



Budmouth College

Searching and Confiscating Policy

Governors' Committee responsible:	SAC and Personnel
Link Senior Leader responsible:	Jayne Simmonite
Date reviewed:	9 th November 2016
Next review date:	January 2020

Policies	Documents
Trips and Visits	Education Act 1996
Drugs	Education and Inspections Act 2006
Use of Reasonable Force	The Colleges (Specification and Disposal of Articles) Regulations 2012
Safeguarding and Child Protection	The College Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012
Uniform Policy	Health and Safety at Work etc. Act 1974
Code of Conduct	Keeping Children Safe in Education 2016
Health and Safety	Sexting in schools and colleges UKCCIS
	European Convention on Human Rights (ECHR)
	Searching, Screening and Confiscation (Advice for headteachers, school staff and governing bodies) February 2014

Working Together, Creating Opportunities

The Policy has been reviewed using the equality impact assessment initial screening record and positive impact is explicitly intended and very likely.

All *policies* can be found on the College 'R' drive in the Policies folder.

Equality Impact Assessment – initial screening record

1. What area of work is being considered?

Searching and Confiscation Policy

2. Upon whom will this impact?

All stakeholders but particularly students.

3. How would the work impact upon groups; are they included and considered?

The Equality Strands	Negative impact	Positive impact	No impact
Minority ethnic groups		Yes	
Gender		Yes	
Disability		Yes	
Religion, Faith or belief		Yes	
Sexual Orientation		Yes	
Transgender		Yes	
Age <small>(N/A to pre-school and school children)</small>		Yes	
Rurality			Yes

4. Does data inform this work, research and/or consultation, and has it been broken down by the equality strands?

	NO	YES	Uncertain
Minority ethnic groups		Yes	
Gender		Yes	
Disability		Yes	
Religion, Faith or belief		Yes	
Sexual Orientation		Yes	
Transgender		Yes	
Age		Yes	
Rurality			Yes

Does the initial screening highlight potential issues that may be illegal? NO

Further comments:-

It is in line with current Government guidance.

Do you consider that a full Equality Impact Assessment is required? NO

Initial screening carried out by Jayne Simmonite

Signed

Date: 9th November 2016

Comment by Principal:

Date

Budmouth College Searching and Confiscation Policy

Searching

Searching with consent

College staff can search a student for any item if the student agrees.

1) The College is 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 student to agree.

2) Colleges should make clear in their College Code of Conduct and in communications to parents and students what items are banned.

3) 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 College's Code of Conduct.

4) 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, Colleges can apply an appropriate disciplinary penalty.

Searching Without Consent

Authorised College staff 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:

o knives or weapons

o alcohol

o illegal drugs

o stolen items

o tobacco and cigarette papers

o fireworks

o pornographic images

o any article that the member of staff reasonably suspects has been, or is likely to be, used:

i) to commit an offence,

ii) to cause personal injury to, or damage to the property of, any person (including the student)

o Principal and authorised staff 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.

Who can do the search?

Authorised staff 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.

There is a limited exception to this rule. Staff 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.

When can authorised staff do a search?

Authorised staff can search if they have reasonable grounds for suspecting that a student is in possession of a prohibited item.

Also note:

The requirement that the searcher is the same sex as the student and that a witness is present will continue to apply in nearly all searches. Where it is practicable to summon a staff member of the same sex as the student and a witness then the teachers wishing to conduct a search must do so.

Authorising members of staff

1) The Principal will decide who to authorise to use these powers. There is no requirement to provide authorisation in writing.

2) Staff can refuse to undertake a search.

3) When designating a member of staff to undertake searches under these powers, the Principal should require the member of staff to have read this policy to enable them to carry out their responsibilities.

Establishing grounds for a search

- 1) 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.
- 2) 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.
- 3) The powers allow College 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 is later found not to be illegal or stolen.
- 4) College staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item.

Location of a search

- 1) 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.
- 2) The powers only apply in England.

During the search

Extent of the search – clothes, possessions and lockers

- 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.

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.

Lockers

- 1) Under common law powers, the College is able to search lockers for any item provided the student agrees. The College can also make it a condition of having a locker that the student consents to have these searched for any item whether or not the student is present.
- 2) 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.

Use of force

- 1) 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 College rules.
- 2) Please see Budmouth College Reasonable Force Policy

Confiscation

- College 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 College discipline.

Colleges' 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 College (or any public body) must be justified and proportionate.

The powers to search in the Education Act 1996 are compatible with Article 8. If the College is exercising those powers lawfully it should have no difficulty in demonstrating that it has also acted in accordance with Article 8. This advice will assist the College in deciding how to exercise the searching powers in a lawful way.

Items found as a result of a "with consent" search

1) 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.

2) 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.

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 may retain or dispose of it. This means that Colleges 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 Colleges 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 College 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.

Disposal of Controlled Drugs

General Power to Confiscate

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.

Where the person finds 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 new psychoactive substances or "legal highs" (NPS). These are designed to mimic the effect of illegal drugs but are structurally different enough to avoid being classified as illegal substances under the Misuse of Drugs Act. Despite being labelled as legal these substances are not always safe to use and often contain controlled drugs making them illegal to possess. If school staff are unable to identify the legal status of a drug, it should be treated as a controlled drug (DfE and ACPO drug advice for schools September 2012).

- The College reserves the right to carry out a search of student's lockers, desks and **ALL** possessions when staff have reasonable grounds to suspect that the student is in possession of illegal substances. This search will be conducted by 2 staff with the student present. – This will be a member of staff of the same sex, ideally with a witness of the same sex. If the staff involved have any concerns they can refer to a member of the Senior Leadership team immediately. Parent/Carers will also be informed. Staff can seize any prohibited item which they consider harmful.
- Following a search, whether or not anything is found the member of staff should make a record of the person searched, the reason for the search, the time and the place, who was present and not the outcomes and any follow-up action. This should be done via email to the relevant Tutor for example 9MCW (this means that the Tutor, Progress Leader, Behaviour Support Leader, and Line Manager get the email), the Principal and CC to the Designated Safeguarding Lead. **If there is any sensitive information this should only be disclosed to the Designated Safeguarding Lead who can ensure that the student's rights and needs are met and that the information is only shared with appropriate agencies and relevant staff in line with the Safeguarding Policy and Child Protection Procedures.**

- The College should normally inform the individual student's parents/carers where alcohol, illegal drugs or potentially harmful substances are found and if necessary seek their permission to share information with an outside agency that may be able to support the student.
- Complaints about searching should be dealt with through the normal College complaints procedure.

Controlled Drugs

In taking temporary possession and disposing of suspected controlled drugs the College should:

- Ensure that the member of staff doing this is a member of the Leadership Team and that a second adult witness is present throughout (if a member of the Leadership Team is not available it should be the most senior member of staff present e.g. Trip Leader);
- Seal the sample in a plastic bag and include details of the date and time of the seizure/find and witness present;
- Store it in a secure location, such as a safe or other lockable container with access limited to senior members of staff;
- Notify the police without delay, who will collect it and then store or dispose of it in line with locally agreed protocols. The law does not require the College to divulge to the police the name of the student from whom the drugs were taken but it is advised to do so;
- Record full details of the incident, including the police reference number and email to the Tutor (e.g. 8SJO which results in the relevant staff in the year team being informed), the Principal and CC to the Designated Safeguarding Lead. **If there is any sensitive information this should only be disclosed to the Designated Safeguarding Lead who can ensure that the student's rights and needs are met and that the information is only shared with appropriate agencies and relevant staff in line with the Safeguarding Policy and Child Protection Procedures.**
- Inform parents/carers, unless this is not in the best interests of the student and if necessary seek their permission to share information with an outside agency that may be able to support the student;
- Identify any safeguarding concerns and develop a support and disciplinary response.

Disposal of Stolen Items

It is up to teachers to decide whether there is a good reason not to deliver stolen items to the police. In determining what is a "good reason" for not delivering stolen items to the police the member of staff must have regard to the following guidance issued by the Secretary of State¹¹:

In determining what is a 'good reason' for not delivering 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, College staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks).

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. Guidance should be sought from the BSL, DSL or SLT before doing this. 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 in liaison with the BSL, DSL or SLT.

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 College 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 College discipline) or whether the material is of such seriousness that it requires the involvement of the police.

If during a search a teacher finds material which concerns them and they reasonably suspect the material has been or could be used to cause harm or commit an offence, they can seek advice from the BSL or/and the DSL as to whether they should delete the material or retain it as evidence of a criminal offence or a breach of College discipline. They can also ask the BSL or/and DSL whether the material is of such seriousness that the police need to be involved.

However, just as in most circumstances it is not recommended that College staff view imagery, it is recommended that the College should not search through devices and delete imagery unless there is good and clear reason to do so and this should only be done if the DSL, BSL or SLT advise it.

It is recommended that in most cases young people are asked to delete imagery and to confirm that they have deleted the imagery. Young people should be given a deadline for deletion across all devices, online storage or social media sites.

Young people should be reminded that possession of youth produced sexual imagery is illegal. They should be informed that if they refuse or it is later discovered they did not delete the image they are committing a criminal offence and the police may become involved.

All of these decisions need to be recorded; including times, dates and reasons for decisions made and logged in the safeguarding records.

Parents and carers should also be informed unless this presents a further risk to the young person.

At this point the College may want to invoke disciplinary measures to discourage young people from sharing, creating or receiving images but this is at the discretion of Principal.

Also note:

Teachers should also take account of any additional guidance and procedures on the retention and disposal of items that have been put in place by the College.

Youth Produced Sexual Imagery

Please refer to the Safeguarding Policy and Child Protection Procedures for guidance on how to handle youth produced sexual imagery (sometimes referred to as sexting) and always report these cases to the DSL.

Securing and handing over devices to the police

If any devices need to be seized and passed over to the police then the device(s) should be confiscated and the police should be called. The device should be turned off and placed under lock and key until the police are able to come in and retrieve it.

Deletion of images

If the College has decided that other agencies do not need to be involved in line with the Safeguarding Policy and Child Protection Procedures, then consideration should be given to deleting imagery from devices and online services to limit any further sharing of the imagery.

The Searching, Screening and Confiscation advice highlights that College has the power to search students for devices, search data on devices and delete youth produced sexual imagery.

The Education Act 2011 amended the power in the Education Act 1996 to provide that when an electronic device, such as a mobile phone, has been seized, a teacher who has been formally authorised by the Principal can examine data or files, and delete these, where there is good reason to do so. This power applies to all schools and there is no need to have parental consent to search through a young person's mobile phone.

Interviewing and talking to the young person/people involved

Once the College has assessed a young person as not at immediate risk, it may be necessary to have a conversation with them and decide the best course of action. If possible, the DSL should carry out this conversation. However, if the young person feels more comfortable talking to a different teacher, this should be facilitated where possible.

- When discussing the sharing of youth produced sexual imagery, it is important that the DSL:
- Recognises the pressures that young people can be under to take part in sharing such imagery and, if relevant, supports the young person's parents to understand the wider issues and motivations around this.
- Remains solution-focused and avoids questions such as 'why have you done this?' as this may prevent the young person from talking about what has happened.
- Reassures the young person that they are not alone and the College will do everything that they can to help and support them.
- Helps the young person to understand what has happened by discussing the wider pressures that they may face and the motivations of the person that sent on the imagery.
- Discusses issues of consent and trust within healthy relationships. Explain that it is not ok for someone to make them feel uncomfortable, to pressure them into doing things that they don't want to do, or to show them things that they are unhappy about. Let them know that they can speak to the DSL if this ever happens.

The purpose of the conversation is to:

- Identify, **without looking**, what the image contains and whether anyone else has been involved.
- Find out who has seen or shared the image and how further distribution can be prevented.

Please see the Safeguarding Policy and Child Protection Procedures for details of recording the incident.

All incidents relating to youth produced sexual imagery need to be recorded on MyConcern. This includes incidents that have been referred to external agencies and those that have not.

Telling parents and dealing with complaints

- 1) The College is not required to inform parents before a search takes place or to seek their consent to search their child.
- 2) There is no legal requirement to make or keep a record of a search.
- 3) Colleges 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.
- 4) Complaints about searching should be dealt with through the normal College complaints procedure.

Associated Resources

Link to Use of Reasonable Force – advice for Principal, staff and governing bodies

<http://www.education.gov.uk/Colleges/studentssupport/behaviour/f0077153/use-of-reasonable-force-advice-for-College-leaders-staff-and-governing-bodies>

Link to Behaviour and Discipline in Colleges – guidance for governing bodies

<http://www.education.gov.uk/Colleges/studentssupport/behaviour/g0076647/guidance-for-governing-bodies-on-behaviour-and-discipline>

Link to Behaviour and Discipline in Colleges – advice for Principal and College staff

<http://www.education.gov.uk/Colleges/studentssupport/behaviour/f0076803/advice-for-headteachers-and-College-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

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 Colleges (Specification and Disposal of Articles) Regulations 2012

<http://www.legislation.gov.uk/>

The College 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>