



Searching and Confiscation Policy

Statement

Ensuring school staff and students feel safe and secure is vital to establishing calm and supportive environments conducive to learning. Using searching, screening and confiscation powers appropriately is an important way to ensure student and staff welfare is protected and helps schools establish an environment where everyone is safe.

We have carefully considered and analysed the impact of this policy on equality and the possible implications for students with protected characteristics. This forms part of our commitment to meet the Public Sector Equality Duty (PSED) requirement to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

Approved by: Head Teacher
Approved: September 2022
Review cycle: Every 3 years

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 schools DfE July 2022
Coroners and Justice Act 2009
Criminal Justice and Immigration Act 2008
Education Act 1996
Education and Inspections Act 2006
The Schools (Specification and Disposal of Articles) Regulations 2012
Health and Safety at Work etc. Act 1974
Keeping Children Safe in Education

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
- 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).

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:

Under common law, school staff have the power to search a student for any item if the student agrees. The member of staff should ensure the student understands the reason for the search and how it will be conducted so that their agreement is informed.

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.

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.

When a member of staff conducts a search without a witness they should immediately report this to another member of staff, and ensure a record of the search is kept.

3. Authorising members of staff

The Headteacher oversees the School's practice of searching to ensure that a culture of safe, proportionate and appropriate searching is maintained, which safeguards the welfare of all students and staff with support from the designated safeguarding lead (or deputy).

The designated safeguarding lead (or deputy) should be informed of any searching incidents where the member of staff had reasonable grounds to suspect a student was in possession of a prohibited item. The staff member should also involve the designated safeguarding lead (or deputy) without delay if they believe that a search has revealed a safeguarding risk. If the designated safeguarding lead (or deputy) finds evidence that any child is at risk of harm, they should make a referral to children's social care services immediately (as set out in part 1 of Keeping Children Safe in Education). The Designated Safeguarding Lead (or deputy) should then consider the circumstances of the pupil who has been searched to assess the incident against potential wider safeguarding concerns.

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 or for other items if the student agrees.

The authorised member of staff should make an assessment of how urgent the need for a search is and should consider the risk to other students and staff.

Before any search takes place, the member of staff conducting the search should explain to the student why they are being searched, how and where the search is going to take place and give them the opportunity to ask any questions.

The authorised member of staff should always seek the co-operation of the student before conducting a search. If the student is not willing to co-operate with the search, the member of staff should consider why this is. Reasons might include that they:

- are in possession of a prohibited item;
- do not understand the instruction;
- are unaware of what a search may involve; or
- have had a previous distressing experience of being searched.

If a student continues to refuse to co-operate, the member of staff may sanction the student in line with the school's behaviour policy, ensuring that they are responding to misbehaviour consistently and fairly.

If the member of staff still considers a search to be necessary, but is not required urgently, they should seek the advice of the head teacher, designated safeguarding lead (or deputy) or member of the Wellbeing Teams who may have more information about the student. During this time the student should be supervised and kept away from other students.

If the student still refuses to co-operate, the member of staff should assess whether it is appropriate to use reasonable force to conduct the search. A member of staff can only use such force as is reasonable to search for any prohibited items. The decision to use reasonable force should be made on a case-by-case basis. The member of staff should consider whether conducting the search will prevent the student harming themselves or others, damaging property or from causing disorder.

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. Extent of the search – clothes, pockets, 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. Staff members should be sensitive to whether such outer clothing is worn for religious reasons when conducting a search. '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. This is restricted to the removal of outer clothing and searching of pockets (by asking the student to turn out their pockets). The Head Teacher must be consulted if further police involvement is considered.

7. After the search

A log of any search will be made on the student's safeguarding record using MyConcern. The record should include:

- the date, time and location of the search;
- who conducted the search and any other adults or students present;
- what was being searched for;
- the reason for searching;
- what items, if any, were found; and
- what follow-up action was taken as a consequence of the search.

The DSL will monitor records to consider whether the searches fall disproportionately on any particular groups of students. In such cases where searching is falling disproportionately on any group or groups, they should consider whether any actions should be taken to prevent this.

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.

8. Items found as a result of a search

What the law says:

An authorised staff member 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 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.

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. Members of staff should never intentionally view any indecent image of a child (also sometimes known as nude or semi-nude images). Staff must never copy, print, share, store or save such images.

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.

9. 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 should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of a seized article and whether the item is likely to continue to disrupt learning or the calm, safe and supportive environment of the school.

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).

10. Statutory guidance for dealing with electronic devices

Electronic devices, including mobile phones, can contain files or data which relate to an offence, or which may cause harm to another person. This includes, but is not limited to, indecent images of children, pornography, abusive messages, images or videos, or evidence relating to suspected criminal behaviour.

As with all prohibited items, staff should first consider the appropriate safeguarding response if they find images, data or files on an electronic device that they reasonably suspect are likely to put a person at risk.

Staff may examine any data or files on an electronic device they have confiscated as a result of a search if there is good reason to do so. If the member of staff conducting the search suspects they may find an indecent image of a child (sometimes known as nude or semi-nude images), the member of staff should never intentionally view the image, and must never copy, print, share, store or save such images. When an incident might involve an indecent image of a child and/or video, the member of staff should confiscate the device, avoid looking at the device and refer the incident to the Designated Safeguarding Lead (or deputy) as the most appropriate person to advise on the school's response.

Handling such reports or concerns can be especially complicated and the school will follow the principles as set out in Keeping Children Safe in Education. The UK Council for Internet Safety also provides the following guidance to support school staff and designated safeguarding leads: if a member of staff finds any image, data or file that they suspect might constitute a specified offence, then they must be delivered to the police as soon as is reasonably practicable

In exceptional circumstances members of staff may dispose of the image or data if there is a good reason to do so. In determining a 'good reason' to examine or erase the data or files, the member of staff should reasonably suspect that the data or file on the device has been, or could be used, to cause harm, undermine the safe environment of the school and disrupt teaching, or be used to commit an offence.

In determining whether there is a 'good reason' to erase any data or files from the device, the member of staff should consider whether the material found may constitute evidence relating to a suspected offence. In those instances, the data or files should not be deleted, and the device must be handed to the police as soon as it is reasonably practicable. If the data or files are not suspected to be evidence in relation to an offence, a member of staff may delete the data or files if the continued existence of the data or file is likely to continue to cause harm to any person and the student and/or the parent refuses to delete the data or files themselves.

12. Informing Parents

The whole-school approach of building and maintaining positive relationships with parents is important: parents should always be informed of any search for a prohibited item that has taken place, and the outcome of the search as soon as is practicable.

A member of staff should inform the parents of what, if anything, has been confiscated and the resulting action the school has taken, including any sanctions applied.

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

Lead Reviewer: CFI

Link Policies: Behaviour Policy
 Use of Reasonable Force Policy
 Child Protection Policy
 Anti-bullying Policy
 SEN Policy
 Complaints Policy