

HEXHAM MIDDLE SCHOOL AND QUEEN ELIZABETH HIGH SCHOOL HARD FEDERATION

POLICY AND GUIDELINES FOR SCREENING, SEARCHING AND CONFISCATION

(HMS & QEHS follow the guidance set out by the
Department for Education)

A SCREENING

What the law allows:

- Schools can require students to undergo screening by a walk-through or hand-held metal detector (arch or wand) even if they do not suspect them of having a weapon and **without** the consent of the students. QEHS does not currently use screening devices.
- Schools' statutory power to make rules on student behaviour³ and their duty as an employer to manage the safety of staff, students and visitors⁴ enables them to impose a requirement that students undergo screening.
- Any member of school staff can screen students.

Also note:

1. If a student refuses to be screened, the school may refuse to have the student on the premises. Health & safety legislation requires a school to be managed in a way that does not expose students or staff to risks to their health and safety and this would include making reasonable rules as a condition of admittance.
2. If a student fails to comply, and the school does not let the student in, the school has not excluded the student and the student's absence will be treated as unauthorised. The student must comply with the rules and attend.
3. This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

³ Section 89 of the Education and Inspections Act 2006

⁴ Section 3 of the Health & Safety at Work etc Act 1974

B SEARCHING WITH CONSENT

Schools' common law powers to search:

- School staff⁵ can search students **with their consent**⁶ for any item.

Also note:

- 1) We are not required to have formal written consent from the student for this sort of search – it is enough for the teacher 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.
- 2) Banned items include those listed below in 'C Searching without consent'. It should be noted mobile phones, ipods, mp3players should be switched off in student bags at all times during the school day.
- 3) 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, the teacher can apply an appropriate punishment as set out in the school's behaviour policy.
- 4) 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, the school can apply an appropriate disciplinary penalty. Depending upon the issue, this could range from a detention to a seclusion or exclusion in serious cases.

C SEARCHING WITHOUT CONSENT

What the law says:

What can be searched for⁷?

- 1) Knives or weapons, alcohol, illegal drugs and stolen items; and
- 2) Tobacco and cigarette papers, fireworks and pornographic images; and
- 3) 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
- 4) Any item banned by the school rules which has been identified in the rules as an item which may be searched for.

⁵ School staff here means a teacher or someone who has lawful control or charge of the child.

⁶ The ability to give consent may be influenced by the child's age or other factors

⁷ Section 550ZA of the Education Act 1996 and the Schools (Specification and Disposal of Articles) Regulations 2012 and referred to in the legislation as "prohibited items". The provisions in 550ZA of the 1996 Act also include a power to make regulations to add to the list of prohibited items.

Who can search?

5) The Executive Headteacher or a member of school staff⁹ authorised by the Executive Headteacher e.g. Head of School, Senior Deputy Headteacher, Assistant Headteacher, Learning & Guidance Co-ordinators and Mentors.

Under what circumstances?

6) You 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.

7) There is a limited exception to this rule. You can carry out a search of a student of the opposite sex to you and without a witness present, but **only** where you reasonably believe 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.

When can you search?

8) If you have reasonable grounds for suspecting that a student is in possession of a prohibited item.

Also 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

1) The Executive Headteacher has authorised the Head of School, Senior Deputy Headteacher, Assistant Headteachers, Learning & Guidance Co-ordinators and mentors to use these powers at Queen Elizabeth High School. The Executive Headteacher has authorised the Head of School, Assistant Headteacher, Head of KS2, Heads of Year 7 and 8 and the SENCO to use these powers at HMS.

5. Training for school staff

1) When designating a member of staff to undertake searches under these powers, the Executive headteacher will consider whether the member of staff requires any additional training to enable them to carry out their responsibilities.

6. Establishing grounds for a search

1) Teachers 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 teacher 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.

⁹ Member of school staff means any teacher who works at the school, and any other person who with the authority of the head teacher has lawful control or charge of students for whom education is being provided at the school.

2) 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.

3) The powers allow school 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.

4) School staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item¹⁰.

7. Searches for items banned by the school rules

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

8. Location of a search

1) 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 student, for example on school trips in England or in training settings.

2) 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.

Also 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 School staff must ensure they act in accordance with the Data Protection Act 1998, when doing so. Guidance on this is provided by the Information Commissioner – see the Associated Resources section for a link to this document.

10. Lockers and desks

- 1) Under common law powers, schools are able to search lockers and desks for any item provided the student agrees. Schools 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.
- 2) 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

- 1) 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 school rules.
- 2) 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:

- 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 student’s property as a disciplinary penalty, where reasonable to do so.

Also note:

- 1) A senior leader 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.
- 2) 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 (that is the items identified in paragraph C (1-4) on page 2) or is evidence in relation to an offence.
- Where a person conducting a search finds **alcohol** they must report it to a senior leader who 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 student.
- Where they find **controlled drugs**, this must be reported to a senior leader. Controlled drugs 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 and must be reported to a senior leader. 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** this must be reported to a senior leader. Stolen items 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 schools 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 must be reported to a senior leader. Fireworks may be retained or disposed of but should not be returned to the student.
- If a member of staff finds a **pornographic image**, they must report it to a senior leader. The senior leader 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 must be reported to a senior leader. The article 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** it must be reported to a senior leader who 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.
- 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

1) It is up to a senior leader 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 senior leader must have regard to the following guidance issued by the Secretary of State¹¹:

2) **In determining what is a 'good reason' for not delivering controlled drugs or stolen items to the police, the senior leader should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of a seized article.**

3) Where the senior leader is 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.

¹¹ Section 550ZC (6) Education Act 1996

4) 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, the senior leader 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

1) Where the person conducting the search finds **an electronic device** they must report it to a senior leader who 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 senior leader has decided to return the device to the owner, or to retain or dispose of it, the senior leader may erase any data or files, if they think there is a good reason to do so.

2) The senior leader must have regard to the following guidance issued by the Secretary of State¹² 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 senior leader 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 school rules.**

3) If inappropriate material is found on the device it is up to the senior leader 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.

Also note:

Senior leaders 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 school.

16. Telling parents and dealing with complaints

1) The school is not required to inform parents before a search takes place or to seek their consent to search their child.

2) There is no legal requirement to make or keep a record of a search (although we will put this onto the student’s behaviour log).

3) The school will 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.

4) Complaints about screening or searching should be dealt with through the normal school complaints procedure.

ASSOCIATED POLICIES

This policy should be read in conjunction with the following school policies:

- Behaviour Management Policy
- Mobile Phone Policy
- Use of Reasonable Force Policy
- Drugs and Substance Abuse Policy
- Anti-Bullying Policy
- Exclusions Policy

Frequently Asked Questions

I'm a teacher; can I refuse to search a student without their consent?

Yes. A headteacher 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.

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

Headteachers and authorised school 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.

Associated Resources

Link to Use of Reasonable Force – advice for head teachers, staff and governing bodies
<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0077153/use-of-reasonable-force-advice-for-school-leaders-staff-and-governing-bodies>

Link to Behaviour and Discipline in Schools – guidance for governing bodies
<http://www.education.gov.uk/schools/pupilsupport/behaviour/g0076647/guidance-for-governing-bodies-on-behaviour-and-discipline>

Link to Behaviour and Discipline in Schools – advice for head teachers and school staff
<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0076803/advice-for-headteachers-and-school-staff-on-behaviour-and-discipline>

Link to Information Commissioner for advice on the Data Protection Act
http://www.ico.gov.uk/for_organisations/data_protection.aspx

Legislative links

The Education Act 1996
<http://www.legislation.gov.uk/ukpga/1996/56/contents>

Education and Inspections Act 2006
<http://www.legislation.gov.uk/ukpga/2006/40/contents>
<http://www.legislation.gov.uk/ukpga/2006/40/contents>

The Schools (Specification and Disposal of Articles) Regulations 2012
<http://www.legislation.gov.uk/>

The School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/619/contents/made>

Health and Safety at Work etc Act 1974
<http://www.hse.gov.uk/legislation/hswa.htm>