



Confiscation and Search policy: IOWSS P1.3

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Policy Links:

- Health and Safety policy
- Behaviour policy
- Safe use and storage of images policy

Signed

..... Date: 14/03/2018.....

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Headteacher

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1. Purpose: This policy is intended to support the guidance from the DFE 2012 called 'Screening Searching and confiscation – Advice for head teachers, staff and governing bodies'

This policy outlines schools' powers to screen and search students, in particular searching students without consent. It also explains the powers schools have to seize and then confiscate items found during a search.

The Headteacher and authorised staff can also search for any item banned by the school rules which has been identified in the rules as an item which may be searched for. (see behaviour policy)

2. Confiscation

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. Confiscation of a mobile phone is legitimate – however searching through a phone or accessing text messages without a student's permission is not.

List of banned items

- Mobile phones of any kind
- I-pods or personal music devices of any kind
- Gaming equipment such as Nintendo DS, or the games themselves
- Jewellery or personal adornments that do not fit with the uniform code e.g. bracelets, chains, earrings that are not studs.
- Tobacco and smoking paraphernalia
- Alcohol
- Carbonated drinks, including energy drinks
- Gum of any kind
- All items on the list in the confiscation policy

3. Schools' obligations under the European Convention on Human Rights (ECHR)

Under article 8 of the European Convention on Human Rights students have a right to respect for their private life. In the context of these particular powers, this means that students 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 the searching powers in a lawful way.



Searching

4. Searching with Consent

Schools' common law powers to search:

Teachers or someone who has lawful control or charge of the student, can search students **with their consent** for any item.

Also note:

- 1) Schools 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) Schools should make clear in their school behaviour policy and in communications to parents and students what items are banned.
- 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, schools can apply an appropriate disciplinary penalty.

5. Searching without Consent

What the law says:

What can be searched for

- 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.

If you do search a student then you must be, an authorised member of staff and the same sex as the student, there must also be a witness to the search.

However, 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 searching a student you must first ask them to give you the item. If this is refused then we can conduct a search without consent for banned items provided the above rules are followed. We can do this because we have an explicit list of items that are banned. Students who refuse to comply with an instruction to give the item will be given a sanction for failure to follow a reasonable instruction.

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.

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 item.

The School can search for any item that has been listed as being banned in the behaviour policy. This includes mobile phones or other electronic devices and sweets, chewing gum, bubble gum. The search must take place on school premises

Extent of the search – clothes, possessions, desks, trays

We will 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
- Possessions means any goods over which the student has or appears to have control – they can only be searched in the presence of the student and another member of staff (see exceptions to this above)
- We will not use force to conduct a search except where we suspect possession of knives, weapons, alcohol, illegal drugs, stolen items, tobacco, cigarette papers, fireworks, pornographic images, or articles that could be used to commit an offence or cause harm.

7. Telling parents

1) Schools are not required to inform parents before a search takes place or to seek their consent to search their student. However if a search is conducted and an item has



been confiscated that the parent is required to collect, a phone call and/or letter will be made to the parent informing them of what has happened.

2) There is no legal requirement to make or keep a record of a search – although we will record on our blue forms that an item has been confiscated after a search if the parents are required to pick it up.

3) Schools should 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.

8. Confiscation

Section 91 of the Education and Inspections Act 2006 gives members of staff the right to confiscate items, retain and/or dispose of items. Schools should follow these guidelines:

1. Confiscation of property as a disciplinary sanction is in our behaviour policy
2. To be lawful, confiscation must be a reasonable sanction in the circumstances of the particular case.
3. Whether or not we retain or dispose of items must also be reasonable

When is a seizure (confiscation) lawful?

When the member of staff has the authority to do it – this means that it must be justifiable on the basis that it is necessary in a democratic society by being:

- In pursuance of a legitimate aim, and
- Proportionate

The legitimate aim pursued in confiscating property is maintaining an environment that is conducive to learning, and safeguarding the rights of the other students to be educated

What is proportionate?

This depends on the value of the property. Something that is valuable should be confiscated and stored securely. The School will return valuable items to the parent directly only.

Item	What will happen
Mobile phone	Stored securely and given back to the parents/carers only Please refer to the e-safety policy also
Sweets or chocolate of any kind	Disposed of
Any other food items being eaten at inappropriate times of the school day	Disposed of
I-pod, i-pod shuffle, any other music or radio device, gaming equipment and games themselves (other items of value)	Stored securely and given back to the parents carers only
Trading cards, toys	Stored securely and given back to the student at the end of the day to take home



Inappropriate items of jewellery not covered in our uniform policy	Stored and given back to the student at the end of the day (repeated incidences will be dealt with under the behaviour/uniform policy)
Non uniform item of clothing	Given back to student at the end of the day (repeated incidences will be dealt with under the behaviour/uniform policy)

What is a reasonable sanction?

We view confiscation as a reasonable sanction where we are removing items that are:

- on the banned list of items within our behaviour policy.
- a threat to others e.g. a laser pen being used to distract or possible harm students or staff
- threatening good order for learning e.g. a student texting in class
- against school uniform rules e.g. baseball caps
- a threat to health and safety e.g. student wearing inappropriate earrings in school
- on the above list that we can search without consent for.

Jewellery and clothing

We will not confiscate items that are of any religious, medical or cultural significance. We will not confiscate clothing items where the student is left partially dressed. This does not extend to hoodies or jumpers that are not uniform. A student in a shirt and tie does not constitute being partially dressed.

Dealing with electronic devices

In determining a good reason to examine or erase the data or files the staff member 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. If inappropriate material is found on the device it is up to the teacher to decide whether they should delete that material, retain it as evidence, or whether the material is of such seriousness that it requires the involvement of the police.

Confiscating items that you can search without consent for:

This refers to alcohol, controlled drugs, other substances that may be harmful to good order and discipline, fireworks, stolen items, tobacco, cigarette papers, pornographic images, a weapon of any kind,

Item	What the School will do with it
Alcohol	Confiscate and discard the liquid – show the bottle to parents
Fireworks	Confiscate and discard safely
Controlled drugs	Confiscate and report to the police.
Other substances	Confiscate and discard – inform parents



Stolen items	Confiscate and keep for any police investigation. If no police involvement return to the original owner
Tobacco	Confiscate and discard – inform parents
Smoking paraphernalia	Confiscate and discard – inform parents
Weapon of any kind	(as defined in section 45 of the Violent Crime Reduction Act 2006) The police will be called to search where possible and any items found will be retained by them. This includes any evidence of an offence.
Pornographic images	Confiscate the paper images or the electronic device upon which the images are stored. Report to the police if necessary. If not necessary then delete the images, shred the images and inform the parents.