



CHEETWOOD COMMUNITY PRIMARY SCHOOL

GUIDANCE ON SEARCHING PUPILS AND CONFISCATION OF ITEMS

Approved by the Governing Body

A handwritten signature in black ink, appearing to read 'H. M. Kelly', is written over a horizontal line.

Signed
Chair of Governors
06/10/2021

To be reviewed Autumn Term 2022 (or following updated DfE guidance)

Judged to be GOOD by Ofsted in March 2018.

*"This is a highly inclusive school, where everyone feels safe, respected and valued.
Pupils enjoy school and are very keen to learn".*

This guidance is intended to explain Cheetwood School's powers of searching pupils so that staff have the confidence to use them. In particular it explains the use of the power to search pupils without consent. 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 guidance is compatible with Article 8 of the European Convention on Human Rights.

1 Searching with consent

- 1) Any member of Cheetwood School staff (teacher, teaching assistant and any other members of support staff) can search pupils **with their consent** for any item.
- 2) The school is not required to have formal written consent from the pupil for this sort of search – it is enough for the member of staff to ask the pupil to turn out his or her pockets or if the member of staff can look in the pupil's bag and for the pupil to agree.

2 Searching without consent

What the law says:

- 1) All staff at Cheetwood 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
 - inappropriate images
- 2) Members of staff can also search, without consent, for 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 pupil)
 - 3) Staff can also search without consent for any item banned by the school rules which has been identified in the rules as an item which may be searched for. It is made clear in the school's behaviour policy and in communications to parents and pupils what items are banned at school.
 - 4) 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 member of staff can apply an appropriate sanction as set out in the school's behaviour policy.
 - 5) A pupil refusing to co-operate with such a search raises the same kind of issues as where a pupil refuses to attend "loss of free time" 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 sanction.

3 Circumstances under which a search can be conducted and when a search can take place

- 1) It is desirable that the member of staff carrying out the search is the same sex as the pupil being searched and there must be a witness (also a staff member) and, if at all possible, they should also be the same sex as the pupil being searched.
- 2) However, there is a limited exception to this rule. A member of staff can carry out a search of a pupil of the opposite sex to them and without a witness present, but **only** where the member of staff reasonably believes that there is a risk that **serious harm** will be caused to a person if you do not conduct the search immediately and where it is **not reasonably practicable** to summon another member of staff.
- 3) At Cheetwood there is great likelihood that it **will not be reasonably practical** to be the same sex as a male pupil that is being searched or to call upon a male member of staff to witness the search, as the majority of staff in the school are female and there are only three male members of staff. In the 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 will bear in mind that a pupil's expectation of privacy increases as they get older.

4) A search can be carried out if a member of staff has reasonable grounds for suspecting that a pupil is in possession of a prohibited item. The member of staff will 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.

5) 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.

6) School staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item.

4 Location of a search

1) Searches without consent can only be carried out on the school premises and on school trips (taking place in England) when the member of staff has lawful control or charge of the pupil.

5 During the search

Extent of the search (clothing and possessions) what the law says:

1) The member of staff conducting the search may not require the pupil to remove any clothing other than outer clothing.

2) '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.

3) 'Possessions' means any goods over which the pupil has or appears to have control – this includes desks, lockers and bags.

6 After the search

Confiscation

1) 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.

What the law allows:

2) 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, found as a result of a search either with or without consent, where reasonable to do so.

Where any article is thought to be a weapon it will be passed to the police.

3) 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.

7 Items found as a result of a 'without consent' search

What the law says:

1) A person carrying out a search can seize anything they have reasonable grounds for suspecting is a prohibited item (that is the items identified on page 1 of this guidance) or is evidence in relation to an offence.

2) The following items if found during a search will be delivered to the police as soon as possible:

- **controlled drugs**
- **weapons or items which are evidence of an offence or stolen items of a high value (eg iPods/laptops, a pencil case is not considered valuable)**
- **an article that has been (or could be) used to commit an offence or to cause personal injury or damage to property**
- **inappropriate images** if its possession constitutes a specified offence

3) The following items if found during a search will be retained, or disposed of:

- **alcohol**
- **other substances** which are not believed to be controlled drugs; these can be confiscated where the member of staff believes them to be harmful or detrimental to good order and discipline
- **tobacco or cigarette papers**
- **fireworks**
- **an item which is banned under the school rules;** in such cases the headteacher 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

8 Statutory guidance for dealing with electronic devices

- 1) Where the member of staff conducting the search finds **an electronic device** the headteacher will examine any data or files on the device if they think there is a good reason to do so.
- 2) Following an examination, if the headteacher 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.
- 3) If inappropriate material is found on the device, the headteacher will decide whether they should **delete** that material, **retain** it as evidence (of a criminal offence or a breach of school discipline) or whether the material is of such seriousness that it requires the involvement of the police.

9 Telling parents/carers when a search has been carried out on their child and/or items have been confiscated

- 1) Schools are not required to inform parents/carers before a search takes place or to seek their consent to search their child and there is no legal requirement to make or keep a record of a search.
- 2) At Cheetwood incidents involving the searching of a pupil will be recorded on CPOMS, the school's electronic recording system .
- 3) Incidents where a pupil has been searched and/or items have been confiscated will be reported to the respective parents/carers by the headteacher, though there is no legal requirement to do so.

10 Dealing with complaints

- 1) Complaints about searching will be dealt with through the normal school complaints procedure.
- 2) The headteacher and all school staff have a specific statutory power to search pupils without consent for items identified within this guidance. As long as the member of staff acts within the limits of this specific power they will have a robust defence against any legal challenge.

11 COVID-19

It is inevitable that staff will come into much closer physical contact with a pupil whilst searching them. This is an authorised action within the boundaries of this policy.

As long as staff are following the school's published safer working practices and taking all the protective measures required of them during the COVID-19 situation, this will mitigate the risk of transmission of the virus during any closer physical contact.

THIS GUIDANCE HAS BEEN DEVELOPED BASED ON THE LATEST DfE ADVICE "SCREENING, SEARCHING AND CONFISCATION" JANUARY 2018