

St Luke's Science and Sports School

Searching, Screening and Confiscation Policy

Date adopted: September 2015

To be reviewed: September 2016

Rationale

This policy is based on DFE guidance: *Searching, screening and confiscation - Advice for Principals, School staff and governing bodies February 14.*

The following College policies should be read alongside this policy: Behaviour Policy, The Misuse of Substances and Drug Education Policy.

Aim

The DFE guidance is intended to explain the Colleges powers of screening and searching students so that College staff have the confidence to use them. In particular it explains the use of the power to search students without consent. It also explains the powers the College has to seize and then confiscate items found during a search. It includes statutory guidance which the College must have regard to.

Key points

Searching

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

The Principal and staff authorised by him 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:

- Possession of any article made or adapted for use in causing injury
- alcohol
- drugs
- stolen items
- tobacco and cigarette papers (including E-Cigarettes)
- 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
- any article that the member of staff reasonably suspects has been used to cause personal injury to, or damage to the property of, any person (including the student).

Confiscation

College 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 College discipline.

Schools' obligations under the European Convention on Human Rights (ECHR)

- *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 (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.*

Searching with consent

Schools' common law powers to search:

- College staff can search students with their consent for any item listed on the first page of this policy
- The College is not required to have formal written consent from the student for this sort of search – it is enough for the member of staff to ask the student to turn out his or her pockets or if the teacher can look in the student's bag or locker and for the student to agree.
- Banned items are listed in the College Behaviour Policy and also below:
 - any article made or adapted for use in causing injury
 - alcohol
 - drugs
 - stolen items
 - tobacco and cigarette papers (including E-Cigarettes)
 - fireworks
 - pornographic images
 - articles that have been or could be used to commit an offence or cause harm.
- 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, an appropriate sanction can be applied, as set out in the College 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, College can apply an appropriate sanction.

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 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 College rules which has been identified in the rules as an item which may be searched for.

1. Who can search?

The Principal, members of SLT and Designated Safeguarding Officers

2. Under what circumstances?

- Authorised 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. The Principal, or a member of College staff authorised by the Principal, can carry out a search of a student of the opposite sex and without a witness present, but only where they suspect 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.

3. When can a search take place?

If the Principal or an authorised member of staff have reasonable grounds for suspecting that a student is in possession of a prohibited item.

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 student 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 student and a witness then the teachers wishing to conduct a search must do so.

4. Authorising members of staff

The Principal should decide who to authorise to use these powers. There is no requirement to provide authorisation in writing. Staff can refuse to undertake a search.

5. Training for School staff

When designating a member of staff to undertake searches under these powers, the Principal should consider whether the member of staff requires any additional training to enable them to carry out their responsibilities.

6. Establishing grounds for a search

- A member of staff 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 member of staff 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 be suspicious.
- 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 bear in mind that a student's expectation of privacy increases as they get older.
- The powers allow College 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.
- School staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item

7. Searches for items banned by the School rules

An item banned by the College rules may only be searched for under these powers if it has been identified in the College rules as an item that can be searched for.

The College rules must be determined and publicised in the College Behaviour Policy in accordance with section 89 of the Education and Inspections Act 2006

8. Location of a search

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

The powers only apply in England.

During the search

9. Extent of the search – clothes, possessions, desks and lockers

What the law says:

- 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.

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.

10. Lockers and desks

- Under common law powers, College is able to search lockers and desks for any item provided the student agrees. College can also make it a condition of having a locker or desk that the student consents to have these searched for any item whether or not the student is present.
- If a student does not consent to a search (or withdraws consent having signed a consent form) then it is possible to conduct a search without consent but only for the “prohibited items” listed above.

11. 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 College rules.
- Separate advice is available on teachers’ power to use force – see Associated Resources section below for a link to this document

After the search**12. The power to seize and confiscate items – general****What the law allows:**

The Colleges 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.

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 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.

13. 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 College 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.
- 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 College 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, they 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 College 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.

14. 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, College staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks).

15. 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. 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 College rules.
- If inappropriate material is found on the device it is up to the teacher to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of the College Behaviour Policy) or whether the material is of such seriousness that it requires the involvement of the police.

Note:

Members of staff 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 College.

16. Telling parents and dealing with complaints

College 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, but College will always do so to safeguard the school community.

College should inform the individual student’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 College complaints procedure

Frequently Asked Questions

Q: I’m a teacher; can I refuse to search a student without their consent?

A: Yes. A Principal cannot require a member of staff to conduct a search. In order to conduct a search without consent, a member of staff must be authorised to do so. Staff can choose whether they want to be authorised, or not.

Q: Is there a risk that I could face legal challenge if I search a student without consent?

A: Principals and authorised College staff have a specific statutory power to search students without consent for specific items – knives/weapons, alcohol, illegal drugs and stolen items. As long as the member of staff acts within the limits of this specific power they will have a robust defence against a legal challenge.