



CHEETWOOD COMMUNITY PRIMARY SCHOOL

GUIDANCE ON SEARCHING PUPILS AND CONFISCATION OF ITEMS

Reviewed: 14.12.2023

To be reviewed: Autumn Term 2024 or following DfE updates

This DfE 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.

Searching, Screening and Confiscation Advice for schools July 2022

This guidance is intended to explain the screening, searching and confiscating powers a school has, ensuring that headteachers and members of staff have the confidence to use these powers and schools are a calm, safe and supportive environment to learn and work. This guidance also provides advice to headteachers and staff on their related legal duties when it comes to these powers. It also includes statutory guidance which schools must have regard to.

Where the text uses the word 'must', the person in question is legally required to do something. Where the text uses the word 'parent', it should be read as inclusive of carers and any other person with parental responsibility.

This advice will be kept under review and updated as necessary.

What legislation does this guidance refer to?

- Coroners and Justice Act 2009
- Criminal Justice and Immigration Act 2008
- Health and Safety at Work etc. Act 1974
- The Education Act 1996
- The Education and Inspections Act 2006
- The Education (Independent School Standards) Regulations 2014
- The Schools (Specification and Disposal of Articles) Regulations 2012

This guidance is for:

- school leaders, school staff and governing bodies in all maintained schools, academies, free schools and independent schools in England

1.

For the purposes of this advice, references to "maintained school" mean a community, foundation or voluntary school, community or foundation special school. It also means pupil referral units and non-maintained special schools.

2.

Introduction

Ensuring school staff and pupils 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 pupil and staff welfare is protected and helps schools establish an environment where everyone is safe. This guidance is intended to explain schools' screening, searching and confiscation powers so that headteachers and other staff have the confidence to use them if necessary.

Schools and their staff are an important part of the wider safeguarding system for children. This system is described in the statutory guidance Working together to safeguard children. Keeping children safe in education makes clear that all school staff have a responsibility to provide a safe environment in which pupils can learn.

Before screening or conducting a search of a pupil, it is vital that schools consider their obligations under the European Convention on Human Rights. Under Article 8, pupils have a right to respect for their private life. In the context of these rights and obligations, 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 (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 their searching powers in a lawful way.

3.

Searching

3.1 Searching can play a critical role in ensuring that schools are safe environments for all pupils and staff. It is a vital measure to safeguard and promote staff and pupil welfare, and to maintain high standards of behaviour through which pupils can learn and thrive.

3.2 Headteachers, and staff they authorize, have a statutory power to search a pupil or their possessions where they have reasonable grounds to suspect that the pupil may have a prohibited item listed in paragraph 31 or any other item that the school rules identify as an item which may be searched for.

3.3 The list of prohibited items is:

- knives and weapons;
- alcohol;
- illegal drugs;
- stolen items;
- 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 of; any person (including the pupil).
- e-cigarettes, vapes, tobacco and cigarette papers;
- fireworks; and
- pornographic images.

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

3.4.1 A 'prohibited item' is defined in subsection (3) of Section 550ZA of the Education Act 1996.

3.4.2 For maintained schools, see Section 89, Education and Inspections Act 2006

3.4.3 The Schools (Specification and Disposal of Articles) Regulations 2012.

3.4.4 Being in possession of a prohibited item – especially knives, weapons, illegal drugs or stolen items – may mean that the pupil is involved, or at risk of being involved, in anti social or criminal behaviour including gang involvement, and in some cases may be involved in child criminal exploitation. A search may play a vital role in identifying pupils who may benefit from early help or a referral to the local authority children's social care services. See Keeping children safe in education and Working together to safeguard children.

When exercising their powers, schools must consider the age and needs of pupils being searched or screened. This includes the individual needs or learning difficulties of pupils with Special Educational Needs (SEN) and making reasonable adjustments that may be required where a pupil has a disability.

Only the headteacher, or a member of staff authorised by the headteacher, can carry out a search. The headteacher can authorise individual members of staff to search for specific items, or all items set out in this policy. The headteacher may not require any other member of staff to undertake a search if they refuse.

The headteacher should oversee 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 pupils and staff with support from the designated safeguarding lead (or deputy).

The headteacher should ensure that a sufficient number of staff are appropriately trained in how to lawfully and safely search a pupil who is not co-operating, so that these trained staff can support and advise other members of staff if this situation arises. However, it is vital that all staff understand their rights and the rights of the pupil who is being searched.

The designated safeguarding lead (or deputy) should be informed of any searching incidents where the member of staff had reasonable grounds to suspect a pupil was in possession of a prohibited item as listed in 3.3. 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.

Before searching

A search can be considered if the member of staff has reasonable grounds for suspecting that the pupil is in possession of a prohibited item or any item identified in 3.3 for which a search can be made, or if the pupil has agreed.

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 pupils and staff. 6 Section 550ZB of the Education Act 1996.

Before any search takes place, the member of staff conducting the search should explain to the pupil 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 pupil before conducting a search. If the pupil 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 the member of staff still considers a search to be necessary, but is not required urgently, they should seek the advice of the headteacher, designated safeguarding lead (or deputy) or pastoral member of staff who may have more information about the pupil.

During this time the pupil should be supervised and kept away from other pupils.

If the pupil 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 use such force as is reasonable to search for any prohibited items identified in 3.3.

5.

During a search

Where

An appropriate location for the search should be found. Where possible, this should be away from other pupils. The search must only take place on the school premises or where the member of staff has lawful control or charge of the pupil, for example on a school trip.

Who

The law states the member of staff conducting the search must be of the same sex as the pupil being searched. There must be another member of staff present as a witness to the search.

There is a limited exception to this rule. This is that a member of staff can search a pupil of the opposite sex and/or without a witness present only:

- if the member of staff carrying out the search reasonably believes there is risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency; and
- in the time available, it is not reasonably practicable for the search to be carried out by a member of staff who is same sex as the pupil or it is not reasonably practicable for the search to be carried out in the presence of 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

6.

The extent of the search

A member of staff may search a pupil's outer clothing, pockets, possessions and class trays.

The person conducting the search must not require the pupil to remove any clothing other than outer clothing. 'Outer clothing' means any item of clothing that is not worn wholly next to the skin or immediately over a garment that is being worn as underwear, as well as hats, shoes, boots or scarves.

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.

The member of staff may use a metal detector to assist with the search.

The member of staff's power to search outlined above does not enable them to conduct a strip search.

7.

Strip searching

A strip search is a search involving the removal of more than outer clothing. Strip searches on school premises can only be carried out by police officers under the Police and Criminal Evidence Act 1984 (PACE) Code A and in accordance with the Police and Criminal Evidence Act 1984 (PACE) Code C.

While the decision to undertake the strip search itself and its conduct are police matters, school staff retain a duty of care to the pupil(s) involved and should advocate for pupil wellbeing at all times.

Before calling police into school, staff should assess and balance the risk of a potential strip search on the pupil's mental and physical wellbeing and the risk of not recovering the suspected item. Staff should consider whether introducing the potential for a strip search through police involvement is absolutely necessary.

Unless there is an immediate risk of harm and where reasonably possible, staff should inform a parent of the pupil suspected of concealing an item in advance of the search, even if the parent is not acting as the appropriate adult. Parents should always be informed by a staff member once a strip search has taken place. Schools should keep records of strip searches that have been conducted on school premises and monitor them for any trends that emerge.

If the pupil's parent would like to be the appropriate adult, the school should facilitate this where possible. Police officers carrying out the search must be of the same sex as the pupil being searched. An appropriate adult not of the same sex as the pupil being searched may be present if specifically requested by the pupil. Otherwise, no-one of a different sex to the pupil being searched is permitted to be present, and the search must not be carried out in a location where the pupil could be seen by anyone else.

8.

After-care following a strip search

Pupils should be given appropriate support, irrespective of whether the suspected item is found. If an item is found, this may be a police matter, but should always be accompanied by a safeguarding process handled by the school which gives attention to the pupil's wellbeing and involves relevant staff, such as the designated safeguarding lead (or deputy).

Safeguarding should also be at the centre of support following a strip search in which the item is not found, both in the sense of supporting the pupil to deal with the experience of being searched, and regarding wider issues that may have informed the decision to conduct a strip search in the first place. In both cases, pupils should feel that they have an opportunity to express their views regarding the strip search and the events surrounding it. School staff should give particular consideration to any pupils who have been strip searched more than once and/or groups of pupils who are more likely to be subjected to strip searching with unusual frequency, and consider preventative approaches.

9.

After a search

Whether or not any items have been found as a result of any search, schools should consider whether the reasons for the search, the search itself, or the outcome of the search give cause to suspect that the pupil is suffering, or is likely to suffer harm, and/or whether any specific support is needed. Where this may be the case, school staff should follow the school's child protection policy and speak to the designated safeguarding lead (or deputy) as set out in Part 1 of Keeping children safe in education. They will consider if pastoral support, an early help intervention or a referral to children's social care is appropriate. If any prohibited items are found during the search, the member of staff should follow the guidance below.

If a pupil is found to be in possession of a prohibited item listed in paragraph 3.3, then the staff member should alert the designated safeguarding lead (or deputy) and the pupil should be sanctioned in line with the school's behaviour policy to ensure consistency of approach.

Further information on safeguarding can be found in Keeping children safe in education and Working together to safeguard children.

10.

Recording searches

Any search by a member of staff for a prohibited item listed in 3.3 and all searches conducted by police officers should be recorded on CPoms, including whether or not an item is found. This will allow the designated safeguarding lead (or deputy) to identify possible risks and initiate a safeguarding response if required. Headteachers may also decide that all searches for items banned by the school rules should be recorded. Staff members should follow the school policy in these cases.

Schools are encouraged to include in the record of each search:

- the date, time and location of the search;
- which pupil was searched;
- who conducted the search and any other adults or pupils 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.

Parents should always be informed of any search for a prohibited item listed in 3.3 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.

Any complaints about searching, screening or confiscation should be dealt with through the normal school complaints procedure.

11.

Confiscation

Items found as a result of a search

An authorised staff member carrying out a search can confiscate any item that they have reasonable grounds for suspecting:

- poses a risk to staff or pupils;
- is prohibited,
- is evidence in relation to an offence.

12.

Prohibited or illegal items

Controlled drugs must be delivered to the police as soon as possible unless there is a good reason not to do so. In these cases, the member of staff must safely dispose of the drugs.

The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the controlled drug.

When 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. If the member of staff is in doubt about the safe

disposal of controlled drugs, they should deliver them to the police.

Where a person conducting a search finds alcohol, tobacco, cigarette papers or fireworks, they may retain or dispose of them as they think appropriate but should not return them to the pupil.

If a member of staff finds a pornographic image, they 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 an indecent image of a child) in which case it must be given to the police.

13.

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 schools should follow the principles as set out in Keeping children safe in education.

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.

Schools' general power to discipline enables a member of staff to confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so.