

### Searching and screening: DFE updated guidance

The DFE updated its guidance in January 2018 and schools should update the following into their behavioural policies.



#### **Consent**

A school can search for any item if the pupil consents. There is no requirement to have written consent but

equally consent must be freely given and not under duress. There is no requirement to inform parents prior to a search or to seek their consent.

Schools may make it a condition of having a locker that pupils allow them to search it.

#### **Without consent**

Schools have a statutory power to search without consent if they have reasonable grounds to suspect that a pupil has a prohibited item.

**Prohibited items** are 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, or cause personal injury to, or damage to the property of, any person (including the pupil) or any item banned by



the school rules which has been identified in those rules as a searchable item.

Schools should inform parents if alcohol, drugs or potentially harmful substances are found.

#### **Confiscation**

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



Schools can confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so.

For some prohibited items liaison with the police will have to be considered.

### **Screening**



Schools can require pupils to undergo screening by a walk-through or hand held metal detector even if they do not suspect them of having a weapon and without the consent of the pupils.

Any member of school staff can screen pupils.

If a pupil refuses to be screened, the school may refuse to have the pupil on the premises.

If a pupil fails to comply, and the school does not let the pupil in, the school has not excluded the pupil and the pupil's absence should be treated as unauthorised.

### **Who and how to search/publicising/complaints**

The Head Teacher or an authorised member of staff can search. Staff other than security staff can refuse to do a search.

The searcher should normally be the same sex as the pupil. A witness should be present when it is conducted and it should be conducted in a private location.

Schools might need to consider use of CCTV to determine whether to conduct a search. **Warning- this is not referred to in the guidance but it is essential that you comply with data protection law and the forthcoming GDPR.**

The search can only be done on school premises or on a school trip.

Head Teachers must publicise their behavioural policy at least once a year to pupils and parents.

**The guidance states that there is no requirement to make or keep records of a search, however, we believe that recordkeeping is essential and would advise you always to keep records of any search.**

Complaints should be dealt with under the normal complaints procedure.

## Electronic Devices



There is a right to examine data files and/or delete them if there is good reason to do so. A good reason includes there are reasonable grounds to believe that there is either disruption of teaching or breach of the school rules. If there is a potential criminal offence involved, staff should give the phone to the police and should not delete any files or images.

Schools should also consider the UK Council for Child Internet Safety's guidance on sexting.

## Data Protection

The DFE has updated its template on privacy notices for schools on how they use pupil information so that it is compliant with the GDPR ([www.gov.uk](http://www.gov.uk)). This is a template document and any additional use of data needs to be lawful and factored into the privacy notice.



Are you checking that staff are complying with their data protection obligations and that your systems are safe? A recent case has found that an employer was liable for a deliberate data breach by a 'rogue' employee. The employee has been convicted in the criminal courts under the Computer Misuse Act and the Data Protection Act. The employer has been held vicariously liable for the acts of its employee in civil proceedings. The amount of compensation is yet to be determined. Throughout all of these cases, a key consideration has been the security and safety of computer systems.

## EHC plans – meaning of necessary

A recent case in the Upper Tribunal has considered Education Health and Care (EHC) plans. Section 37(1) of the Children and Families Act 2014 states that:

Where in the light of an education, health and care needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan, the Local

Authority must ensure that an EHC plan is prepared and maintained.



'Necessary' is not defined in the legislation but the judge in the case, where a local authority had refused to issue an EHC plan following assessment, examined its meaning in detail. The judge said that there are a multitude of points to be factored in but ultimately every case will turn on its own facts. There are many children who may have learning difficulties and require some form of educational provision but this does not in itself mean that a statement will be required and the SEN Code envisages that the vast majority won't need EHC plans.

The SEN Code identifies three steps. The first is to ascertain the degree of the child's learning difficulties and the special educational needs that result. The second is to determine what provision is required and the third is to determine whether that provision is available within the normal resources available to the education authority and whether the school could reasonably be expected to make provision within its own resources.

Local authorities are required to have, and to publish, a 'local offer' (section 30 of the CFA 2014) which tells the public the provision that the LA expect to be available across education, health and social care for children and young people who have special educational needs or are disabled, including those who do not have EHC plans. Schools may be challenged on why they cannot meet the LA's expectations under its offer. Schools have a set amount of additional funds per pupil to meet additional educational needs caused by learning difficulties and disability that fall short of requiring an EHC plan. Schools also have access to exceptional needs funding and specialist advice and training from the Local Authority.

The judge noted that there may be considerable room for argument not only over what the local offer really includes but what can reasonably be provided in the mainstream context and whether that is enough to meet the child's needs.

## Flexible Working promoted

The Government continues to promote flexible working for staff and has noted that potential barriers to more flexible roles are perceived increase in costs and management time, difficulty of managing timetables and parental expectations.

The Government is working with school leaders, education experts, industry specialists and unions to change these perceptions and increase the number of part-time or job-sharing posts at all levels within the school system, and expand the range of flexible opportunities in schools. It also wants to help teachers who have returned after a break e.g. maternity to return to work on a more flexible basis, help career progressions of women by offering more flexible opportunities in senior posts and assist those who cannot work full time hours due to their personal circumstances. Flexible working can include part-time working, job-sharing - 2 or more people do one job and split the hours, compressed hours - working full-time hours but over fewer days, staggered hours - where the employee has different start, finish and break times from other workers (dependent on individual situations) and home working. We would add that use of multimedia and the internet needs to be factored into all of these discussions.

Schools should also look at the Government's guidance on flexible working in Schools (published in February 2017) [www.gov.uk](http://www.gov.uk).

**Contact details** If you have any queries relating to this newsletter or wish to seek education advice or discuss training needs, please contact:  
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