

## Searches of Pupils Guidance

**This guidance applies to:**

**Francis Holland Regents Park      Francis Holland Sloane Square      Francis Holland Prep**

Where there are differences between the schools these have been clearly highlighted.

Guidance owner	RP: Deputy Head Pastoral SSq: Senior Deputy Head Pastoral Prep: Senior Deputy Head and DSL
Type of guidance	Regulatory N/A (has regard to the DfE guidance ' <i>Searching, screening and confiscation January 2022</i> ')  Guidelines explaining the circumstances under which a member of FHS's staff may search a pupil of the Schools.
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Linked Policies	Exclusions and Removal Policy Behaviour & Sanctions Policy

### Revision History

This section should be completed by the reviewer each time this guidance is reviewed

Changes made [Brief description of edits]	Date
<ul style="list-style-type: none"> <li>Reference made to updated guidance July 2022 throughout. Section headings updated to reflect the guidance.</li> <li>vapes, cigarette papers and any smoking paraphernalia added after tobacco as prohibited items in accordance with the Behaviour and Sanctions Policy</li> <li>Sanction substituted for Punishment</li> <li>ELT included with SLT</li> <li>only allow staff members who have been authorised by the head to conduct searches in accordance with best practice</li> </ul>	Autumn 2022

# SEARCHES OF PUPILS GUIDANCE

## INTRODUCTION

Francis Holland Schools has regard to the following legislation and guidance when outlining the guidance:

- European Convention on Human Rights (ECHR);
- Education Act 1996;
- Education and Inspections Act 2006;
- The Education (Independent School Standards) Regulations 2014;
- The Schools (Specification and Disposal of Articles) Regulations 2012;
- Use of reasonable force in schools;
- Police and Criminal Evidence Act 1984 (PACE) codes of practice.

## 1 SCOPE

This guidance contains guidelines, which will be adapted as necessary, explaining the circumstances under which a member of Francis Holland Schools (FHS) staff may search a pupil of FHS and under which they may seize, and confiscate items found during a search.

## 2 AIMS

The aims of this guidance are:

- To safeguard and promote the welfare of children;
- To support the FHS's policies on behaviour and exclusions;
- To outline the FHS's powers of searching pupils so that staff have the confidence to use them.

## 3 SUMMARY OF KEY POINTS

### 3a SEARCHING

Headteachers and staff authorised by them have a statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that the pupil may have a prohibited item. Prohibited items are:

- knives or weapons;
- alcohol;
- illegal drugs;
- stolen items
- tobacco, e-cigarettes, vapes, cigarette papers and any smoking paraphernalia
- fireworks
- 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 the property of, any person (including the pupil).

Heads and authorised staff can also search for any item banned by the school rules which has been identified in the rules as an item which may be searched for.

### 3b CONFISCATION

Staff can seize any prohibited item found as a result of a search. They can also seize any item they consider harmful or detrimental to school discipline.

### 3c SCHOOLS' OBLIGATION 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 the Schools must be justified and proportionate.

The powers to search, granted to Schools 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 guidance will assist staff in deciding how to exercise the searching powers in a lawful way.

#### **4 SEARCHING WITH CONSENT**

Schools' common law powers to search:

School staff can search pupils with their consent for any item. The ability to give consent may be influenced by the child's age or other factors and staff should use their discretion on a case by case basis.

Also note:

Schools are not required to have formal written consent from the pupil for this sort of search – it is enough for the teacher to ask the pupil to turn out her pockets or look in the pupil's bag or locker and for the pupil to agree.

Francis Holland Schools make it clear to parents and pupil what items are banned, by listing these in the Behaviour & Sanctions Policy which is publicly available on the Schools' website. If a member of staff suspects a pupil has a banned item in her possession, they can instruct the pupil to turn out her pockets or bag and if the pupil refuses, the teacher can apply an appropriate sanction as set out in the FHS's Behaviour & Sanctions Policy. It is usual for a senior member of staff such as a member of the Senior or Extended Leadership Team with responsibility for pastoral matters, or a Head of Year, to undertake the search.

A pupil refusing to co-operate with such a search raises the same kind of issues as where a pupil 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.

#### **5 SEARCHING WITHOUT CONSENT**

Heads and staff they authorise have a statutory power to search a pupil or their possessions where they have reasonable grounds to suspect that the pupil may have a prohibited item as follows:

- knives and weapons;
- alcohol;
- illegal drugs;
- stolen items;

or 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 of any person (including the pupil);
- an article specified in regulations 2012 of the Schools Specification and Disposal of Articles;
- tobacco and cigarette papers;
- fireworks;
- pornographic images.

The Designated Safeguarding Lead (or Deputy) must be informed of any searches where the member of staff had reasonable grounds to suspect a pupil was in possession of a prohibited item.

#### **6 UNDERTAKING THE SEARCH**

##### **6a BEFORE SEARCHING**

Staff can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have in 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 pupils talking about the item or they might notice a pupil behaving in a way that causes them to suspect that the pupil is concealing a prohibited item.

The member of staff must be the same sex as the pupil being searched. There must be a witness (also a staff member) present during the search.

There is a limited exception to this rule. A member of staff can search a pupil of the opposite sex and/or without a witness present only:

- if the member of staff carrying out the search reasonably believes there is risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency; and
- in the time available, it is not reasonably practicable for the search to be carried out by a member of staff who is same sex as the pupil or it is not reasonably practicable for the search to be carried out in the presence of another member of staff.

When a member of staff conducts a search without a witness, they should immediately report this to another member of staff and ensure a record of the search is kept.

The powers allow school staff to search regardless of whether the pupil is found after the search to have that item. This includes circumstances where staff suspect a pupil of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.

School staff may wish to consider utilising CCTV footage in order to decide as to whether to conduct a search for an item.

Before any search takes place, the member of staff conducting the search should explain to the pupil why they are being searched, how and where the search is going to take place and give them the opportunity to ask any questions.

The authorised member of staff should always seek the co-operation of the pupil before conducting a search. If the pupil is not willing to co-operate with the search, the member of staff should consider why this is. Reasons might include that they:

- are in possession of a prohibited item;
- do not understand the instruction;
- are unaware of what a search may involve; or
- had a previous distressing experience of being searched.

If a pupil continues to refuse to co-operate, the member of staff may sanction the pupil in line with the School's Behaviour & Sanctions Policy, ensuring that they are responding to misbehaviour consistently and fairly.

If the member of staff still considers a search to be necessary, but is not required urgently, they should seek the advice of the DSL or DDSL. During this time the pupil should be supervised and kept away from other pupils.

If the pupil still refuses to co-operate, the member of staff should assess whether it is appropriate to use reasonable force to conduct the search. A member of staff can use such force as is reasonable to search for any prohibited items identified in section 5, but not to search for items which are identified only in the school rules. The decision to use reasonable force should be made on a case-by-case basis. The member of staff should consider whether conducting the search will prevent the pupil harming themselves or others, damaging property or from causing disorder.

## **6b DURING A SEARCH**

An appropriate location for the search should be found. Where possible, this should be away from other pupils. The search must only take place on the school premises or where the member of staff has lawful control or charge of the pupil, for example on a school trip.

A member of staff may search a pupil's outer clothing, pockets, possessions, desks or lockers. The person conducting the search must not require the pupil to remove any clothing other than outer clothing. 'Outer clothing' means any item of clothing that is not worn wholly next to the skin or immediately over a garment that is being worn as underwear, as well as hats, shoes, boots or scarves.

'Possessions' means any goods over which the pupil has or appears to have control - this includes lockers and bags. A member of staff is able to search lockers or other personal spaces at the school for any item provided the pupil agrees. A pupil's possessions can only be searched in the presence of the pupil 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.

The member of staff's power to search outlined above does not enable them to conduct an intimate search. If a member of staff has good cause to suspect that a prohibited item is concealed within a student's inner clothing, and hence it is felt necessary for a student to be subject to an intimate search (i.e. consisting of inner clothing), then the student should be told that the police will be called, who are allowed to conduct a strip search under the Police and Criminal Evidence Act 1984 (PACE) Code A and in accordance with the Police and Criminal Evidence Act 1984 (PACE) Code C if they believe that a crime has been committed. Before calling the police, staff will assess and balance the risk of a potential strip search on the pupil's mental and physical wellbeing and the risk of not recovering the suspected item. Intimate searches may only be conducted by a police officer and following notification to parents, unless there is an immediate risk of harm. While the decision to undertake the strip search itself and its conduct are police matters, school staff retain a duty of care to the pupil(s) involved and should advocate for pupil wellbeing at all times.

## **6c AFTER THE SEARCH**

Whether or not any items have been found as a result of any search, the pupil(s) concerned will be offered pastoral support. If any prohibited items are found during the search, the member of staff should follow the guidance set out below regarding confiscating items. If a pupil is found to be in possession of a prohibited item listed in section 5, then the staff member should alert the designated safeguarding lead (or deputy) and the pupil should be sanctioned in line with the School's Behaviour & Sanctions Policy to ensure consistency of approach.

## **7. THE POWER TO SEIZE AND CONFISCATE ITEMS**

### **7a GENERAL GUIDELINES**

An authorised staff member carrying out a search can confiscate any item that they have reasonable grounds for suspecting:

- poses a risk to staff or pupils;
- is prohibited, or identified in the school rules for which a search can be made; or
- is evidence in relation to an offence.

Schools' general power to discipline enables a member of staff to confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so. 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.

### **7b PROHIBITED OR ILLEGAL ITEMS**

Controlled drugs must be delivered to the police as soon as possible unless there is a good reason not to do so. In these cases, the member of staff must safely dispose of the drugs. In determining whether there is a good reason to dispose of controlled drugs, the member of staff should consider all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the controlled drug. When 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. If the member of staff is in doubt about the safe disposal of controlled drugs, they should deliver them to the police. Other substances which are not believed to be controlled

should also be delivered to the police, or disposed of as above, if the member of staff believes they could be harmful.

Where a person conducting a search finds alcohol, tobacco, cigarette papers or fireworks, they may retain or dispose of them as they think appropriate but should not return them to the pupil.

If a member of staff finds a pornographic image, they may dispose of the image unless they have reasonable grounds to suspect that its possession constitutes a specified offence (i.e. it is extreme or an indecent image of a child) in which case it must be delivered to the police as soon as reasonably practicable. Members of staff should never intentionally view any indecent image of a child (also sometimes known as nude or semi-nude images). Staff must never copy, print, share, store or save such images.

Where a member of staff finds stolen items, these must be delivered to the police as soon as reasonably practicable. However, if there is good reason to do so, the member of staff may also return the item to the owner or retain or dispose of it if returning them to their owner is not practicable. In determining whether there is a good reason to return the stolen item to its owner or retain or dispose of the item, the member of staff should consider all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the seized article. In considering the relevant circumstances, the member of staff should consider the following:

- the value of the item - it would not be reasonable or desirable to involve the police in dealing with low value items such as pencil cases, though school staff may judge it appropriate to contact the police if the items are valuable;
- whether the item is banned by the school;
- whether retaining or returning the item to the owner may place any person at risk of harm; and
- whether the item can be disposed of safely.

Any weapons or items which are evidence of a suspected offence must be passed to the police as soon as possible. Items that have been (or are likely to be) used to commit an offence or to cause personal injury or damage to property should be delivered to the police as soon as reasonably practicable, returned to the owner, retained or disposed of. In deciding what to do with such an item, the member of staff should consider all relevant circumstances and use their professional judgement to determine whether the item should be delivered to the police, retained, returned to the owner or disposed of. In considering all relevant circumstances the member of staff should consider:

- whether it is safe to dispose of the item; and
- whether and when it is safe to return the item.

Members of staff should use their judgement to decide to return, retain or dispose of any other items banned under the school rules. In deciding what to do with such an item, the member of staff should consider all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the seized item. In considering all relevant circumstances, the member of staff should consider:

- the value of the item;
- whether it is appropriate to return the item to the pupil or parent; and
- whether the item is likely to continue to disrupt learning or the calm, safe and supportive environment of the school.

Members of staff should follow any additional guidance and procedures on the retention and disposal of items put in place by the school.

## **7c ELECTRONIC DEVICES**

Electronic devices, including mobile phones, can contain files or data which relate to an offence, or which may cause harm to another person. This includes, but is not limited to, indecent images of children, pornography, abusive messages, images or videos, or evidence relating to suspected criminal behaviour. As with all prohibited items, staff should first consider the appropriate safeguarding response if they find images, data or files on an electronic device that they reasonably suspect are likely to put a person at risk.

Staff may examine any data or files on an electronic device they have confiscated as a result of a search, if there is good reason to do so. If the member of staff conducting the search suspects, they may find an indecent image of a child (sometimes known as nude or semi-nude images), the member of staff should never intentionally view the image, and must never copy, print, share, store or save such images. When an incident might involve an indecent image of a child and/or video, the member of staff should confiscate the device, avoid looking at the device and refer the incident to the designated safeguarding lead (or deputy) as the most appropriate person to advise on the school's response. Handling such reports or concerns can be especially complicated and schools should follow the principles as set out in Keeping children safe in education and Sharing nudes and semi-nudes: advice for education settings working with children and young people.

If a member of staff finds any image, data or file that they suspect might constitute a specified offence, then they must be delivered to the police as soon as is reasonably practicable.

In exceptional circumstances members of staff may dispose of the image or data if there is a good reason to do so. In determining a 'good reason' to examine or erase the data or files, the member of staff should reasonably suspect that the data or file on the device has been, or could be used, to cause harm, undermine the safe environment of the school and disrupt teaching, or be used to commit an offence. If the material found may constitute evidence relating to a suspected offence, the data or files should not be deleted, and the device must be handed to the police as soon as it is reasonably practicable. If the data or files are not suspected to be evidence in relation to an offence, a member of staff may delete the data or files if the continued existence of the data or file is likely to continue to cause harm to any person and the pupil and/or the parent refuses to delete the data or files themselves.

## **8. RECORDING SEARCHES**

Any search by a member of staff for a prohibited item listed in section 5 and all searches conducted by police officers are recorded in the school's safeguarding reporting system, including whether or not an item is found. This allows the designated safeguarding lead (or deputy) to identify possible risks and initiate a safeguarding response if required.

The following details are included in the record of each search:

- the date, time and location of the search;
- which pupil was searched;
- who conducted the search and any other adults or pupils present;
- what was being searched for;
- the reason for searching;
- what items, if any, were found; and
- what follow-up action was taken as a consequence of the search.

## **9. INFORMING 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. Parents should always be informed of any search for a prohibited item listed in section 5 that has taken place, and the outcome of the search as soon as is practicable. A member of staff should inform the parents of what, if anything, has been confiscated and the resulting action the school has taken, including any sanctions applied.

In some circumstances it might also be necessary to inform parents of a search for an item banned by the Schools' policies.

Any complaints about searching or confiscation are dealt with through the Schools' Complaints from Parents of Pupils Policy, and corresponding procedure.