohol, they may retain or dispose of it. It will not be returned to the student.
- Where they find **controlled drugs**, these will be delivered to the police as soon as possible but may be disposed of if the member of staff thinks there is a good reason to do so.
- Where staff 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 staff 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 would not include returning them to the student.
- **Fireworks** found because of a search may be retained or disposed of but would not be returned to the student.

- 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 will 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 will consider 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** will be passed to the police as soon as possible.

#### **14. Statutory guidance on the disposal of controlled drugs and stolen items**

- Authorised staff will 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 will consider 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 will 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).

## 15. Statutory guidance for 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 suspect 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 will 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.<sup>2</sup>
- 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.

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<sup>2</sup> Section 62 of the Coroners and Justice Act 2009 defines prohibited images of children. Section 63 of the Criminal Justice and Immigrations Act 2008 defines extreme pornographic images.

- All school staff should be aware that behaviours linked to sexting put a child in danger. Sexting and the school's approach to it is set out in the school's Child Protection Policy.

## **16. 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.
- The school will inform the individual student's parents or carers where alcohol, illegal drugs or potentially harmful substances are found.
- Complaints about screening or searching should be dealt with through the school's complaints procedure.

## **17. Monitoring and review**

- This policy will be reviewed on an annual basis.
- The school will apply this policy fairly, and will not discriminate against any student on the grounds of any protected characteristic.