



Homewood School & Sixth Form Centre

LEARNING • RESPECT • BELONGING



# **SEARCHING & CONFISCATION POLICY**

Date approved by Governors  
March 2019

# **HOMEWOOD SCHOOL & SIXTH FORM CENTRE**

## **Searching & Confiscation Policy**

This policy will be reviewed every 3 years

**DATE OF POLICY: MARCH 2019**

**DATE OF REVIEW: MARCH 2022**

**Member of staff responsible for Policy:**

**Principal & Vice Principal Students**

**Signed.....Head Teacher**

**Signed.....Chair of Governors**

## **1. Overview of Policy**

This policy is based on the DfE advice for Headteachers, school staff and governing bodies (February 2014) which explains schools' powers for screening and searching students. It explains the use of the power to search pupils without consent and also the powers that schools have to seize and then confiscate items found during a search.

## **2. Searching for Prohibited Items**

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

Headteachers 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 a member of staff reasonably suspects has been, or is likely to be, used to commit an offence
- any article which could cause personal injury to, or damage to the property of, any person (including the student).
- Headteachers and authorised staff can also search for any item banned by the school which has been identified in the rules as an item which may be searched for.

## **3. Confiscation**

School staff can seize any prohibited item found as a result of a search. They can also seize any item, however found, which they consider harmful or detrimental to school discipline.

## **4. Searching with consent**

Schools' common law powers to search:

- School staff can search students with their consent for any item. Normally such a search will involve students being asked to empty their pockets, bags and having their personal possessions such as pencil cases checked. It may also involve students being asked to remove outer clothing such as jackets, blazers or jumpers. The school may also use a

'metal detecting wand' as part of the search procedure to detect metal objects. Where possible a search with consent should be conducted in the presence of a witness (es).

- 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 his or her pockets or for the teacher to look in the student's bag or locker and for the student to agree.
- If a member of staff suspects a student has a banned item in his/her possession, they can instruct the student to turn out his or her pockets or bag and if the student refuses, the teacher can apply an appropriate sanction.
- Where a student refuses to agree to a search, a member of staff should call for assistance from a colleague or college office.

## 5. Searching without consent

If a member of staff has reasonable grounds for suspecting that a student is in possession of a **prohibited item** then an **authorised** member of staff may conduct a search without consent. The authorised member of staff must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard students talking about the item or they may notice students behaving in a way that causes them to be suspicious.

### What the law says about what can be searched for without consent:

- 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 to, 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.
- Searches without consent can be conducted by authorised staff only.
  - Authorised staff include the Principal, any member of the Extended Leadership Team or Life Centre Staff. These authorised members of staff include members of the College Staff (Head and Assistant Heads of College). Training will be provided to staff authorised to search.
  - An authorised member of staff conducting a search must be the same sex as the student being searched and there must be a witness present (also a staff member). If at all possible, the witness should be the same sex as the student being searched. There is a limited exception to this rule. A member of staff can carry out a search of a student of the opposite sex and without a witness present, but only where the searcher reasonably believes that 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. In this exceptional circumstance, the member of staff should bear in mind the student's expectation privacy.
  - Staff can refuse to undertake a search.

- The police may be contacted where a student is suspected of having a prohibited item in their possession.
- Searching powers allow school staff to search regardless of whether a 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 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 school premises or, elsewhere, where the member of staff has lawful control or charge of a student, for example on school trips in England or in training settings.

## **6. During the search**

### **What the law says about the extent of the search (clothes, possessions, lockers):**

- The person conducting the search may not require a 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 lockers, bags and items within 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 any 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.

## **7. Lockers**

- Under common law powers, schools are able to search lockers for any item provided the student agrees and is present.
- 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.

## **8. 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. Such force cannot be used to search for items banned under the school rules.

## 9. After the search

### What the law allows with regards to the power to seize and confiscate items (general):

- Schools' 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 student's property as a disciplinary penalty, where reasonable to do so.

Also note:

- A 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 thought to be a 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.

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

### What the law says:

- A member of 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. This means that schools can dispose of **alcohol** as they think appropriate but this should not include returning it to the student.
- 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. Disposal decisions should be checked with the Director of Inclusion or Vice Principal (Students).
- Where they find **other substances** which are not believed to be controlled drugs these can be confiscated where a member of staff 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 may need to be delivered to the police as soon as reasonably practicable – but alternatively they may be returned to the owner (or may be retained or disposed of if returning them to their owner is not practicable) if the member of staff 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 student.
- **Fireworks** found as a result of a search may be retained or disposed of but should not be returned to the student.
- If a member of staff finds a **pornographic image** it should be reported to the e-safety officer who may dispose of the image unless 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. Images found on a mobile phone or other electronic device can be deleted unless it is necessary to pass them to the police.
- Where an **article that has been (or could 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.
- It is up to teachers 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).

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

- Where the member of staff conducting the search finds an electronic device it should be reported to the school’s e-safety officer who may examine any data or files on the device if they think there is a good reason to do so. Following an examination, if the member of staff has decided to return the device to the owner, or to retain or dispose of it, they may erase any data or files, if they think there is a good reason to do so.
- 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 must 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 inappropriate material is found on the device the teacher must report it to the school's e-safety officer to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of school discipline) or whether the material is of such seriousness that it requires the involvement of the police.

## **12. 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 the individual student's parents or carers where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
- Complaints about screening or searching may be dealt with through the normal school complaints procedure.

## **13. Further sources of information**

### **Associated resources (external links)**

- [Use of Reasonable Force – advice for headteachers, staff and governing bodies Behaviour and Discipline in Schools](#)
- [Behaviour and Discipline in Schools – advice for head teachers and school staff](#)
- [Information Commissioner for advice on the Data Protection Act](#)

### **Legislative links**

- [The Education Act 1996](#)
- [Education and Inspections Act 2006](#)
- [Education \(Independent School Standards\) \(England\) Regulations 2010](#)
- [The Schools \(Specification and Disposal of Articles\) Regulations 2012](#)
- [School Behaviour \(Determination and Publicising of Measures in Academies\) Regulations 2012](#)
- [Health and Safety at Work etc Act 1974](#)