



**Oxford Sixth Form College**

A NORD ANGLIA EDUCATION SCHOOL

# **Searching, Screening and Confiscation Policy**

**Revised: August 2022**

**Review date: August 2023**

## **Introduction**

This policy is written in line with the Education Act 1996, section 550ZA, DfE guidance on Searching, screening and confiscation: advice for schools 2022 and National minimum Boarding Standards 2022 (NMS).

Ensuring College staff and students feel safe and secure is vital to establishing calm and supportive environments conducive to learning. Using searching, screening and confiscation powers appropriately is an important way to ensure student and staff welfare is protected and helps schools & colleges establish an environment where everyone is safe.

Before screening or conducting a search of a student, it is vital that staff consider their obligations under the European Convention on Human Rights. Under Article 8, students have a right to respect for their private life. In the context of these rights and obligations, 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 college must be justified and proportionate.

## **Searching**

The Principal or designated deputy and staff authorised by the Principal or designated deputy have a statutory power to search students or their possessions, without consent, where they have reasonable grounds for suspecting that the student may have a prohibited item.

Prohibited items are:

- knives or weapons
- alcohol
- illegal drugs and drug paraphernalia
- stolen items
- tobacco and cigarette papers (under the age of 16)
- fireworks
- pornographic images
- any article 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 student).

Under common law, College staff have the power to search a student for any item if the student agrees. The member of staff should ensure the student understands the reason for the search and how it will be conducted so that their agreement is informed.

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 and only with direct permission from the Principal.

When exercising their powers, staff must consider the age and needs of pupils being searched or screened. This includes the individual needs or learning difficulties of pupils with Special Educational Needs (SEN) and making reasonable adjustments that may be required where a pupil has a disability.

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. Searches without consent can only be carried out on the College premises or, if elsewhere, where the member of staff has lawful control or charge of the student, for example on College trips in England or in training settings.

The Principal and staff authorised by the Principal can also search for any item banned by the College rules which has been identified in the rules as an item which may be searched for. The powers allow College staff to search regardless of whether the student is found after the search to have that item.

Staff 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 suspect that the student is concealing a prohibited item. College staff, other than security staff, can refuse to undertake a search.

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 member of staff can apply an appropriate punishment as set out in the College’s Promoting Good Behaviour policy.

‘Possessions’ means any goods over which the student has or appears to have control – this includes in 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.

A student refusing to co-operate with such a search raises the same kind of issues as where a student refuses to stop any other unacceptable behaviour when instructed by a member of staff – in such circumstances, the College may apply an appropriate disciplinary penalty.

Note: Being in possession of a prohibited item – especially knives, weapons, illegal drugs or stolen items – may mean that the student is involved, or at risk of being involved, in anti-social or criminal behaviour including gang involvement, and in some cases may be involved in child criminal exploitation. A search may play a vital role in identifying students who may benefit from early help

or a referral to the local authority children's social care services. See KCSiE and Working together to safeguard children 2018 (WTtSC).

College staff can seize any prohibited item found as a result of a search. They can also seize any item, they consider harmful or detrimental to College discipline. The Vice Principal (VP) should be informed of any such seizure.

When undertaking a search the staff member concerned must be the same sex as the student being searched; and there must be a witness (also a staff member) and, if possible, they should be the same sex as the student being searched. There is a limited exception to this rule. A member of staff can carry out a search of a student of the opposite sex 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.

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.

Members of staff can only use such force as is reasonable given the circumstances when conducting a search for knives or weapons, alcohol, illegal drugs or drug paraphernalia, stolen items, tobacco and cigarette papers (under 16s), fireworks, pornographic images or articles that have been or could be used to commit an offence or cause harm.

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.

Where a member of staff finds alcohol, they will dispose of it and not return it to the student. They will inform the VP of the seizure and subsequent disposal.

Where a member of staff finds controlled drugs, they will inform the VP immediately. The seized controlled drugs will be delivered to the police as soon as possible but may be disposed of if the VP 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 member of staff believes them to be harmful or detrimental to good order and discipline and inform the VP. 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, they will inform the VP immediately who will liaise with the relevant authorities.

Where a member of staff finds tobacco or cigarette papers they may retain or dispose of them. As with alcohol, this means that the College can dispose of tobacco or cigarette papers as they think appropriate but this will not include returning them to the student.

Fireworks found as a result of a search may be retained or disposed of but should not be returned to the student.

If a member of staff finds a pornographic image, they may dispose of the image unless they have reasonable grounds to suspect that its possession constitutes a specified offence (i.e. it is extreme or child pornography) in which case the VP/DSL or another member of the College Safeguarding Team must be informed immediately. The VP will liaise with the relevant authorities.

Where an article that has been (or is likely to be) used to commit an offence or to cause personal injury or damage to property in which case the VP must be informed immediately. The VP will liaise with the relevant authorities.

Where the person conducting the search finds an electronic device that is prohibited by the College rules or that they reasonably suspects has been, or is likely to be, used to commit an offence or cause personal injury or damage to property, they may examine any data or files on the device where there is a good reason to do so. They may also delete data or files if they think there is a good reason to do so, unless they are going to give the device to the police. This power applies to all schools and colleges, and there is no need to have parental consent to search through a young person's mobile phone if it has been seized in a lawful 'without consent' search and is prohibited by the College rules or is reasonably suspected of being, or being likely to be, used to commit an offence or cause personal injury or damage to property.

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 should 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 College rules.
- If an electronic device that is prohibited by the College rules has been seized and the member of staff has reasonable grounds to suspect that it contains evidence in relation to an offence, they must inform the VP immediately who will liaise with the relevant authorities. Material on the device that is suspected to be evidence relevant to an offence, or that is a pornographic image of a child or an extreme pornographic image, will not be deleted prior to giving the device to the police.
- If a staff member does not find any material that they suspect is evidence in relation to an offence, and decides not to give the device to the police, they can decide whether it is appropriate to delete any files or data from the device or to retain the device as evidence of a breach of College discipline.

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. 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. They can also seize any item, however found, which they consider harmful or detrimental to College discipline. Where any article is reasonably suspected to be an offensive weapon, it must be passed to the police.

The College is 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 but the College will do so. The College 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.

The member of staff's power to search outlined above does not enable them to conduct a strip search.

### **Searching a student's room**

This guidance is applicable to the boarding houses and host family homes.

A member of staff is able to search bedrooms, lockers and desks or other personal spaces at the College for any item provided the student agrees. Schools and colleges can make it a condition of having the bedroom, locker or space that the student agrees to have these searched. If the student withdraws their agreement to search, a search may be conducted any of the prohibited items listed above.

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.

Boarding staff should be mindful of the above and seek permission from the Principal or Vice Principal before carrying out a search of a student's room and their possessions. There should never be less than two members of staff and the student present at each search, unless the Principal or Vice Principal authorises it.

If a student is found to be in possession of a prohibited item listed as above, then the staff member should alert the DSL (or deputy) and the student should be sanctioned in line with the College's behaviour policy to ensure consistency of approach.

## **Recording a search**

Any search by a member of staff for a prohibited item listed above and all searches conducted by police officers should be recorded in the College's safeguarding reporting system and in the NMS records, including whether or not an item is found. This will allow the DSL (or deputy) and Senior Management Team to identify possible risks and initiate a safeguarding response if required.

All search records must include the following information:

- the date, time and location of the search;
- which student was searched;
- who conducted the search and any other adults or students present;
- what was being searched for;
- the reason for searching;
- what items, if any, were found; and
- what follow-up action was taken as a consequence of the search.

## **Informing parents**

The Senior Tutor will write to the parents within 24 hours of the search to inform them that their son/daughters room/possessions have been searched. It will include an account of why the room/possessions were searched, that it was carried out in line with the policy and what was found during the search. If banned items were recovered, the Senior Tutor should inform the parents of next steps and include a copy of this policy and Promoting Good Behaviour policy with the email.

Any complaints about searching, screening or confiscation should be dealt with through the normal College complaints procedure.

## **Screening**

Screening can help provide reassurance to students, staff and parents that the College is taking measures to create a calm, safe and supportive environment. The College doesn't currently screen students but if the College decided to introduce screening we would inform parents and students in advance to explain what the screening would involve and why it will be introduced.

The College 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.

The College's statutory power to make rules on student behaviour and duty as an employer to manage the safety of staff, pupils and visitors enables the College to impose a requirement that pupils undergo screening. Any member of College staff can screen students.

If a student refuses to be screened, the College may refuse to have the student on the premises. Health and safety legislation requires that the College is managed in a way which 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.

Where a student has a disability, schools should make any reasonable adjustments to the screening process that may be required.

If a student fails to comply, and the College does not let the student in, the College has not excluded the student and the student's absence should be treated as unauthorised. The student should comply with the rules and attend.

This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

If a student is suspected of being, or being likely to be, used to commit an offence or cause personal injury or damage to property.

Complaints about screening should be dealt with through the normal College complaints procedure.

## **Confiscation**

### **Items found as a result of a search**

An authorised staff member carrying out a search can confiscate any item that they have reasonable grounds for suspecting:

- poses a risk to staff or students;
- is prohibited, or identified in the College rules for which a search can be made; or
- is evidence in relation to an offence.

### **Prohibited or illegal items**

**Controlled drugs** must be delivered to the police as soon as possible unless there is a good reason not to do so. In these cases, the member of staff must safely dispose of the drugs. In determining whether there is a good reason to dispose of controlled drugs, the member of staff must have regard to the following guidance below issued by the Secretary of State.

The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the controlled drug. When 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. If the member of staff is in doubt about the safe disposal of controlled drugs, they should deliver them to the police.



**Other substances** which are not believed to be controlled should also be delivered to the police, or disposed of as above, if the member of staff believes they could be harmful.

Where a person conducting a search finds alcohol, tobacco, cigarette papers or fireworks, they should dispose of them as they think appropriate but should not return them to the student.

If a member of staff finds a **pornographic image**, they may dispose of the image unless they have reasonable grounds to suspect that its possession constitutes a specified offence (i.e. it is extreme or an indecent image of a child) in which case it must be delivered to the police as soon as reasonably practicable. Members of staff should never intentionally view any indecent image of a child (also sometimes known as nude or semi-nude images). Staff must never copy, print, share, store or save such images. See below for more information on electronic devices.

Where a member of staff finds **stolen items**, these must be delivered to the police as soon as reasonably practicable. However, if there is good reason to do so, the member of staff may also return the item to the owner, or retain or dispose of it if returning them to their owner is not practicable. In determining whether there is a good reason to return the stolen item to its owner or retain or dispose of the item, the member of staff must have regard to the following guidance issued by the Secretary of State in paragraph below.

The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the seized article. In taking into account the relevant circumstances, the member of staff should consider the following:

- the value of the item - it would not be reasonable or desirable to involve the police in dealing with low value items such as pencil cases, though College staff may judge it appropriate to contact the police if the items are valuable;
- whether the item is banned by the College;
- whether retaining or returning the item to the owner may place any person at risk of harm; and
- whether the item can be disposed of safely.

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

Items that have been (or are likely to be) used to commit an offence or to cause personal injury or damage to property should be delivered to the police as soon as reasonably practicable, returned to the owner, retained or disposed of. In deciding what to do with such an item, the member of staff must have regard to the guidance issued by the Secretary of State in the two paragraphs below.

The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether the item should be delivered to the police, retained, returned to the owner or disposed of. In taking into account all relevant circumstances the member of staff should consider:

- whether it is safe to dispose of the item; and
- whether and when it is safe to return the item.

If a member staff suspects a confiscated item has been used to commit an offence or is evidence in relation to an offence, the item should be delivered to the police.

Members of staff should use their judgement to decide to return, retain or dispose of any other items banned under the College rules. In deciding what to do with such an item, the member of staff must have regard to the guidance issued by the Secretary of State in paragraph below.

The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the seized item. In taking into account all relevant circumstances, the member of staff should consider:

- the value of the item;
- whether it is appropriate to return the item to the student or parent; and
- whether the item is likely to continue to disrupt learning or the calm, safe and supportive environment of the College.

Members of staff should follow any additional guidance and procedures on the retention and disposal of items put in place by the College.

### **Electronic devices**

Electronic devices, including mobile phones, can contain files or data which relate to an offence, or which may cause harm to another person. This includes, but is not limited to, indecent images of children, pornography, abusive messages, images or videos, or evidence relating to suspected criminal behaviour.

As with all prohibited items, staff should first consider the appropriate safeguarding response if they find images, data or files on an electronic device that they reasonably suspect are likely to put a person at risk.

Staff may examine any data or files on an electronic device they have confiscated as a result of a search, as defined in the paragraph below, if there is good reason to do so.

If the member of staff conducting the search suspects they may find an indecent image of a child (sometimes known as nude or semi-nude images), the member of staff should never intentionally view the image, and must never copy, print, share, store or save such images. When an incident might involve an indecent image of a child and/or video, the member of staff should confiscate the device, avoid looking at the device and refer the incident to the DSL (or deputy) as the most appropriate person to advise on the College's response. Handling such reports or concerns can be especially complicated and colleges should follow the principles as set out in KCSiE. The UK Council for Internet Safety also provides the following guidance to support school staff and designated safeguarding leads: 'Sharing nudes and semi-nudes: advice for education settings working with children and young people'.

If a member of staff finds any image, data or file that they suspect might constitute a specified offence, then they must be delivered to the police as soon as is reasonably practicable.

In exceptional circumstances members of staff may dispose of the image or data if there is a good reason to do so. In determining a 'good reason' to examine or erase the data or files, the member of staff must have regard to the following guidance issued by the Secretary of State in the two paragraphs below.

In determining whether there is a 'good reason' to examine the data or files, the member of staff should reasonably suspect that the data or file on the device has been, or could be used, to cause harm, undermine the safe environment of the school and disrupt teaching, or be used to commit an offence.

In determining whether there is a 'good reason' to erase any data or files from the device, the member of staff should consider whether the material found may constitute evidence relating to a suspected offence. In those instances, the data or files should not be deleted, and the device must be handed to the police as soon as it is reasonably practicable. If the data or files are not suspected to be evidence in relation to an offence, a member of staff may delete the data or files if the continued existence of the data or file is likely to continue to cause harm to any person and the pupil and/or the parent refuses to delete the data or files themselves.

### **Confiscation as a disciplinary penalty**

Schools' and college's general power to discipline enables a member of staff to confiscate, retain or dispose of a student's property as a disciplinary penalty, where reasonable to do so (Section 91 of the Education and Inspections Act 2006.)

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.