

Searching, Screening and Confiscation Policy

The Vyne Community School



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Linked Policies/Documents:

Behaviour for Learning Policy

Anti-Bullying

Anti-Drug

Restrictive Physical Intervention

Staff Code of Conduct

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The school follows Government advice published by the Department for Education “Searching, Screening and Confiscation - Advice for Headteachers, school staff and governing bodies - July 2022” (see below).

Schools’ Obligations under the European Convention on Human Rights (ECHR)

- Under Article 8 of the European Convention on Human Rights, pupils have a right of 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. This advice will assist schools in deciding how to exercise the searching powers in a lawful way.

Screening

What the law allows:

- Schools can require pupils to undergo screening by a walk-through or hand-held metal detector (arch or wand) even if they do not suspect them of having a weapon and without the consent of the pupils.
- Schools’ statutory power to make rules on pupil behaviour and their duty as an employer to manage the safety of staff, pupils and visitors enables them to impose a requirement that pupils undergo screening.
- Any member of school staff can screen pupils.

Also, note:

- If a pupil refuses to be screened, the school may refuse to have the pupil on the premises. Health and Safety legislation requires a school to be managed in a way, which does not expose pupils or staff to risks to their health, and safety and this would include making reasonable rules as a condition of admittance.
- If a pupil fails to comply, and the school does not let the pupil in, the school has not excluded the pupil and the pupil’s absence should be treated as unauthorised. The pupil should comply with the rules and attend.
- This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

Searching with Consent

Schools' common law powers to search:

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

Also, note:

- Schools are not required to have formal written consent from the pupil for this sort of search – it is enough for the teacher to ask the pupil to turn out his or her pockets or if the teacher can look in the pupil's bag and for the pupil to agree.
- If a member of staff suspects a pupil has a banned item in his/her possession, they can instruct the pupil to turn out his or her pockets or bag and if the pupil refuses, the teacher can apply an appropriate punishment as set out in the school's behaviour policy.
- A pupil refusing to cooperate 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, schools can apply an appropriate disciplinary penalty.

Searching without Consent

What the law says: 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 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.

Who can carry out a search?

- A Headteacher or a member of school staff as authorised by the Headteacher.

Under what circumstances can a search be carried out?

- Staff must be the same sex as the pupil being searched; and there must be a witness (also a staff member) and, if 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 there is a reasonable belief that there is a risk that serious harm will be caused to a person if the staff do not conduct the search immediately and where it is not reasonably practicable to summon another member of staff.

When can a search be carried out?

- If a staff member has reasonable grounds for suspecting that, a pupil is in possession of a prohibited item.

Also, note:

- The law also says what must be done with prohibited items, which are seized following a search.
- The requirement that the searcher is the same sex as the pupil 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 pupil and a witness, the teacher wishing to conduct a search must do so.

Authorising Members of Staff

- Before any search the consent of the Headteacher will be sought. This authority may be delegated to the Deputy Head or other members of SLT, but only if the Headteacher is uncontactable.
- Headteachers decide whom to authorise to use these powers. There is no requirement to provide authorisation in writing.
- Staff can refuse to undertake a search. The law states that Headteachers may not require anyone other than a member of the school security staff to undertake a search.
- 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.

Establishing Grounds for a Search

- Teachers authorised by the headteacher can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have in his or her possession a prohibited item. The headteacher 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 school 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.
- School staff as authorised under the CCTV policy can view CCTV footage in order to make a decision as to whether to conduct a search for an item.

Searches for Items Banned by the School Rules

- An item banned by 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 be determined and published by the Headteacher in accordance with Section 89 of the Education and Inspections Act 2006 in maintained school.

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 pupil, for example on school trips in England or in training settings.

The powers only apply in England.

During the Search

Extent of the Search – Clothes, Possessions, Desks and Lockers

What the law says:

- 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 goods 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.

Also, note:

- 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.

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.

After the Search

The Power to Seize and Confiscate Items – General

What the law allows:

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

Also, note:

- The member of staff can use their discretion to confiscate, retain and/or destroy any item found because 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.

Items Found as a Result of a 'Without Consent' Search

What the law says:

- 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 because 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 its possession constitutes a specified offence (i.e. it is extreme or child pornography) in which case the Headteacher or Designated Safeguarding Lead (DSL) should be informed. The images 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.

Statutory Guidance on the Disposal of Controlled Drugs and Stolen Items

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).

Statutory Guidance for Dealing with Electronic Devices

- Where the person conducting the search finds an electronic device they 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 person 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. 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 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 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](#)

Also, note:

- Teachers should also take account of any additional guidance and procedures on the retention and disposal of items that have been put in place by the school.

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.
- Where possible parents/ carers will be notified that a search has taken place and the outcome of that search.
- There is no legal requirement to make or keep a record of a search.
- Schools should inform the individual pupil's parents or guardians where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
- Complaints about screening or searching should be dealt with through the normal school complaints procedure.