

Policy for Searching, Screening and Confiscation

Guidance on conducting a consented search

Newfriars College is committed to safeguarding and promoting the welfare of the members of its community. The Education Act 2011 gives staff the power to search a student if they have reasonable suspicion the student has “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” or that they have an item that is identified against the college rules. Any items that pose a threat or are in breach of the college rules discovered in a search may be seized. Seized items should be appropriately dealt with in order to remove the risk of harm the item posed, and should maintain the law – e.g. if drugs or a weapon were discovered these would be handed over to the police, cigarettes may be disposed of but other items may be returned to parents or other appropriate adults.

Further to non-statutory advice from the Department for Education ‘Screening, Searching and Confiscation’ (Feb 2014) states that ‘School staff can search a student for any item banned under the college rules, if the pupil agrees’ and also that ‘Head teachers and staff authorised by them have a statutory power to search pupils or their possessions, without consent, where they suspect the student has certain prohibited items.

Searching

The Head of College and staff authorised by them 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:

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

The Head of College 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. The people in the college who can carry out any such a search are members of the Senior Leadership Team. In exceptional circumstances a member of the SLT may authorise others to carry out such a search. This Policy would apply on authorised school trips where an immediate search may be required when there is suspicion that a pupil is in possession of a prohibited item or where a student would most benefit from another person's approach, e.g. where a student has Autism or extreme behaviours requiring other possible intervention. In all circumstances the consent of the student to any search should be requested. A second adult witness should always be present. The college will always request students consent before a search, and will endeavour to protect the dignity of the student and where possible privacy. The college is under no obligation to consult with parent/carers of students but will seek to do so where possible.

In the general course of college life, given student good conduct overall and taking into account the very good relationships between student and staff, it is unlikely that searching students will be necessary. There are however, some occasions when it might be necessary; at those times, this Policy should be followed. These searches are outlined below.

Searching with consent.

College's common law powers to search:

- College staff can search students with their consent for any item.
- Staff are 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.
- If a member of staff suspects a student has a banned item in his/her possession, they will instruct the student to turn out his pockets or bag and, if the student refuses, the staff member can apply an appropriate punishment as set out in the college's behaviour policy.
- 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.

Personal Search

Requires authorisation from SLT and should be carried out with a witness present. Parents/carers should always be informed when a search has been carried out. Staff must never:

- Touch the student forcibly;
- Search the student's person which includes clothing and pockets;

- Remove the student's clothing (even a coat);
- Newfriars College **do not** carry out physical searches of students.

Students can be asked to turn out their pockets and contents of bags etc, in the presence of two people.

Students refusing to comply should be presented with clear facts and asked to reconsider. Parent/carers may be asked to come into the college to support the request, or speak to the student. Parents may also be informed that the police will be contacted to conduct the search if the matter is deemed significant enough and involves an item outlined as banned that could pose a threat to themselves or others e.g. a knife or weapon.

Property Search (Students belongings)

Students who may refuse to be searched should be presented with clear evidence and should be asked to reconsider. Searches can be made for any item that is considered to be a threat to the Students, the property of the academy or if the possession of which are against College rules. Searches may also be carried out to find missing or stolen property belonging to the college, staff or other students. Searches should only be carried out if there is reasonable suspicion that an item will be discovered and the reason for the search should be recorded appropriately and parents/carers informed following any search no matter the outcome.

Staff should not use a consented search as a first intervention; other information should be explored initially. E.g. Questioning. The following approaches can be used:

- Opportunities should be given for students to use their sense of responsibility. This encourages a greater sense of morality, reasoning and consideration. Explain the suspicion to the student and your intention to search
- If as a last resort searches are required, students should be consulted, involved and be present
- Students can be asked to empty their pockets and bags. This should be handled sensitively (Not in an open public situation)
- Every opportunity should be given to students to volunteer permission to search.

Formal written permission is not required and verbal permission is acceptable.

- Ask for permission, if this is given the student will need to sign (where appropriate) the consented search log.
- The students may choose an advocate to support them through the process, this may be another student.

Searches should be proportionate to the value or the risk. Staff should be aware of the potential of being accused of always selecting to search the same student(s) and the extent of the search should be proportionate to the likelihood of the item being found. Searches should be carried out in the view of the designated witness

In all circumstances of a search being carried out, an incident report and the consented search book needs to be completed thoroughly and a copy given immediately or first opportunity to the College Principal or Deputy Principal/Assistant Principal. If the student is searched during a residential stay at an alternate site the College Principal or Deputy Principal/Assistant Principal should be consulted and permission sought

Parent/carers need to be informed and support offered to the student following a search regardless of the outcome.

It may be necessary, on the result of the search that the Police are informed.

Where a student refuses consent to a search being carried out, and it is reasonable to suspect that a prohibited item is still in a student's possession, then a member of SLT, or member of the College staff authorised by the SLT will contact parents/carers and ask for their support. Parents/carers may be informed that the police will be contacted to conduct the search if the matter is deemed significant enough to require their involvement.

The staff member conducting the search will be the same sex as the student being searched. There will be a witness (also a staff member) and, if at all possible, they will be the same sex as the student being searched. Staff members 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 staff member 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.

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.

During the search

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.

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 school rules.

After the search

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.

A staff member 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 staff member conducting a search finds alcohol, they may retain or dispose of it. This means that schools 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 schools 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.

Sanctions

The discovery of any prohibited items will result in sanctions being applied in line with the college's behaviour policy. The level of sanction will be decided by a member of the college's SLT, but may include one or more of the following:

- Loss of break
- Loss of Options
- Detention
- Ban from defined areas
- Fixed Term Exclusion
- Permanent Exclusion

What the law says (DfE 2018) :

- 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.

Confiscation

The DfE states:

“School 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.”

The academy is obliged under the European Convention of Human Rights Article 8 to maintain a level of respect for students; Article 8 states:

“...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.”

Screening

What the law allows:

- Colleges 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.
- College’s 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 college staff can screen students. **(DfE 2018)**

College’s 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. If a student refuses to be screened, the college may refuse to have the student on the premises. Health and safety legislation requires a college 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 school does not let the student in, the college has not excluded the student and the student’s absence will be treated as unauthorised. The student should comply with the rules and attend.