

SCREENING, SEARCHING AND CONFISCATION POLICY

Date of Policy	October 2018
Approved by Principal	October 2018
Next Review Date	August 2019
Lead for Review	Deputy Head Pastoral

Aim

To provide a clear transparent policy that allows members of staff, volunteers and students to understand roles & responsibilities around search and confiscation.

The policy applies to all staff.

Purpose

Provide guidance and information to staff and students to help them develop the confidence to know what action to take if they are concerned about room searches or personal searches, etc.

Legal Responsibility

The Health and Safety at Work Act 1974 places a duty on employers to ensure, as far as is reasonably practicable, the health, safety and welfare at work of staff, students and other users of its premises and aims to provide a safe, healthy and high quality learning environment. This includes the appropriate policing of Boarding Houses, College property and not limited to personal belonging searches, etc.

This policy also relates to the Education and Inspections Act 2006 and the Misuse of Drugs Act 1971 s.8- Amendment 8 (3.3)

- Ultimate responsibility for this policy and procedure lies with the Principal.
- It is a criminal offence to knowingly allow premises the Colleges own, manage or have responsibility for, to be used by any other person for administration or use of any controlled drugs and the production of such drugs. The law requires that if staff become aware of the use or supply of illicit drugs on the premises, then reasonable action must be taken to prevent this continuing.

Introduction

This policy is intended to give clear guidance on the screening, searching and confiscation of student's property and residential premises and takes into account the 'Department for Education non- statutory guidance (2012) - Screening, Searching and Confiscation – Advice for Head Teachers, staff and governing bodies'.

- College staff can search a student for any item banned under the College rules, if the student agrees. The Principal and staff authorised by them have a statutory power to search students or their possessions, without consent, where they suspect the student has certain prohibited items. The items that can be searched for under this power are knives or weapons, alcohol, illegal drugs and stolen items.
- College staff can seize any banned or prohibited item found as a result of a search or which they consider harmful or detrimental to College discipline.

CATS Canterbury respects the privacy of its students. However, the Colleges reserve the right to enter a student's room, with the student being given the choice of being present, when conducting a room search and without permission when conducting health and safety room checks/cleaning/maintenance inspections or without permission under the direction of the Principal should it be deemed essential.

Screening

The Colleges retain the right to screen students by walk through or hand held metal detectors, without the consent of the student. This type of screening can be carried out by an authorised member of staff but staff must not use physical contact. CATS College does not currently use search equipment but retains the right to do so to ensure the health and safety of staff and other students is not compromised and legislation is complied with.

Room Checks/Brief Inspection

- Room checks are an opportunity for Boarding staff to visually scan rooms for any defects/damages etc. If the Boarding staff suspect or have good reason to believe that a student is hiding under a bed or closet in order to avoid attending College or is hiding someone else in their room then they are authorized to open wardrobes, look under beds and check bathrooms etc. Under these circumstances and particularly at times when room checks occur the opening of wardrobes will not constitute as a room search.
- When Boarding staff enter a student room for a room Inspection the staff member is authorized to conduct a visual search of the room but may not open drawers, etc. without the students permission. The staff member may request a student to open these items whilst conducting a room inspection. A room inspection will not require the student's permission.

Establishing grounds for a search

- The designated person carrying out the search must establish what constitutes reasonable ground for suspicion and document this using the 'search document 'appendix 1' attached to this policy. For example, staff may have heard other students talking about an item or a change in a student's behaviour, a positive drugs test or suspicion of illegal substances in their accommodation
- The powers allow College staff to search regardless of whether a 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 are later found not to be illegal or stolen.

Searching with consent

College's common law powers to search:

- College staff can search students with their consent for any item which is banned by the College rules
- College do not require having formal written consent from the Student for this sort of search – it is enough for the staff member to ask the student to turn out his or her pockets or search their bedroom or locker and for the student to agree.
- If a member of staff suspects a student has a banned item in his/her possession/ accommodation, they can instruct the student to turn out his or her pockets or bag and if the student refuses, the staff member can apply the disciplinary policy.
- The Education Act 2011 allows authorised persons to examine data on electronic devices if they think there is a good reason to do so. In determining a 'good reason' to examine or erase the data or files the authorised staff member must reasonably suspect that the data or file on the 5 device in question has been, or could be, used to cause harm, to disrupt teaching or could break the school rules.

- 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, CATS Colleges can apply the College disciplinary policy.

Searching without consent

Section 550ZA of the Education Act 1996 states: Knives, Weapons, Alcohol, Illegal Drugs and stolen items (referred to in the legislation as ‘prohibited items’) can be searched for without student consent.

- The search can be carried out when there are ‘reasonable grounds’ for suspecting that a student is in possession of a prohibited item. Seek permission from the Principal/ Vice Principal /Deputy Head Pastoral/Welfare Team/SLT. A search under these circumstances may only be undertaken by staff who are authorised by someone in this list.
- Searches without consent can only be carried out on College premises or, if elsewhere, where a member of staff has lawful control or charge of the student, for example a schools trip in England or in a training setting. On a trip this should only be done in exceptional circumstances and usually after obtaining consent from Senior Staff in College whenever possible.
- The legal powers only apply to England.

Searching Procedure

If searching without consent you must have sought permission from the Principal/ Vice Principal /Deputy Head Pastoral/Welfare Team/SLT. A search under these circumstances may only be undertaken by staff who are authorised by someone in this list.

Please see Appendix 1 for the Search Procedure.

Once the search has been completed staff to complete the search form in Appendix 2 and pass it to the Principal/ Vice Principal /Deputy Head Pastoral/Welfare Team/SLT or file as indicated in the procedure.

Searching a Room

- Every search shall be based on timely information and conducted as soon as possible after the information or report is received.
- There will always be present at least two staff members, where this is impossible, a second witness, preferably adult, should be present.
- Before any room search and when it is practicable, room occupants will be notified of the reason for the search and will be afforded an opportunity to be present and voluntarily produce the items or materials sought. The room shall be searched in an orderly manner and all information shall be recorded. (At no time is a person’s body to be searched.)* The room shall be left in the same condition as it was when entered and the student will be notified about the search if not present.
- During the search process, failure to comply with any reasonable request by authorised personnel could result in the student facing formal disciplinary procedure, be asked to be removed from location and search conducted in their absence if looking for prohibited/illegal items. Reasonable requests shall include emptying of pockets, clothing, purses, etc.

- The search form (appendix 1) will be completed and sent to the Principal along with any confiscated items.

Please also refer to Boarding Principles and Practice Policy for protocol on entering a student room.

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, locker, bags, and living accommodation.
- A student’s possessions can only be searched in the presence of the student and another member of staff.

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.

Electronic Devices

Members of staff authorised by the Principal to carry out searches for and of electronic devices and to access and delete data / files from those devices should receive training that is specific and relevant to this role. Specific training is required for those staff who may need to judge whether material that is accessed is inappropriate or illegal.

The examination of the data / files on the device should go only as far as is reasonably necessary to establish the facts of the incident. Any further intrusive examination of personal data may leave the school open to legal challenge.

Following an examination of an electronic device, if the authorised member of staff 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.

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

A record should be kept of the reasons for the deletion of data / files.

Use of force

Reasonable force may be used by the person conducting the search by law but CATS College do not sanction the use of force in searching a student except in exceptional circumstances when the Principal is present or has specifically authorised it.

After the Search

THE POWER TO SEIZE AND CONFISCATE ITEMS – GENERAL

What the law allows:

- The College's general power to discipline, as set out in Section 94 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.
- The Colleges reserve the right to confiscate any DVDs or video games that are not within the age consent bracket of the student and only return the item upon the student's departure from the College.
- If inappropriate material is found on an electronic device it is up to the authorised member of staff 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.

Examples of illegal activity would include:

- Child sexual abuse images (including images of one student held by another student)
- Adult material which potentially breaches the Obscene Publications Act
- Criminally racist material
- Other criminal conduct, activity or materials
- 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.

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 a weapon/knife; alcohol; illegal drugs or stolen items) or is evidence in relation to an offence.
- Where a person conducting a search finds alcohol, they may retain or dispose of it.
- Where they find controlled drugs, 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 staff 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 they find stolen items, 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.
- 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 guidance issued by the Secretary of State¹⁰ (see paragraphs 1 to 4 below):
- Any weapons or items which are evidence of an offence must be passed to the police as soon as possible.
- It is up to staff to decide whether there is a good reason not to deliver stolen items or controlled drugs to the police.
- In determining what a ‘good reason’ is, 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.
- 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, College staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks).
- Schools can dispose of alcohol as they think appropriate but this does not include returning it to the student.

Disposal

Taking temporary possession of and disposal of suspected illegal drugs

The law permits College staff to take temporary possession of a substance suspected of being an illegal drug, for the purposes of preventing an offence from being committed or continued in relation to that drug. Providing that all reasonable steps are taken to destroy the drug or deliver it to a person lawfully entitled to take custody of it. In taking temporary possession and disposing of suspected legal drugs Colleges are advised to:

- Seal the sample in a plastic bag and include details of the date and time of the seizure/find and witness present
- Pass to the Welfare Team or Deputy Head Pastoral
- The Welfare Team and Deputy Head Pastoral will store the items in a secure location, such as the College safe or other lockable container with access limited to senior members of staff
- Notify the police and arrange a time to hand the items to them for disposal. The law does not require a College to divulge to the police the name of the student from whom the drugs were taken Record full details of the incident
- Inform parents/carers, unless this would jeopardise the safety of the student

Disposal of drug paraphernalia:

Needles or syringes found on College premises should be placed in a sturdy, secure container (e.g. a tin with lid) using gloves.

Telling parents and dealing with complaints

The Colleges 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 but as good practice and a form of monitoring the College do expect the search form to be completed and retained in the Boarding Office and a note made on Shackleton
- The Colleges may 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 will be dealt with through the normal College complaints procedure.

Confidentiality and Data Protection

Please refer to the Confidentiality Policy.

Monitoring of Searches

Yearly reviews will be carried out to ensure best practice and policy is adhered to.

Associated Resources:

Searching, screening and confiscation Advice for headteachers, school staff and governing bodies

<https://www.gov.uk/government/publications/searching-screening-and-confiscation>

Use of Reasonable Force – advice for head teachers, staff and governing bodies

<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0077153/use-ofreasonable-forceadvice-for-school-leaders-staff-and-governing-bodies>

Behaviour and Discipline in Schools – guidance for governing bodies

<http://www.education.gov.uk/schools/pupilsupport/behaviour/g0076647/guidance-for-governingbodies-on-behaviour-and-discipline>

Behaviour and Discipline in Schools – advice for head teachers and school staff

<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0076803/advicefor-headteachersand-school-staff-on-behaviour-and-discipline>

Information Commissioner for advice on the Data Protection Act

http://www.ico.gov.uk/for_organisations/data_protection.aspx

DfE advice on the sections of the Education Act 2011

<http://www.education.gov.uk/schools/pupilsupport/behaviour/behaviourpolicies/f0076897/screening-searching-and-confiscation>

Legislative links

Education and Inspections Act 2006

<http://www.legislation.gov.uk/ukpga/2006/40/contents>Health and Safety at Work etc Act 1974

<http://www.hse.gov.uk/legislation/hswa.htm>

Relevant legislation:

- Education Act 1996
- Education and Inspections Act 2006
- Education Act 2011 Part 2 (Discipline)
- The School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012
- Health and Safety at Work etc. Act 1974
- Obscene Publications Act 1959
- Children Act 1989
- Human Rights Act 1998
- Computer Misuse Act 1990

Appendix 1 - Search Procedure

A student's room and belongings can only be searched where there are clear grounds for suspecting something is untoward, the reasons have been explained to the student and where failure to carry out the search would put at risk the welfare of the pupil and others.

Unauthorised items that are left in clear view of any staff member entering the room will be confiscated immediately and documented prior to a further search.

In all circumstances a minimum of 2 staff must conduct the search and in most cases it will be preferable for the student to be present during the search.

All such searched must be documented showing the students name, time and date, noting what was found and who carried out the search. Staff will use a 3 part NCR pad "Student Property Log" to list all items seized. They should inform the student if the items will be stored, immediately disposed of, or turned into the local police to be destroyed. All those present should sign and date the record.

All items should be placed in a "keep safe" bag and the pink copy of the "Student Property Log" placed in the bag and sealed. The yellow copy of the "Student Property Log" will be given to the student as a receipt.

The white copy of the "Student Property Log" should be filed by staff, noting where any items will be stored.

The "Date Returned" section of the form should be completed on the white copy that has been filed. The student and at least one staff member must sign and the white copy must be retained by staff and refiled. (Age specific items will only be returned to the student at an appropriate time ie. When arranged with parents to be sent home or when the student has turned 18.)

The "Date Disposed of" section must be signed by two members of staff on the white copy that has been filed, noting how the item was disposed of and then refiled.

The "Continuity" section of the form should be filled in by staff on the white form that has been filed, if the items are being handed over and taken away from the premises. It should be signed by whoever is accepting responsibility, the reason they are taking it, and signed by at least one witness.

(The only time the "Continuity" section will be filled in on the pink form is when the bag is opened by police. The pink form will then be signed by the police and placed on file.)

In the event that the student is found to be in possession of any illegal substances or offensive weapons then the Student Care must be informed immediately. The Team will consult with Senior Management and if necessary the police will be involved. Any illegal items will be then be turned into the police to be destroyed. A receipt will be obtained from the police and filed.

The parents / agent of student may be informed during the assessment / admission process of this policy. Students should always be informed prior to any contact being made.