



## **Screening**

### **What the law allows:**

- Schools can require pupils 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 pupils.
- Schools' statutory power to make rules on pupil behaviour and their duty as an employer to manage the safety of staff, pupils and visitors enables them to impose a requirement that pupils undergo screening.
- Any member of school staff can screen pupils.

Also note:

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

This is unlikely to be required at TWGGS, but would be instigated were there a need, identified by the Headteacher and Senior Leadership Team.

## **Searching with consent**

Schools' common law powers to search:

- School staff can search pupils with their consent for any item.

Also note:

- Schools are not required to have formal written consent from the pupil for this sort of search; it is enough for the teacher to ask the pupil to turn out her pockets or if the teacher can, look in the pupil's bag or locker and for the pupil to agree.
- Schools should make clear in their school behaviour policy and in communications to parents/ carers and pupils what items are banned.
- If a member of staff suspects a pupil has a banned item in her possession, he/ she can instruct the pupil to turn out her pockets or bag and if the pupil refuses, the teacher can apply an appropriate punishment as set out in the school's behaviour policy.
- 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 disciplinary penalty.

## **Searching without consent**

### **What the law says:**

*What can be searched for?*

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

### **1. Can I search?**

- Yes, if you are a headteacher or a member of school staff and authorised by the headteacher.

### **2. Under what circumstances?**

- You must be the same sex as the pupil being searched; there must be a witness (also a staff member) and, if at all possible, they should be the same sex as the pupil being searched.

- There is a limited exception to this rule. You can carry out a search of a pupil 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.

### **3. When can I search?**

- If you have reasonable grounds for suspecting that a pupil 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 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.

### **4. Authorising members of staff**

- Headteachers should decide who to authorise to use these powers; there is no requirement for written authorisation.
- Staff, other than security staff, can refuse to undertake a search. The law states that headteachers may not require anyone other than a member of the school security staff to undertake a search.
- 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.
- If a security guard, who is not a member of the school staff, searches a pupil, the person witnessing the search should ideally be a permanent member of the school staff, as they are more likely to know the pupil.

### **5. Training for school staff**

When designating a member of staff to undertake searches under these powers, the Headteacher should consider whether the member of staff requires any additional training to enable them to carry out his/ her responsibilities.

### **6. Establishing grounds for a search**

- Teachers can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have in 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 pupils talking about the item or they might notice a pupil behaving in a way that causes them to be suspicious.
- In the exceptional circumstances when it is necessary to conduct a search of a pupil of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a pupil's expectation of privacy increases as they get older.
- The powers allow school staff to search regardless of whether the pupil is found after the search to have that item. 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.
- School staff can view CCTV footage if available in order to make a decision as to whether to conduct a search for an item.

### **7. Searches for items banned by the school rules**

- 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.
- The school rules must be determined and publicised by the Headteacher in accordance with Section 89 of the Education and Inspections Act 2006 in maintained schools. Separate advice on school rules is available in Behaviour and Discipline in Schools Advice for Headteachers and School Staff 2016 via the link under Associated Resources.
- Under Section 89 and the Behaviour and Discipline in Schools Advice for Headteachers and School Staff Jan 2016 the Headteacher must publicise the school behaviour policy, in writing, to staff, parents and pupils at least once a year.

## **8. Location of a search**

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. 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 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 but 'outer clothing' includes hats; shoes; boots; gloves and scarves.*
- *'Possessions' means any goods over which the pupil has or appears to have control – this includes desks, lockers and bags.*
- *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.*

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. Lockers and desks**

- Under common law powers, schools are able to search lockers and desks for any item provided the pupil agrees. Schools can also make it a condition of having a locker or desk that the pupil consents to have these searched for any item whether or not the pupil is present.
- If a pupil 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**

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. 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 pupil's property as a disciplinary penalty, where reasonable to do so.*

Also note:

- The member of staff 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.
- 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 or is evidence in relation to an offence.*
- 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.
- 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.
- 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.
- 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** found as a result of a search may be retained or disposed of but should not be returned to the pupil.
- If a member of staff finds a **pornographic image**, they 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 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.
- 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**

- It is up to teachers 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 member of staff must have regard to the following guidance issued by the Secretary of State:

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

- 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 such as pencil cases. However, school staff 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**

- 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, if the person has decided to return the device to the owner, or to retain or dispose of it, they may erase any data or files, if they think there is a good reason to do so.
- 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 (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.
- All school staff should be aware that behaviours linked to sexting put a child in danger. Governing bodies should ensure sexting and the school's approach to it is reflected in the Child Protection/ Safeguarding Policy. The UK Council for Child Internet Safety (UKCCIS) Education Group has recently published the advice - sexting in schools and colleges - responding to incidents and safeguarding young people

Also note:

- Teachers 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/ carers and dealing with complaints**

- Schools are not required to inform parents before a search takes place or to seek their consent to search their child.
- There is no legal requirement to make or keep a record of a search.
- Schools should inform the individual pupil's parents or guardians where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
- Complaints about screening or searching should be dealt with through the normal school complaints procedure.

#### **Review**

This Policy has been written to reflect: "Screening, Searching and Confiscation - Advice for headteachers, staff and governing bodies" *DfE 2014* and it will be reviewed every 3 years

Lead Reviewer: Deputy Headteacher

Link Policies: Behaviour Policy; Child Protection/Safeguarding Policy; Anti-bullying Policy; SEND Policy

## **Appendix 1**

### **Screening and Searching of Pupils for Weapons: Additional Guidance for School Staff from Kent Police**

Kent County Council and Kent Police have worked together to produce this additional guidance which aims to reduce risk to staff and pupils.

1. KCC and Kent Police would advise against school staff conducting without consent searches for weapons unless a full risk assessment had determined that such a course of action was absolutely safe for both the pupil and the staff involved.
2. School staff who believe that a young person may have a weapon in their possession should also think carefully about how they ask him/her to give up possession. A non-confrontational approach in an unconfined space reduces the chance of eliciting an aggressive response.
3. Kent Police will, given sufficient notice, provide an effective and proportionate response if a school believes that a pupil has a knife.
4. A proportionate response is determined by the Human Rights Act and has tests of proportionality, lawfulness and necessity. This results in a continuum of responses from physical presence to the deployment of specialists such as armed officers.
5. To be clear, a 999 call from a school which said that a young person was suspected of having a weapon and was likely to use that weapon in the near future could lead to the deployment of armed officers. KCC and Kent Police have concerns regarding the deployment of such resources at school premises and the impact this can have upon the School and wider community. Schools are therefore urged to consider this before making such a 999 call.

## **Appendix 2**

### **Further sources of information**

#### **Associated resources (external links)**

- Use of Reasonable Force - advice for headteachers, staff and governing bodies
- Behaviour and Discipline in Schools - advice for head teachers and school staff
- Information Commissioner for advice on the Data Protection Act
- Keeping Children Safe in Education statutory guidance for schools and colleges
- UK Council for Child Internet Safety- UKCCIS Sexting in schools and colleges - responding to incidents and safeguarding young people

## **Appendix 3**

### **Frequently Asked Questions**

#### **Q: I'm a teacher; can I refuse to search a pupil without their consent?**

**A:** Yes. A headteacher cannot require a member of staff 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.

#### **Q: Is there a risk that I could face legal challenge if I search a pupil without consent?**

**A:** Headteachers and authorised school staff have a specific statutory power to search pupils 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.