

Blackfen School for Girls



Screening, Searching, Confiscation Policy

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	Date	Name	Signature
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The Governing Body of Blackfen School for Girls adopted this Policy on Screening, Searching and Confiscation on 9th July 2020.

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Statutory statement:

Blackfen School provides a written statement of general principles to guide the head teacher in determining measures to promote good behaviour in the school and review it with governors every year. This policy forms part of our Behaviour Charter (September 2019) and is linked to the non-statutory advice and statutory guidance from the Department for Education (January 2018).

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.

Rationale:

The purpose of this policy is to explain the school's powers of screening and searching students so that school staff have confidence to use them. It also explains the power which the school has to seize and then confiscate items found during a search.

Outcomes:

A positive attitude to learning leads to success. Good behaviour has a positive impact on the life of the school community. Our expectation is that all students have respect for each other, the environment and themselves. Good behaviour ensures a safe school for all. Sometimes it is necessary for staff to follow procedures to search students for any item banned under the school rules as set out in the Behaviour Charter.

Procedures:

Screening (see appendix 1)

The school can require a student 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 student.

Searching with consent (see appendix 2)

Any member of staff can search a student with their consent for any item which is banned by the school.

Searching without consent (see appendix 3)

Any member of staff has the statutory power to search a student or their possessions, without consent, where they have reasonable grounds for suspecting that a student may have a prohibited item. The items that can be searched for under this power are knives or weapons, alcohol, illegal drugs, pornographic images, fireworks and stolen items.

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Confiscation (see appendix 4)

Any member of staff can seize any banned or prohibited item found as a result of a search or which they consider harmful or detrimental to school discipline.

Dealing with electronic devices (see appendix 5)

Recording

- Any incident where a student is searched must be reported immediately to the line manager of the member of staff involved.
- Any incident where a student is searched must be reported immediately to the Student Welfare Team.
- The Student Welfare Team must record the incident and inform parents/carers that the search has taken place.

Telling parents 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 student'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.

Key roles

Any member of staff can screen or search a student using the correct procedures. Any member of staff can confiscate banned or prohibited items.

The Student Welfare Team must always be involved in any search.

The Student Welfare Team has the responsibility of recording and monitoring incidents of screening and searching and should report these to the Deputy Head Teacher (Personal Development, Behaviour and Welfare).

Appendix 1

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.

Schools' statutory power to make rules on student behaviour and their duty as an employer to manage the safety of staff, students and visitors enables them to impose a requirement that students undergo screening. ANY member of staff can screen students.

- If a student refuses to be screened, the school may refuse to have the student on the premises. Health and safety legislation require a school to be 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.
- If a student fails to comply, and the school does not let the student in, the school has not excluded the student and this absence will be treated as unauthorised. The student must 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.

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Appendix 2

Searching with consent

Schools' common law powers to search:

School staff can search students **with their consent** for any item.

- Schools are not required to have formal written consent from the student for this sort of search – it is enough for the member of staff to ask the student to turn out his or her pockets or if the member of staff can look in the student's bag or locker and for the student to agree.
- The banned items in school are outlined in the Behaviour Charter
- 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 sanction as set out in the Behaviour Charter.
- 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 member of staff can apply an appropriate sanction as set out in the Behaviour Charter.

Appendix 3

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 (see Behaviour Charter) which has been identified in the rules as an item which may be searched for.

A student can be searched if there are reasonable grounds for suspecting that a student is in possession of a prohibited or banned item.

Establishing grounds for a search

A member of staff 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 member of 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 be suspicious.

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.

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

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When searching it is important that a member of staff is of the same sex as the student being searched and there is a witness present who, if possible, is also of the same sex.

There is a limited exception to this rule. You can carry out a search of a student of the opposite sex to you/ or without a witness present, but only where you reasonably believe that there is a risk of 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.

During the search

Extent of the search – clothes, possessions and lockers

What the law says:

The member of staff conducting the search 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 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 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 practicable to summon another member of staff.

The power to search without consent enables a personal search but not an intimate search which only a person with more extensive powers (e.g. a police officer) can do.

Appendix 4

Confiscation

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

- 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.

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Items found as a result of a 'without consent' search

What the law says:

A member of staff carrying out a search can seize anything they have reasonable grounds for suspecting is a prohibited or banned item (that is a weapon/knife; alcohol; illegal drugs or stolen items; tobacco and cigarette papers, fireworks and pornographic images) or is evidence in relation to an offence.

Where **alcohol** is found it must be disposed of.

Where **controlled drugs** are found, these must be delivered to the police as soon as possible unless there is a good reason not to do so – in which case the drugs must be disposed of.

Where **other substances** are found 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. 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 **stolen items** are found, these must be delivered to the police unless there is a good reason not to do so – in which case the stolen item should be returned to the owner. These stolen items may be retained or disposed of if returning them to their owner is not practicable. Any **weapons or items which are evidence of an offence** must be passed to the police as soon as possible.

Where **tobacco or cigarette papers** are found they must be disposed of.

Where **fireworks** are found they must be disposed of.

Where **pornographic images** are found the image must be kept as if may constitute a specified offence. The image must be shown to the Designated Safeguarding Lead who must decide if the image should be delivered to the police. This includes images on mobile devices.

Where an article is found which has been (or could be) used to commit an offence or to cause personal injury or damage to property it must be delivered to the police or disposed of.

Where an item is found which is banned under the school rules they must be disposed of.

It is up to the school 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', the school will take into account all relevant circumstances and use professional judgement to determine whether they can safely dispose of a seized article.
- In determining what "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.
- 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).
- Disposing of alcohol, tobacco, cigarette papers, fireworks, articles which could be used to commit an offence, does not include returning it to the student.

Appendix 5

Statutory guidance for dealing with electronic devices:

- Where the person conducting the search finds an electronic device that is prohibited by the school 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 there is no need to have parental consent to search through a young person's mobile phone if it has been seized in

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a lawful 'without consent' search and is prohibited by the school 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 school rules.
- If an electronic device that is prohibited by the school 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 give the device to the police as soon as it is reasonably practicable. 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, should 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 school discipline.
- 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 policy. The UK Council for Child Internet Safety.

Related documents: Behaviour Charter. Home School Agreement. Teaching and Learning Charter, Use of Reasonable force policy.