

THE SPALDING SPECIAL SCHOOLS FEDERATION POWERS TO SEARCH POLICY and GUIDANCE

Parents and pupils are reminded that it is a criminal offence to have a prohibited item in school and that the penalties on conviction can be severe. SSSF will contact parents and carers each and every time a prohibited item is found on a pupil even though there is no legal requirement to do so. Complaints about screening or searches should be made through normal school complaints procedures.

Reference Points

- Health and Safety at Work etc. Act 1974
- Education Act 1996
- Education and Inspections Act 2006
- The Schools (Specification and Disposal of Articles) Regulations 2012
- The School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012
- 'Screening, searching and confiscation - advice for headteachers and governors' available at <http://www.education.gov.uk/aboutdfe/advice/f0076897/screeningsearching-and-confiscation>

Contact Points

If urgent or life-threatening tel. 999 or 112

Otherwise tel. Lincolnshire Police Control Centre (01522 532222)

Introduction

This guidance is to advise schools on:

- the power to screen pupils for prohibited items without suspicion and without consent.
- the statutory power for headteachers and staff they authorise, to search pupils or their possessions without consent, when they have reasonable grounds for suspecting that a pupil has a prohibited item.

Without-Consent Search

- School staff can search pupils **with their consent** for any item and a verbal agreement is all that is required. (Note that the age of the child will impact on their ability to give consent) Where a pupil refuses to turn out pockets or bag on instruction, schools can apply an appropriate disciplinary penalty.
- The statutory power to search a pupil **without consent** applies where there are reasonable grounds for suspecting that a pupil has in his/her possession any of the prohibited items and where other options have been exhausted.

Prohibited Items:

- **Knives:** any article which has a blade or is sharply pointed. The usual definition does not include a folding pocket knife other than one whose cutting edge exceeds 3 inches or one which is not readily foldable at all times (e.g. a locking knife). Within the SSSF pocket knives of any description are also considered prohibited items.
- **Weapons:** any article made or adapted to injure a person or any article with which it is intended that another person will be injured:-
 - A weapon made for causing injury e.g. a gun
 - An article adapted for causing injury e.g. a bottle broken for the purpose
 - Any other article with which the person carrying it intends to cause injury e.g. a baseball bat
- **Alcohol**
- **Controlled drugs** which it would be unlawful for the pupil to have in their possession
- **Stolen articles**

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- **Tobacco and cigarette papers**
- **Fireworks**
- **Pornographic images**
- **Any item which** the member of staff has reasonable grounds for suspecting **has been or is likely to be used to commit an offence or to cause personal injury or damage to the property of another person.**
- Headteachers and authorised staff can also search pupils for **any other item banned by the school rules, so long as it has been identified and publicised in the school rules as an item which may be searched for.**

Where staff suspect a pupil is carrying a prohibited item, they can seek to allay or confirm their suspicion by questioning the pupil. This power includes the power to search where there are reasonable grounds to suspect that a pupil is in innocent possession of such an item.

Searching Pupils

Who is authorised to search?

- A headteacher needs no authorisation to conduct a search for banned items without consent. Other school staff must be authorised by their headteacher before they can do so, but staff other than security staff can refuse to undertake a search and the headteacher cannot require them to do it. Within SSSF the authorisation to search is granted to all senior staff.
- There is no legal requirement for a headteacher or member of staff to undergo training before carrying out a 'without consent' search, but headteachers may want to consider whether such training would benefit a member of staff in carrying out such duties.
- The person carrying out the search should be the **same sex** as the pupil being searched and should carry out the search in the presence of another member of staff, who should also be of the same sex as the pupil being searched if at all possible.
- A member of staff may carry out a search of a pupil of opposite sex and without a witness **only** where he/she believes there is a risk of **serious harm** to another person if the search is not carried out immediately and it is **not reasonably practicable** to summon another member of staff.
- In some cases other staff may also be present at a search, e.g. an adult with expertise on the pupil's particular Special Educational Needs or with knowledge of the pupil's religious or cultural sensitivities. It may be helpful in some situations for the pupil's parents to be present, although **schools are not required in law to inform a parent before a search, nor are they required to seek parental consent.**

How and where to search?

- 'Without consent' searches can only be carried out on school premises or where a member of staff has lawful control over pupils, for example on a school trip in England. The powers only apply in England.
- Whenever possible, a search should be carried out in a private area i.e. with only those adults present who are required to be. Staff should take proportionate steps to preserve the pupil's dignity and be sensitive to any particular Special Educational Needs or cultural needs the pupil may have.
- The power to search on suspicion and without consent enables a *personal search*, involving removal of outer clothing only and searching pockets, but not an *intimate search*, which only a person with more extensive powers such as a police officer may carry out. Outer clothing means clothing that is not worn next to the skin or worn immediately over underwear, but would also include hats, shoes, boots, gloves and scarves.
- If, during the search an object is observed in e.g. a trouser pocket, the pupil can be asked to bring it out and show it. If the pupil refuses, or alleges assault, the search should stop and the police called. *We would recommend that, unless a pupil is cooperative throughout, staff should always call the police to carry out a search where it is suspected that the pupil is in possession of an offensive weapon.*
- A pupil's possessions can be searched without consent for prohibited items only. The search should be witnessed by another member of staff; unless there is risk of serious harm to another person if the search isn't carried out immediately and it is not reasonably practicable

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to call another member of staff. The searcher and/or the witness need not be the same sex as the pupil. The pupil must be present.

- The person carrying out the search may use such force as is reasonable in the circumstances to search for prohibited items under the Acts, but **not for items banned under school rules.** – see separate guidance on use of force.

The Power to Seize or Confiscate Items

- A member of staff can use discretion to confiscate, retain and/or destroy any item found as a result of a 'with consent' search so long as it is reasonable. Any item thought to be a weapon *must* be passed to the police as soon as is reasonably practicable.
- For items found as a result of a 'without consent' search a member of staff can seize anything they have reasonable grounds to suspect is a prohibited item or is evidence in relation to an offence.
- If weapons or items which are evidence of an offence are seized, they must be passed to the police as soon as possible.
- If alcohol is seized, it can be retained or disposed of, but must not be returned to the pupil.
- If a stolen item is seized, it should be delivered to the police as soon as reasonably practicable, or it may be returned to its owner, or retained or disposed of, if the person thinks there is good reason to do so. If there is any doubt, contact the police.
- If controlled drugs are found, these must be handed to the police as soon as possible unless there is good reason not to do so in which case they must be disposed of.
- Where other substances not believed to be controlled drugs are found, such as so-called 'legal highs', these can be confiscated where it is believed they are harmful or detrimental to good order and discipline.
- Tobacco or cigarette papers may be retained or disposed of, but must not be returned to the pupil.
- Fireworks may be retained or disposed of, but must not be returned to the pupil.
- Pornographic images may be disposed of unless its possession is an offence, e.g. extreme or child pornography, in which case it must be delivered to the police as soon as reasonably practicable. Images on mobile phones/electronic devices may be deleted unless it is necessary to pass to the police.
- Articles used to commit an offence or cause personal injury may be delivered to the police or returned to the owner or retained or disposed of.
- Articles banned under school rules will require professional judgement and consideration of all relevant circumstances to determine whether to return to its owner, retain or dispose of the item.

Electronic Devices

- Where a member of staff conducting a search finds an electronic device they may examine any data or files on the device if they think there is good reason to do so. Prior to returning to the owner or deciding to retain or dispose of the device, they may erase any data or files on the device if they think there is good reason to do so.
- For the member of staff to have a good reason to erase the contents of an electronic device, he/she must reasonably suspect the data or file has been or could be used to **cause harm, disrupt teaching or break school rules.**
- Staff must decide whether to delete inappropriate material, retain it as evidence (of criminal offence or breach of school rules) or to refer to the police if sufficiently serious.
- Staff should also take account of any specific guidance provided by their own school.

This policy and guidance will be kept under regular review.

It will be updated and amended upon receipt of any further guidance distributed by the Local Authority.