

Search and Confiscation of Learner's Property

2020-21



Policy dates: Sept 2020 – Aug 2021
Staff Lead: Karen Thomson
Trustee Lead: Gareth Whitmarsh
Policy approved: Board meeting Jun 2020
Next review date: Mar 2021

TBAP AP AND SPECIAL ACADEMIES



LONDON



COURTYARD



LATIMER



BEACHCROFT



BRIDGE



16-19



CAMBRIDGE



UNITY



OCTAVIA



CAMBRIDGESHIRE



EVERY CHILD A CHANCE



SUPPORT

Please refer to COVID 19 Secure procedures revised search and confiscation during this context.

Aim

The aim of this Policy is to state the circumstances under which Learners' property whether legal or illegal may be confiscated by a member of staff and the procedures to be followed when this occurs.

These instructions set out the circumstances in which such confiscations and searches can be carried out and the means by which it should be done, in accordance with the Education and Inspections Act 2006 and DFE Guidance for Schools on Screening, Searching and Confiscation 2014

Introduction

The Head of School and staff authorised by the Head of School have a statutory power to search learners or their possessions, with or without consent, where they have reasonable grounds for suspecting that the learner may have a prohibited item. This includes the content of mobile phones and other devices, for example as a result of a reasonable suspicion that a device contains illegal or undesirable material, including but not exclusive to sexual images, pornography, violence or bullying.

All TBAP Schools' has statutory powers to make rules on learner behaviour and their duty as an employer to manage the safety of staff, learners and visitors enables them to impose a requirement that learners undergo screening, searching.

Schools staff may also consider it necessary to confiscate property from learners when a dangerous, banned or personal item that could be disrupted and/or the health or safety of learners may be put at risk

Scope

The scope of this policy applies to all learners across TBAP Trust schools and provisions.

Links to other policy

- TBAP Behaviour Policy
- TBAP Keeping Safe Policy
- 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
- Health and Safety at Work etc. Act 1974
- TBAP Online Safety Policy
- This policy follows the guidance written by the DfE Searching, Screening and Confiscation- Advices for school head teachers and governing bodies. February 2014.

Dangerous items

The following items are not allowed in to any TBAP School

1. Illegal drugs and “legal highs” and any drug related paraphernalia e.g. weed crushers, small bong.
2. Guns, included toys/imitations
3. Knives and other bladed articles or offensive weapons
4. Pornographic imagery
5. Alcohol
6. Fireworks or any other explosive or flammable items.
7. Stolen items
8. Tobacco and cigarette papers
9. 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 the property of, any person (including the learner).

Note: Items 1-4 are to be given immediately to the head of school who will deal with them. TBAP Trust reserves the right to inform the police if items 1, 2, 3 , 4 or 9 are brought onto the premises and to give these items to the police.

Item 5 may need to be secured safely with assistance from site manager or fire service, if appropriate and brought to the Head of School’s attention.

If individual TBAP Schools have a list of additional items which are banned, this should be shared with parents, carers and learners and attached to **TBAP’s Behaviour Policy** as an appendices.

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.

Procedures for confiscating learner’s property

- If a member of staff finds a learner in possession of a **dangerous item or banned item** they should immediately confiscate it and report it to the Head of School or a member of SLT. Head of School or member of SLT will then respond in accordance with the **TBAP Behaviour Policy** and guidance from **DfE Searching, screening and confiscation- Advices for school head teachers and governing bodies. February 2014.**
- Any member of staff confiscating any personal item (not classified as dangerous or banned by the school) from a learner should take the confiscated item to the SPOC, where it will be held in a safe place until it is returned to the learner.

- The member of staff should where possible place the confiscated item in an envelope on which the name and form of the learner must be written, along with the details of the confiscated item, the date it was confiscated and sign their name. The item should be secured in a central place agreed by members of SLT.
- At the end of the agreed period of confiscation the learner will collect the confiscated item from the SPOC and sign that they have done so.

Parents should be reminded that TBAP Trust will not take any responsibility for the theft or damage of items belonging to learner's personal property. Parents should also be reminded that expensive items should not be brought in to school and that any items brought to school should be covered by their own personal home insurance.

Screening learners

TBAP Schools retains the right to screen students by walk through or hand held metal detectors, without the consent of the student. This type of screening can be carried out by an authorised member of staff to ensure that the health and safety of staff and other students are not compromised and legislation is complied with.

Searching Learners

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.

Searching with consent

- School staff can search pupils with their consent for any item
- The school will take into account the age of the child when considering consent.
- It is enough for the teacher to ask the learner to turn out his or her pockets or if the teacher can look in the learner's bag or locker and for the learner to agree. They do not need written consent from the child.
- The school makes clear in their school behaviour policy and in communications to parents and learners what items are banned.
- If a member of staff suspects a learner has a banned item in his/her possession, they can instruct the learner to turn out his or her pockets or bag and if the learner refuses, the teacher can apply an appropriate punishment as set out in the **TBAP's behaviour policy**.
- A learner refusing to co-operate with such a search raises the same kind of issues as where a learner 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 sanction.

Searching without consent

The Head of School and staff authorised by the Head of School have a statutory power to search learners or their possessions, without consent, where they have reasonable grounds for suspecting that the learner may have a prohibited item.

Prohibited items are: -

- Illegal drugs and “legal highs” and any drug related paraphernalia e.g. weed crushers, small
- Guns, included toys/imitations
- Knives and other bladed articles or offensive weapons
- Pornographic imagery
- Alcohol
- Fireworks or any other explosive or flammable items.
- Stolen items
- Tobacco and cigarette papers
- 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 the property of, any person (including the learner).

How to conduct searches

- The staff member conducting the search must be the same sex as the learner 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 learner being searched.
- At least one member of staff conducting a search should be permanently employed by TBAP Trust.
- There is a limited exception to this rule. Staff can carry out a search of a learner of the opposite sex without a witness present, but only where the staff member reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search immediately and where it is not reasonably practicable to summon another member of staff.
- Under section 8 of the European Convention on Human Rights learners have the right to respect for their private life. In context of these particular powers, this means that learners have the right to expect a reasonable level of personal privacy.
- 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.

Establishing grounds for a search

- Staff can only undertake a search without consent if they have reasonable grounds for suspecting that a learner may have in his or her possession a prohibited item. The member of staff must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard other learners talking about the item or they might notice a learner behaving in a way that causes them to be suspicious.
- In the exceptional circumstances when it is necessary to conduct a search of a learner of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a learner's expectation of privacy increases as they get older.
- The powers allow school staff to search regardless of whether the learner is found after the search to have that item. This includes circumstances where staff suspects a learner 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 in order to make a decision as to whether to conduct a search for an item.
- 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 learner, for example on school trips in England or in training settings.

Confiscation of property

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.

When deciding what to do with the confiscated items, staff will follow the guidelines set out in Searching, Screening and Confiscation: Advice for Head of School, school staff and governing bodies DfE 2014 Dealing with Electronic Devices (statutory guidance)

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.

The member of staff must have regard to the following guidance issued by the Secretary of State 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 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 to go against the expectation in the school's Behaviour Policy.

If inappropriate material is found on the device it is up to the Head of School or member of SLT 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.

Guidance for Carrying Out a Search **What the law says:**

The person conducting the search may not require the learner 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 learner has or appears to have control – this includes lockers and bags.

A learner's possessions can only be searched in the presence of the learner 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.

Searching of school lockers

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

If a learner 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.

Use of force

All TBAP schools are able to use reasonable force to search learner where they have not permitted their consent. Staff should refer **TBAP Keeping Safe policy** for supporting information on the use of reasonable forces.

Informing Parents/Carers

- There is no requirement for the school to inform parents/carers before a search
- Parents/carers may be informed as part of the school behaviour policy and procedures.
- /carers will be informed if the matter is sufficiently serious or could be potentially harmful to the learner or the school.
- If a parent/carer makes a complaint, the normal procedures for dealing with **TBAP Complaints Policy** should be followed.

Record Keeping

There is no legal requirement for the school to keep records of searches or confiscation. However as part of TBAP's procedures any dangerous item (see above) confiscated should be in such event be recorded in **SIMS** and a **serious incident form** completed in line with TBAP policy. Consideration should be given to whether the incident or learner should be recorded on the **Risk Register** and whether an individual risk assessment needs to be completed.

This policy was agreed June 2020 and will be reviewed annually by the TBAP Trust Board

Date of next review: June 2021