



# Whitburn Church of England Academy

## Searching and Confiscation Policy

### Preface

The Academy Vision and Values can be found here: <https://www.whitburncofeacademy.org/about-us/academy-ethos.html>

This policy and its associated procedures are based on these key principles and values.

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## Statement of intent

Whitburn Church of England Academy appreciates that students have a right to expect a reasonable level of personal privacy and will do its utmost to ensure that, as far as possible, this right is respected.

However, the Academy also takes seriously its obligation under health and safety legislation to be managed in a way which does not expose students or staff members to unnecessary risks.

This policy sets out the framework in which the Academy will meet this obligation by outlining the circumstances in which authorised staff members can search students, particularly without consent. It also outlines the legal powers to seize and then confiscate items during a search.

Staff members authorised by the Principal with search powers are: **Senior Leadership Team (SLT) and Heads of Learning (HoLs).**

## Legal Framework

1.1. This policy takes regard of the following legislation:

- Health and Safety at Work Act 1974
- Education Act 1996
- Education and Inspections Act 2006
- Education (Independent Academy Standards) Regulations 2010
- The Academy's (Specification and Disposal of Articles) Regulations 2012
- Academy Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012
- European Convention on Human Rights

1.2. It also has regard to the following pieces of statutory guidance and advice:

- Searching, screening and confiscation – January 2018
- Use of reasonable force
- Behaviour and discipline in Academies
- Information Commissioner for advice on the Data Protection Act

## 2. Authorisation

2.1. The Principal has the responsibility to decide who to authorise to use these powers, but there is no requirement to provide authorisation in writing.

2.2. The Principal can require a member of the Senior Leadership Team (SLT) and Heads of Learning (HoLs) to undertake a search. Staff members, other than SLT and HoLs, may refuse to carry out a search.

2.3. Staff members can be authorised to search for some items but not others.

- 2.4. Staff members must be the same sex as the student being searched and there must be a witness (also a staff member) and, if possible, they should be the same sex as the student being searched.
- 2.5. Staff members can search a student of the opposite sex only where there is reasonable cause to suspect that there is a risk of serious harm to a person if a search is not conducted immediately.
- 2.6. Staff members can search a student without a witness present only where there is reasonable cause to suspect that there is a risk of serious harm to a person if a search is not conducted immediately.

### **3. Training**

- 3.1. When designating a member of staff to undertake searches under these powers, the Principal should consider whether the member of staff requires any additional training to enable them to carry out their responsibilities.

### **4. Establishing grounds for a search**

- 4.1. Whitburn Church of England Academy has the right to search students with their consent for any item. Formal written consent is not required. It is enough for the teacher to ask the student to turn out his / her pockets or look in the student's bag or locker and for the student to agree.
- 4.2. Members of staff can instruct a student to turn out his / her pockets or bag if it is suspected that the student has a banned item in his / her possession. If a student refuses, the teacher will apply the appropriate punishment as outlined in the Academy Behaviour Policy.
- 4.3. A student's refusal 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. The appropriate disciplinary penalty will be applied.

### **5. Location**

- 5.1. Searches without consent can only be carried out on the Academy premises or, if elsewhere, where the member of staff has lawful control or charge of the student.
- 5.2. Lockers - Under common law powers, the Academy is able to search lockers for any item provided the student agrees. The Academy makes 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.

If a student does not consent to a search (or withdraws consent having signed the Locker Acceptable Use Policy) then it is possible to conduct a search without consent for "prohibited items".

## **6. Searching without consent**

- 6.1. Authorised staff members can undertake a search without consent if there are reasonable grounds to suspect that a student is in possession of a prohibited item, as outlined in section 8 of this policy.
- 6.2. Staff members are empowered to search regardless of whether the student is found after the search to have a prohibited item.
- 6.3. Staff members can view CCTV footage, in accord with the CCTV Policy, to inform their decision as to whether to conduct a search for a prohibited item.

## **7. Prohibited items**

- 7.1. The following items are prohibited:
  - Knives or weapons, alcohol, illegal drugs and stolen items.
  - Medicines not covered by a care plan
  - Tobacco and paraphernalia (including e-cigarettes), fireworks, laser pens and pornographic images.
  - Any article that a 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.
  - Any item banned by the Academy rules which has been identified in the rules as an item which may be searched for.

## **8. Banned items**

- 8.1. Items banned by the Academy rules may only be searched under these powers if it has been identified in the Academy rules as an item that can be searched for.
- 8.2. Banned items include:
  - Legal highs
  - Aerosol cans
  - Paint thinners
  - Non-prescribed hypodermic needles
  - Any item which is counter to the ethos of the Academy: for example, material which might cause tension between one community and another.
  - Items of clothing and jewellery which are not in accord with the Academy Uniform Policy.
- 8.3. The Academy rules must be determined and publicised by the Principal.
- 8.4. The Academy will also confiscate items which are allowed in the Academy but are not being used appropriately by students. For example:
  - Any item which poses a threat to good order for learning: for example, personal music players and mobile phones found to be switched on during lesson/assemblies/examinations etc.

- Food and drinks other than water which is being consumed in areas other than those specifically designated by the Academy, e.g. food and drinks other than water consumed in classrooms, corridors, toilets will be confiscated.

## **9. During the search**

- 9.1. Members of staff can use such force as is reasonable given the circumstances when conducting a search for prohibited items, but cannot use force to search for items banned only under Academy rules.
- 9.2. The power to search without consent enables a personal search, involving removal of outer clothing and the searching of pockets, but not an intimate search going further than that, which only a person with more extensive powers (i.e. a Police Officer) can do.
- 9.3. Outer clothing means clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear, but includes hats, shoes, boots, gloves and scarves.
- 9.4. Authorised staff members can search lockers and desks for any item, provided the student agrees and 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.
- 9.5. Authorised staff members must be the same sex as the student being searched; and there must be a witness (also a staff member) and, if possible, they should be the same sex as the student being searched.
- 9.6. There is a limited exception to this rule. Staff can carry out a search of a student of the opposite sex to you and / or 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.
- 9.7. 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 prohibited items.

### **Use of force**

- 9.8. 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.  
*Separate advice is available on teachers' power to use force – see Behaviour and Discipline Policy*

## **10. After the search**

- 10.1. Staff members can confiscate, retain or dispose of a student's property as a disciplinary penalty, where reasonable to do so.
- 10.2. Staff members 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 an article is thought to be a weapon, it must be passed on to the police.
- 10.3. Staff members are legally protected from liability in any proceedings brought against them for any loss of, or damage to, any item they have confiscated, provided they acted lawfully.
- 10.4. 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.
- 10.5. Where a staff member conducting a search finds alcohol, he / she may retain or dispose of it as they think appropriate, but must not return it to the student.
- 10.6. Where a staff member finds:
  - 10.6.1. 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.
  - 10.6.2. 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 discipline, including legal highs. Where staff suspect that a substance may be controlled, they should treat them as controlled drugs as above.
  - 10.6.3. Stolen items, these must be delivered to the police as soon as reasonably practicable, but may be returned to the owner or disposed of if the person thinks there is good reason to do so.
  - 10.6.4. Tobacco or cigarette papers, they may retain or dispose of them, but must not return them to the student.
  - 10.6.5. Fireworks, they may be retained or disposed of, but must not return them to the student.
  - 10.6.6. Pornographic images, 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 is reasonably practicable. Images found on a mobile phone or other electronic device can be deleted unless it is necessary to pass them to police.
  - 10.6.7. An article that has been or could be used to commit an offence or to cause personal injury or damage to property, this may be retained, disposed of, delivered to the police or returned to the owner, as appropriate.
  - 10.6.8. An item banned under the Academy 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.

- 10.6.9. Weapons or items which are evidence of an offence must be passed to the police as soon as possible.

## **11. Parental Consent**

- 11.1. Whitburn Church of England Academy is not required to inform parents before a search takes place or to seek their consent to search their child.
- 11.2. Whitburn Church of England Academy will inform the individual student's parents / carers where alcohol, illegal drugs or potentially harmful substances are found, though this is not a legal obligation.

## **12. Monitoring / Reporting**

- 12.1. Although it is not a legal requirement to do so, for the purposes of accountability and transparency, the Academy will keep a record of all searches undertaken by authorised staff members.

## **13. Enforcement**

- 13.1. Whitburn Church of England Academy expects authorised staff members to use their screen and search powers in accordance with the provisions of this policy.
- 13.2. Staff members that abuse these powers or screen and search students without consent for items other than those which are prohibited, will be subject to the appropriate disciplinary action.

## **14. Complaints**

- 14.1. Complaints about screening or searching should be dealt with through the Academy's normal complaints procedure.

## **15. Policy circulation**

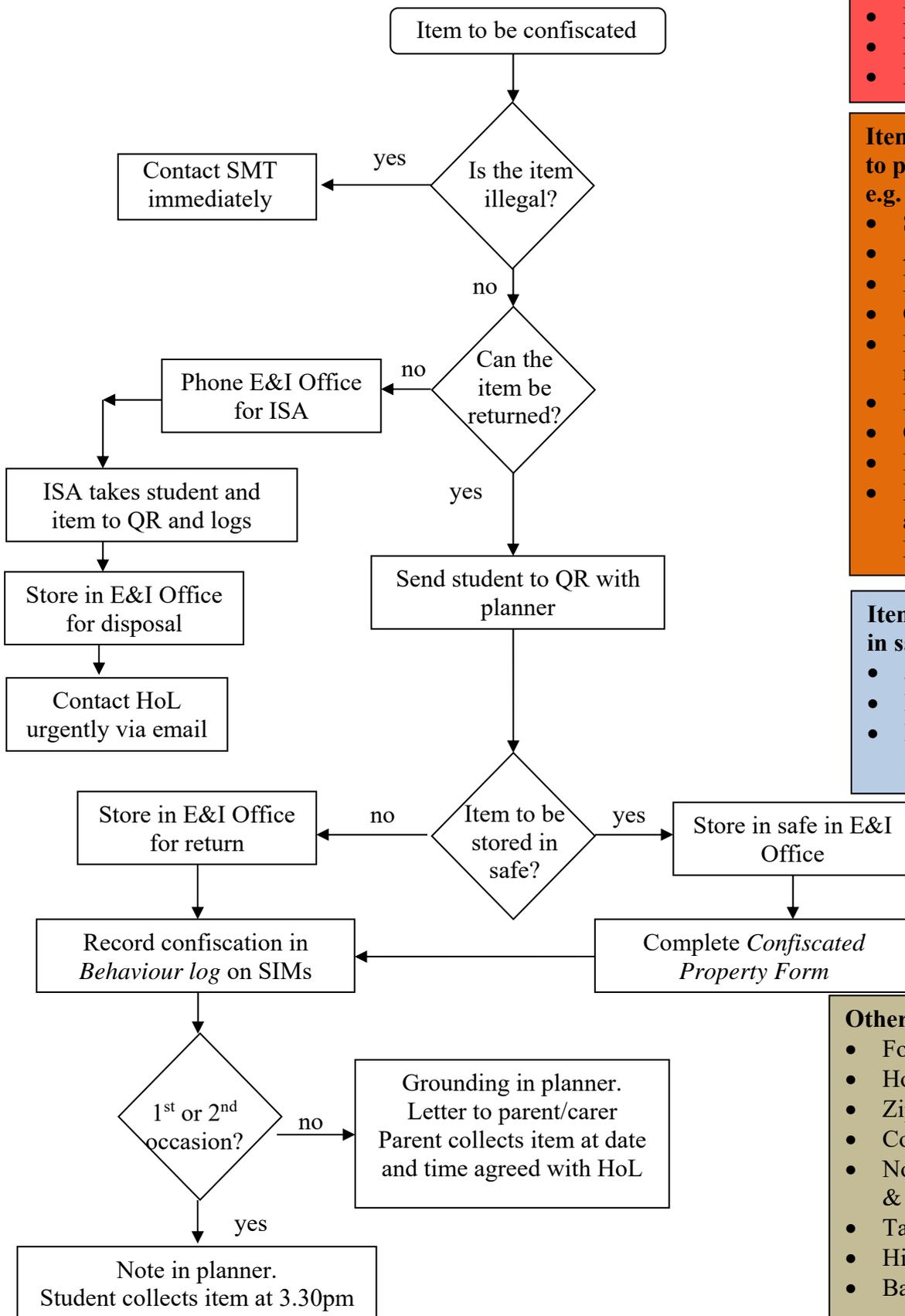
- 15.1. This policy will be circulated to every staff member, who shall annually sign a statement which affirms that he / she has:

- Received a copy of the policy.
- Has read and understood the policy.
- Has agreed to comply with the policy.

- 15.2. This policy will be included in the publication scheme on the Academy's website and will be made available to the public.

| <b>Searching and Confiscation Policy</b> |   |                                |
|--|---|--------------------------------|
| <b>Linked to</b>                         | Behaviour and Discipline Policy<br>Drugs Policy |                                |
| <b>Creation Date</b>                     | <b>Version</b>                                  | <b>Status</b>                  |
| 26 <sup>th</sup> June 2007               | 1.0   | Approved by the Governing Body |
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| 20 <sup>th</sup> March 2018              | 6.0   | Approved by the Governing Body |
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## Appendix A Procedure for Confiscating Items



**Illegal Items e.g.**

- Weapons
- Racist material
- Pornography
- Illegal drugs

**Items not returned to parents/students e.g.**

- Solvents
- Alcohol
- Medicine
- Cigarettes
- Lighters and matches
- Fireworks
- Chewing gum
- Laser pens
- E-Cigarettes & associated Paraphernalia

**Items to be stored in safe e.g.**

- Jewellery
- Mobile phones
- Mp3/4 players, ipods

**Other items e.g.**

- Food and drink
- Hooded tops
- Zipped tops
- Coats (not black)
- Non-uniform jumpers & cardigans
- Tank tops
- High collared tops
- Baseball caps