



Screening, Searching & Confiscation Policy

RATIONALE AND AIM

Samuel Whitbread Academy (SWA) aim to provide a safe and secure environment for all students, staff and visitors. SWA staff can request to undertake a search on any student for an item if the staff member believes that the student has a prohibited item, the staff member may seize any prohibited item(s) found as a result of a search and retain the right to carry out screening of students, if necessary.

POLICY

What legislation does this policy relate to?

- Education and Inspections Act 2006
- The Academies (Specification and Disposal of Articles) Regulations 2012
- The Academy Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012
- Health and Safety at Work etc. Act 1974
- Searching, screening and confiscation Advice for headteachers, school staff and governing bodies January 2018

SEARCHING

SWA staff can request to search a student for any item if they believe the item to be a prohibited item. Staff are not required to have formal written consent from the student. It is enough for a member of staff to ask the student to turn out his or her pockets or to ask whether the member of staff can look in the student's bag or locker and for the student to verbally agree.

SWA staff are authorised by the Principal to search students and have the 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, but not limited to:

- knives or weapons
- alcohol
- illegal drugs
- stolen items
- tobacco and cigarette papers
- fireworks
- pornographic images
- any article that the member of staff reasonably suspects has been, or is likely to be, used;
 - to commit an offence
 - to cause personal injury to, or damage to the property of, any person including the student

SWA staff can also search for any item banned by the Academies' rules which has been identified in the rules as an item which may be searched for. Specifically:

- Lighters or matches
- Paint or markers
- Aerosols
- Laser pens or pointers

SWA staff may search regardless of whether the student is found after the search to have that item. This includes circumstances where staff suspects a student of having items such as illegal drugs or stolen property which is later found not to be illegal or stolen.

If a member of staff suspects a student has a prohibited or banned item in his/her possession, they can instruct the student to turn out his/her pockets or bag and if the student refuses, the student will face a fixed term exclusion for refusing a search. If the member of staff suspects that a student who is refusing to be searched is carrying something illegal or dangerous the police will be called to carry out a search and their parents informed.

RULES FOR MEMBERS OF STAFF CONDUCTING SEARCHES

- Staff should be the same sex as the student being searched, if the student is to be touched in any way. There is a limited exception to this rule. Staff can carry out a search of a student of the opposite sex and without a witness present, but only where they reasonably believe 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.
- The person conducting the search must 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. 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.
- '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.
- A member of staff should never undertake a search if he/she thinks there is any risk to their personal safety or that of other staff or students (including the student being searched). In these circumstances a member of staff will call the police to undertake a search. The Principal should be informed if the police are called.
- Members of staff can use such force as is reasonable (for more information please refer to the SWA Physical Intervention Policy – included in the Behaviour Policy) 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 Academy rules.

CONFISCATION

SWA staff can seize any prohibited item found as a result of a search. They can also seize any item found, which they consider harmful or detrimental to Academy discipline. SWA reserve the right to hand any **offensive weapons** to the police. **Offensive weapons** are deemed as anything that could be used to cause harm to others.

The Academy's 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 and within the guidelines set out in this policy.

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.

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 should give it to a member of the Senior Team who will dispose of it. Alcohol must not be returned 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 Principal 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. 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 staff 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 staff can dispose of tobacco or cigarette papers as they think appropriate but this must not include returning them to the student.
- **Fireworks** found as a result of a search may be retained or disposed of but must 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 by a senior member of staff.

STAFF MUST ENSURE THAT THEY CONTACT THE DSL AND UPDATE CPOMS (SAFEGUARDING REPORTING SYSTEM) AS PER THE SAFEGUARDING POLICY.

- Where a member of staff finds an item which is banned under the academy rules they should take into account all relevant circumstances and use their professional judgment 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.

STATUTORY GUIDANCE ON THE DISPOSAL OF CONTROLLED DRUGS AND STOLEN ITEMS

It is up to SWA Senior Team 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 judgment 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, staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks). If in doubt, a member of the Senior Team should be consulted.

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 student, 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 break the Academy rules.”

If inappropriate material is found on the device it is up to the member of staff to decide whether they should **delete** that material, **retain** it as evidence (of a criminal offence or a breach of Academy discipline) or whether the material is of such seriousness that it requires the involvement of the police.

The viewing of inappropriate material must only be done by a member of staff with a witness. All incidents of viewed material which is illegal (e.g. images of children or illegal pornography) must be reported to the Principal, Vice Principal or member of the Safeguarding Team as soon as possible and reported to the police. Devices with illegal material on them must be placed in secure locked storage. A record of the viewing of the material must be kept and signed by both members of staff who watched it. Members of staff should only watch illegal material once.

Screening

SWA do not routinely require students to undergo screening but retain the right to carry this out if necessary.

What the law allows:

- SWA 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.
- SWA 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 academy staff can screen students.

Also note:

- If a student refuses to be screened, SWA may refuse to have the student on the premises. Health and safety legislation requires an Academy 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 Academy does not let the student in, the Academy has not excluded the student and the student’s absence should be treated as unauthorised. The student must comply with the rules and attend. Parents will be made aware of the decision.
- This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

Telling parents and dealing with complaints

- SWA 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 although it is good practice to do so.
- SWA 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.
- Complaints about screening or searching should be dealt with through the normal procedure – refer to SWA Parental Complaints Policy.

Links to other policies:

SWA staff can view CCTV footage, if available, in order to make a decision as to whether to conduct a search for an item. Refer to SWA CCTV Policy.

- CCTV Policy
- Drugs & Alcohol Policy
- Behaviour Management Policy
- Parental Complaints Policy

1. Monitoring and Evaluation

SWA hold a variety of records concerning incidents of misbehavior. Information concerning incidents of misbehavior are reported to the local governing bodies on a regular basis.

It is the responsibility of the governing body to monitor this information and to ensure that this policy is administered fairly and consistently.

2. Implementation & Review

This policy will be made known to all staff, parents/carers and governors, and published on the Academy website. Copies are also available upon request from the Academy office. This policy will be reviewed two yearly or as required.

3. Author and Date

M Gibbs Associate Principal, Children & Families– March 2018