



**CUCKOO HALL  
ACADEMIES TRUST**

# Searching and confiscation policy

**Primary and Secondary Academies**

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## Introduction and summary of key points

This policy is based upon the 2014 Department for Education advice with regards to 'Searching, screening and confiscation' and for school leaders and teaching staff within our academies

### Searching

School staff can search a pupil for any item if the pupil agrees (although we recognise that the ability to give consent may be influenced by the child's age or other factors)

Schools and academies are not required to inform parents before a search takes place or to seek their consent to search their child.

Headteachers and their authorised staff 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. In addition to any item each individual academy has clearly identified as a banned item in that may be searched for, prohibited items are:

- knives or weapons
- alcohol
- illegal drugs
- stolen items
- tobacco and cigarette papers
- fireworks
- pornographic images
- any article or device that the member of staff reasonably suspects has been, or is likely to be, used to
  - commit an offence; or
  - cause personal injury to, or damage to the property of, any person (including the pupil).

### Confiscation

School staff can seize any prohibited item found as a result of a search and any item, however found, which they consider harmful or detrimental to school discipline.

### 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 meaning that they have the right to expect a reasonable level of personal privacy. However, the right under Article 8 is not absolute, it can be interfered with but any interference with this right by a school or academy 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 policy will outline how to exercise searching powers in a lawful way.

## Searching with consent

As per the Schools' common law powers to search, school / academy staff can search pupils for any item with their consent.

Formal written consent from the pupil is not required for this sort of search. It is sufficient for the teacher to ask the pupil to turn out his or her pockets or ask if the teacher can look in the pupil's bag or locker and for the pupil to agree.

If a member of staff suspects a pupil has a banned item in their possession, they can instruct the pupil to turn out his or her pockets or bag.

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, schools can apply an appropriate and proportionate sanction.

## Searching without consent

### What does the law say?

The law allows a search for those items identified in the '*Introduction and summary of key points*' section above.

The powers allow school staff to search regardless of whether the pupil is latterly found to have the item or not. 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 respectively.

### Who can search?

The headteachers or a member of the school staff authorised by the headteacher may conduct a search.

The staff member must be the same gender as the pupil being searched.

There must be a witness who is also a staff member and, where possible, also of the same gender as the pupil being searched.

However, a staff member may carry out a search of a pupil of the opposite gender and without a witness present only where the staff member reasonably believes that there is a risk that serious harm will be caused to a person if that search is not performed immediately and where it is not reasonably practicable to summon another member of staff. The member of staff conducting the search should bear in mind that a pupil's expectation of privacy increases as they get older.

### When can staff conduct a search?

Staff can search if they have reasonable grounds for suspecting that a pupil is in possession of a prohibited item.

The requirement that the searcher is the same sex as the pupil 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 pupil and a witness then the teachers wishing to conduct a search must do so.

### **Who can authorise members of staff?**

Headteachers should decide who to authorise to use these powers and there is no requirement to provide authorisation in writing.

Staff can be authorised to search for some items but not others; for example, a member of staff could be authorised to search for stolen property, but not for weapons or knives.

Staff can refuse to undertake a search. The law states that headteachers may not require anyone to undertake a search.

### **How are grounds for a search established?**

Teachers can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have a prohibited item in his or her possession.

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 be suspicious).

Authorised school staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item.

### **Where should a search take place?**

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 a search**

### **Clothes**

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. *'Outer clothing'* does include hats; shoes; boots; gloves and scarves.

### **Possessions**

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.)

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

Whilst the power to search without consent enables a personal search involving the removal of outer clothing and searching of pockets, it does not allow for an intimate search going further than that. Only a person with more extensive powers (e.g. a police officer) can do this.

### **Lockers and desks**

Under common law powers, schools are able to search lockers and desks for any item provided the pupil agrees.

If a pupil does not consent to a search (or withdraws consent having signed a consent form) then it is only possible to conduct a search for the '*prohibited items*' listed in the '*Introduction and summary of key points*' section at the start of this policy.

## **After a search**

### **Confiscation**

As per Section 91 of the Education and Inspections Act 2006, a school's 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.

### **Further to a search with consent**

The member of staff can use their discretion to confiscate, retain and / or destroy any item so long as it is reasonable in the circumstances.

Where any article or device is thought to be a weapon it must be passed to the police.

The law both provides them with a defence and protects members of staff from liability in any proceedings brought against them for any loss of / damage to any item they have confiscated, provided they acted lawfully.

### **Further to a search without consent**

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.

- **knives or weapons**

Any weapons or items which are evidence of an offence must be passed to the police as soon as possible.

- **alcohol**  
Where a person conducting a search finds alcohol, they may retain or dispose of it. This means that schools can dispose of alcohol as they think appropriate but this should not include returning it to the pupil.
- **illegal drugs**  
Where they find controlled drugs, these must be delivered to the police as soon as possible but may be disposed of if the person thinks there is a good reason to do so.  
  
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.
- **stolen items**  
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.
- **tobacco and cigarette papers**  
Where a member of staff finds tobacco or cigarette papers they may retain or dispose of them. As with alcohol, this means that schools can dispose of tobacco or cigarette papers as they think appropriate but this should not include returning them to the pupil.
- **fireworks**  
Fireworks found as a result of a search may be retained or disposed of but should not be returned to the pupil.
- **pornographic images**  
any article or device that the member of staff reasonably suspects has been, or is likely to be, used to
  - commit an offence; or
  - cause personal injury to, or damage to the property of, any person (including the pupil).
 If an image relates to an incident of 'Sexting' or its possession constitutes a specified offence (i.e. extreme or child pornography) it must be dealt with in line with our *sexting procedure* and / or *safeguarding and child protection procedure*, otherwise the member of staff may dispose of / delete the image.

## 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, they may erase any data or files prior to returning / retaining / disposing of it to the owner *if they think there is a good reason to do so*.

In the event that there are concerns that the device may store inappropriate images, please refer to the *sexting procedure* found within our *safeguarding and child protection policy*

If material deemed inappropriate but **not** raising concerns around sexting 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 school discipline) or whether the material is of such seriousness that it requires the involvement of the police in conjunction with the headteacher.

## Additional information

Where an article or device 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 school 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.

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 (e.g. pencil cases) However, school staff may judge it appropriate to contact the police if the items are valuable (e.g. iPods / laptops) or illegal (e.g. alcohol / fireworks).

The safeguarding team are on site and able to advise.