

Build-a-Future

Main Road, West Ashby, Horncastle, Lincolnshire, LN9 5PT 01507 524015

Searching & Confiscation Policy



This policy is informed by DfE advice February 2014 and includes statutory guidance which BAF must have regard to.

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1 Searching

Build-a-Future (BAF) staff can search a learner for any item if the learner agrees.

Principal and staff authorised have a statutory power to search learners or their possessions, without consent, where they have reasonable grounds for suspecting that the learner 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.
- to cause personal injury to, or damage to the property of, any person (including the learner).

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

2 Confiscation

BAF staff can seize any prohibited item found as a result of a search. They can also seize any item, however found, which they consider harmful or detrimental to BAF discipline.

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3 Searching with consent

BAF' common law powers to search:

- BAF staff can search learners with their consent for any item.
- BAF are not required to have formal written consent from the learner for this sort of search – it is enough for the teacher to ask the learner to turn out his or her pockets or if the teacher can look in the learner's bag or locker and for the learner to agree.
- BAF should make clear in their BAF behaviour policy and in communications to parents/ carers and learners what items are banned.
- If a member of staff suspects a learner has a banned item in his/ her possession, they can instruct the learner to turn out his or her pockets or bag and if the learner refuses, the teacher can apply an appropriate punishment as set out in the BAF's behaviour policy.
- A learner refusing to co-operate with such a search raises the same kind of issues as where a learner refuses to stay in a detention or refuses to stop any other unacceptable behaviour when instructed by a member of staff – in such circumstances appropriate disciplinary penalty or sanctions can be applied (refer to the Behaviour Policy).

4 Searching without consent

The Principal or a member of BAF staff authorised by the Principal can conduct a search without consent under the following circumstances:

- You must be the same sex as the learner being searched; and there must be a witness (also a staff member) and, if at all possible, they should be the same sex as the learner being searched.
- There is a limited exception to this rule. You can carry out a search of a learner of the opposite sex to you and 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.



5 Establishing grounds for a search

BAF staff can only undertake a search without consent if they have reasonable grounds for suspecting that a learner may have in his or 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 learners talking about the item or they might notice a learner behaving in a way that causes them to be suspicious.

In the exceptional circumstances when it is necessary to conduct a search of a learner of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a learner's expectation of privacy increases as they get older.

The powers allow BAF staff to search regardless of whether the learner is found after the search to have that item. This includes circumstances where staff suspect a learner of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen. BAF staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item.

6 Location of a search

Searches without consent can only be carried out on the BAF premises or, if elsewhere, where the member of staff has lawful control or charge of the learner, for example on BAF trips in England or in training settings.

7 Conducting the search

What the law says:

- The person conducting the search may not require the learner 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 learner has or appears to have control – this includes desks, lockers and bags.
- A learner's possessions can only be searched in the presence of the learner 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 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.

8 Use of force

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

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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 BAF rules.

9 After the search

The power to seize and confiscate items

- 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.

10 Items found as a result of a 'without consent' search

What the law says:

- a. 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.
- b. Where a person conducting a search finds alcohol, they may retain or dispose of it. This means that BAF can dispose of alcohol as they think appropriate but this should not include returning it to the learner.
- c. 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.
- d. 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.
- e. 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.
- f. Where a member of staff finds tobacco or cigarette papers they may retain or dispose of them. As with alcohol, this means that BAF can dispose of tobacco or cigarette papers as they think appropriate but this should not include returning them to the learner.
- g. Fireworks found as a result of a search may be retained or disposed of but should not be returned to the learner.
- h. 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.

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- i. 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.
- j. Where a member of staff finds an item which is banned under the BAF 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.
- k. Any weapons or items which are evidence of an offence must be passed to the police as soon as possible.

11 Statutory guidance on the disposal of controlled drugs and stolen items

- a. It is up to teachers to decide whether there is a good reason not to deliver stolen items or controlled drugs to the police. 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 the following guidance issued by the Secretary of State.
- b. In determining what is a ‘good reason’ for not delivering controlled drugs or stolen items to the police, 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.
- c. 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.
- d. 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, BAF staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks).

12 Statutory guidance for dealing with electronic devices

- a. Where the person conducting the search finds an electronic device they may examine any data or files on the device if they think there is a good reason to do so. 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.
- b. The member of staff must have regard to the following guidance issued by the Secretary of State when determining what is a “good reason” for examining or erasing the contents of an electronic device.
- c. In determining a ‘good reason’ to examine or erase the data or files the staff member must reasonably suspect that the data or file on the device in question has been, or could be, used to cause harm, to disrupt teaching or break the BAF rules.
- d. If inappropriate material is found on the device it is up to the teacher to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of BAF discipline) or whether the material is of such seriousness that it requires the involvement of the police.

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13 Telling parents and dealing with complaints

- a. BAF are not required to inform parents before a search takes place or to seek their consent to search their child.
- b. There is no legal requirement to make or keep a record of a search.
- c. BAF should inform the individual learner's parents or guardians where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
- d. Complaints about screening or searching should be dealt with through the normal BAF complaints procedure.

14 Further sources of information

Associated resources (external links)

- Use of Reasonable Force – advice for Principal, staff and governing bodies Behaviour and Discipline in BAF.
- Behaviour and Discipline in BAFs – advice for head teachers and BAF staff.
- Information Commissioner for advice on the Data Protection Act.

Legislative links

- The Education Act 1996.
- Education and Inspections Act 2006.
- Education (Independent BAF Standards) (England) Regulations 2010.
- The BAF (Specification and Disposal of Articles) Regulations 2012.
- BAF Behaviour (Determination and Publicising of Measures in BAF) Regulations 2012.
- Health and Safety at Work etc Act 1974.