

CHOSEN HILL SCHOOL



SEARCHING, SCREEN & CONFISCATION PROTOCOL

NON-STATUTORY

June 2020

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Group Assigned: Community and People

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This protocol is linked to the Behaviour Management Policy, Drugs and Drugs Management Policy, School & Restraint Protocol

Summary

This protocol should be read in conjunction with the Behaviour Management Policy and Drugs Education & Drugs Management Policy.

This protocol explains the schools' powers of screening and searching students and is guidance to staff in how to use them appropriately and legally. It also explains the powers the school has to seize and then confiscate items found during a search.

Key points regarding school staff powers to undertake a search without consent and the school's power to seize and then confiscate items found during a search.

Searching

- School staff can search a pupil for any item if the pupil agrees;
- The Headteacher and staff authorised by her have a statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that the pupil 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 pupil);
- The Headteacher and authorised staff can also search for any item banned by the school expectations which has been identified as an item which may be searched for.

Confiscation

- School staff can seize any prohibited item found as a result 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 pupils have a right to 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 must be justified and proportionate;
- The powers to search in the Education Act 1996 are compatible with Article 8. In exercising powers lawfully to search lawfully, the school will demonstrate that it has also acted in accordance with Article 8.

Searching with consent

The School's common law powers to search:

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

Also note:

- The school is 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 or locker and for the pupil to agree;
- The school Behaviour Management Policy, this protocol and communications to parents and pupils indicate items which are banned at Chosen Hill School;
- 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 Management policy for defiance;
- A pupil refusing to co-operate 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, the school will apply an appropriate disciplinary consequence.

Searching without consent

What the law says:

What can be searched for?

- Knives or weapons, alcohol, illegal drugs and stolen items; and
- Tobacco and cigarette papers, fireworks and pornographic images; and
- Any article that a 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 expectations which has been identified in the expectations as an item which may be searched for.

Who can search:

- The Headteacher or a member of school staff and staff authorised by the Headteacher.

How should a search be conducted:

- The staff member must be the same sex as the pupil being searched; and there must be a witness (also a staff member) and, if possible, they too should be the same sex as the pupil being searched;
- A staff member can carry out a search of a pupil of the opposite sex to the staff member and/or without a witness present, but only where the staff member reasonably believes that there is a risk that serious harm will be caused to a person if the staff member does not conduct the search immediately and where it is not reasonably practicable to summon another member of staff.

When can a search be conducted:

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

The process to gain authorisation for a search:

- The Headteacher will decide who to authorise to use these powers. There is no requirement for this authorisation to be provided in writing.

Establishing grounds for a search:

- A teacher 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 teacher 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 suspect that the pupil is concealing a prohibited item;
- 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 may utilise CCTV footage in order to make a decision as to whether to conduct a search for an item.

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.

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.

Lockers and desks

- Under common law powers, schools are able to search lockers and desks for any item provided the pupil agrees. Schools has made it a condition of having a locker or desk that the pupil consents to have these searched for any item whether or not the pupil is present;
- If a pupil does not consent to a search (or withdraws consent) then it is possible to conduct a search without consent but only for the “prohibited items” listed above.

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 circumscribed by 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 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;
- 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 and in line with the terms of this protocol.

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 the school can dispose of **alcohol** as they think appropriate but this does not include returning it to the pupil;
- Where a person conducting a search finds **controlled drugs**, these must be delivered to the police as soon as possible but may be disposed of if the school thinks there is a good reason to do so;
- Where the person conducting a search finds **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) in consultation with the designated senior member of staff;
- Where a member of staff finds **tobacco or cigarette papers** they may retain or dispose of them. As with alcohol, this means that the school will dispose of tobacco or cigarette papers as they think appropriate but this will not include returning them to the pupil;
- **Fireworks** found as a result of a search may be retained or disposed of but will not be returned to the pupil;
- If a member of staff finds a **pornographic image**, in consultation with the designated senior member of staff, the school 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 confer with the designated senior member of staff who will 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** will be passed to the police as soon as possible.

Statutory guidance on the disposal of controlled drugs and stolen items

- It is up to the Headteacher and staff authorised by her to decide whether there is a good reason or 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 Headteacher 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 Headteacher should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of a seized article;
 - Where any staff member is 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 a staff member 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 parental consent is not required 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 will 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 will 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, in consultation with the designated senior staff member, 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, in consultation with the designated senior staff member, 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.

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;
- There is no legal requirement to make or keep a record of a search;
- The school will 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 will be dealt with through the normal school complaints procedure.