



SEARCHING AND CONFISCATION POLICY

DfE guidelines have been issued regarding the use of screening, searching and confiscation; this policy document clarifies Tonbridge Grammar School's interpretation of these guidelines.

This advice is intended to explain the School's powers of searching students so that school staff have the confidence to use them. It also explains the powers schools have to seize and then confiscate items found during a search. It includes statutory guidance which schools must have regard to.

This advice relates to:

Searching, screening and confiscation Advice for headteachers, school staff and governing bodies DfE January 2018

Education Act 1996

Education and Inspections Act 2006

The Schools (Specification and Disposal of Articles) Regulations 2012

The School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012

Health and Safety at Work etc. Act 1974

Key Points:

Searching

School staff can search a student for any item if the student agrees. However, the Head Teacher 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:

- alcohol
- *knives* or weapons
- stolen items
- tobacco and cigarette papers
- fireworks
- pornographic images

Searching and Confiscation Policy

Approval date: June 2018

Review level: Head Teacher

- illegal drugs
- any article that the member of staff reasonably suspects has been, or is likely to be, used;
 - i) to commit an offence;
 - ii) to cause personal injury to, or damage to the property of, any person (including the student).

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.

Schools' obligations under the European Convention on Human Rights

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 particular 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 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.

Guidance:

1. Searching with consent

Schools' common law powers to search:

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

Staff 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.

The School has made it clear in the planner what items are banned. If a member of staff suspects a student has a banned item in his/her 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 according to the scale of the behaviour triangles in the behaviour 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 sanction for 'defiance' as indicated in the behaviour triangles.

2. Searching without consent

A student can be searched without consent by the Head Teacher or a member of staff authorised by the Head Teacher for any of the prohibited items listed above.

Searching and Confiscation Policy

Approval date: June 2018

Review level: Head Teacher

DfE guidance states that the member of staff must be the same sex as the student 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 student being searched.

There is a limited exception to this rule. Staff can carry out a search of a student of the opposite sex and 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.

3. Authorising members of staff

The Head Teacher decides who to authorise to use these powers. There is no requirement to provide authorisation in writing.

Staff can refuse to undertake a search.

4. 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 his or her possession a prohibited item. The teacher must decide in each particular 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 be mindful 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.

Authorised staff can view the CCTV footage in order to make a decision as to whether to conduct a search for an item.

5. Location of a search

Searches without consent can only be carried out on the premises or, if elsewhere, where the member of staff has lawful control or charge of the student, for example on school trips in England.

Any search should take place out of view of other students.

6. During the search

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 (by asking the student to turn out their 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. Use of force

Members of staff can use such force as is reasonable given the circumstances when conducting a search for the prohibited items listed above. Such force **cannot** be used to search for any other items banned under the School rules.

Separate advice is available on teachers' power to use force – see the Use of Reasonable Force Policy.

8. After the search

A log of the search will be made on the student's safeguarding record.

The School's' 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.

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 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.

9. 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.

Alcohol: Staff may retain or dispose of it. This means that the School can dispose of alcohol as they think appropriate but this should not include returning it to the student.

Controlled drugs: Police will be informed that a suspected controlled drug has been found and that a named member of staff will be delivering them to the police station as soon as possible. Where they find **other substances** which are not believed to be controlled drugs these can be confiscated where staff believe 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.

Searching and Confiscation Policy

Approval date: June 2018

Review level: Head Teacher

Stolen items: These may be returned to the owner following investigation by school staff or following consultation with police if appropriate.

Tobacco or cigarette papers: Staff may retain or dispose of them. As with alcohol, this means that staff can dispose of tobacco or cigarette papers as they think appropriate but this should not include returning them to the student.

Fireworks: These may be retained or disposed of but should not be returned to the student.

Pornographic images: Staff 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.

An article that has been (or could be) used to commit an offence or to cause personal injury or damage to property: This may be delivered to the police or returned to the owner. It may also be retained or disposed of.

An item which is banned under the School rules: Staff 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: These must be passed to the police as soon as possible. See additional guidance from Kent Police in the Appendix.

10. Statutory guidance on the disposal of controlled drugs and stolen items

It is up to staff 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:

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 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**:

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 and should follow procedures set out in the child protection policy.

12. Guidance on telling parents and dealing with complaints

The School is not required to inform parents before a search takes place or to seek their consent to search their child.

Staff should inform the individual student’s parents or guardians where alcohol, illegal drugs or potentially harmful substances are found.

4) Complaints about screening or searching should be dealt with through the normal school complaints procedure.

This Policy uses the guidance in “**Screening, searching and confiscation Advice for head teachers, staff and governing bodies**” *DfE 2018*

Lead Reviewer: CFI

Link Policies: Behaviour Policy
 Use of Reasonable Force Policy
 Child Protection Policy
 Anti-bullying Policy
 SEND Policy
 Durg and Alcohol Policy

Appendix: Screening and Searching of Students for Weapons: Additional Guidance for School Staff from Kent Police

Kent County Council and Kent Police have worked together to produce this additional guidance which aims to reduce risk to staff and students.

1. KCC and Kent Police would advise against school staff conducting without consent searches for weapons unless a full risk assessment had determined that such a course of action was absolutely safe for both the student and the staff involved.
2. School staff who believe that a young person may have a weapon in their possession should also think carefully about how they ask him/her to give up possession. A non confrontational approach in an unconfined space reduces the chance of eliciting an aggressive response.
3. Kent Police will, given sufficient notice, provide an effective and proportionate response if a school believes that a student has a knife.
4. A proportionate response is determined by the Human Rights Act and has tests of proportionality, lawfulness and necessity. This results in a continuum of responses from physical presence to the deployment of specialists such as armed officers.
5. To be clear, a 999 call from a school which said that a young person was suspected of having a weapon and was likely to use that weapon in the near future could lead to the deployment of armed officers. KCC and Kent Police have concerns regarding the deployment of such resources at school premises and the impact this can have upon the School and wider community. Schools are therefore urged to consider this before making such a 999 call.