

Laleham Gap School – LGS43 Searching & Confiscation Policy

Kent County Council

Education Learning and Skills Directorate



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Contents

1.	Security Protective Marking	Page 3
2.	Introduction	Page 3
	2.1 Legislation	
	2.2 Schools Obligation under Human Rights (ECHR)	
	2.3 Searching with Consent	
	2.4 Searching without Consent	
3.	Authorising Members of Staff	Page 4
	3.1 Training for School Staff	
	3.2 Searches for items banned by school rules	
	3.3 Location of Searches	
	3.4 During the Search	
	3.5 Without Consent 'Personal Search'	
	3.6 Lockers & Desks	
	3.7 Use of Force	
	3.8 After the Search	
	3.9 Items found 'without consent search'	
	3.10 Statutory Guidance on disposal of controlled drugs & Stolen Items	
	3.11 Statutory Guidance in dealing with electronic devices	
	3.12 Telling Parents & Dealing with Complaints	
4.	Associated Resources	Page 8
	4.1 Legislative Links	

Laleham Gap School – LGS43

Searching & Confiscation Policy

1. Security Protective Marking

Not Protective Marked

2. Introduction

2.1 LEGISLATION.

This advice relates to the following legislation: 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 Act 1974

2.2 EUROPEAN CONVENTION ON HUMAN RIGHTS

Schools' obligations under the European Convention on Human Rights (ECHR) under article 8 of the European Convention on Human Rights pupils have a right to respect for their private life. In the context of these particular powers, this means that pupils 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

2.3 SEARCHING WITH CONSENT

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

Also note:

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 pupil to agree.

Schools should make clear in their school behaviour policy and in communications to parents and students what items are banned.

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.

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.

2.4 SEARCHING WITHOUT CONSENT

Legally the following items can be searched for:

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

- 1) You may search if you are a Head teacher or a member of school staff and authorised by the head teacher.
- 2) You must be the same sex as the student 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 student being searched.
- 3) There is a limited exception to this rule. 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.
- 4) If you have reasonable grounds for suspecting that a student is in possession of a prohibited item you can search.

3. Authorising Members of Staff

Head teachers should decide who to authorise to use these powers. There is no requirement to provide authorisation in writing.

Staff, other than security staff, can refuse to undertake a search. The law states that head teachers 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.

3.1 TRAINING FOR SCHOOL STAFF

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.

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.

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.

3.2 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 head teacher in accordance with section 89 of the Education and Inspections Act 2006. In the case of Academies, the school rules must be determined in accordance with the School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012. Separate advice on school rules is available in 'Behaviour and Discipline – a guide for head teachers and school staff' via the link under Associated Resources.

Under section 89 and the School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012, the head teacher must publicise the school behaviour policy, in writing, to staff, parents and students at least once a year.

3.3 LOCATION OF SEARCHES

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.

The powers only apply in England.

3.4 DURING THE SEARCH

EXTENT OF THE SEARCH – CLOTHES, POSSESSIONS, DESKS AND LOCKERS

What the law says:

- 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.
- 'Possessions' means any goods over which the student has or appears to have control – this includes desks, 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.

3.5 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.

3.6 LOCKERS AND DESKS

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

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.

3.7 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.

3.8 AFTER THE SEARCH

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.

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.

3.9 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 (that is the items identified in paragraph 3 (1-4) on page 4) 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 student.
- 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 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 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.

3.10 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.

The member of staff must have regard to the following guidance issued by the Secretary of State¹² 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 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.

3.11 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.

4. Associated Resources

- Link to Use of Reasonable Force – advice for head teachers, staff and governing bodies
<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0077153/use-ofreasonable-force-advice-for-school-leaders-staff-and-governing-bodies> Link to Behaviour and Discipline in Schools – guidance for governing bodies
<http://www.education.gov.uk/schools/pupilsupport/behaviour/g0076647/guidance-for-governing-bodies-on-behaviour-and-discipline>
- Link to Behaviour and Discipline in Schools – advice for head teachers and school staff
<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0076803/advice-for-headteachers-and-school-staff-on-behaviour-and-discipline>
- Link to Information Commissioner for advice on the Data Protection Act
http://www.ico.gov.uk/for_organisations/data_protection.aspx

4.1 LEGISLATIVE LINKS

- The Education Act 1996
- <http://www.legislation.gov.uk/ukpga/1996/56/contents>
Education and Inspections Act 2006
- <http://www.legislation.gov.uk/ukpga/2006/40/contents>
<http://www.legislation.gov.uk/ukpga/2006/40/contents>
- The Schools (Specification and Disposal of Articles) Regulations 2012
<http://www.legislation.gov.uk/>
- The School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012
- <http://www.legislation.gov.uk/uksi/2012/619/contents/made>
Health and Safety at Work etc Act 1974
<http://www.hse.gov.uk/legislation/hswa.htm>