

## Electronic Devices – Searching and Deletion

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# Eastbury Community School



**Electronic Devices-  
Searching and Deletion  
June 2017**

## **Introduction**

The changing face of information technologies and ever increasing pupil / student use of these technologies has meant that the Education Acts have had to change in an attempt to keep pace. Within Part 2 of the Education Act 2011 (Discipline) there have been changes to the powers afforded to schools by statute to search pupils in order to maintain discipline and ensure safety. Schools are required to ensure they have updated policies which take these changes into account. No such policy can on its own guarantee that the school will not face legal challenge, but having a robust policy which takes account of the Act and applying it in practice will however help to provide the school with justification for what it does.

The particular changes we deal with here are the added power to search for items 'banned under the school rules including mobile devices' and the power to 'delete data' stored on seized electronic devices.

Items banned under the school rules are determined and publicised by the Headteacher (section 89 Education and Inspections Act 1996). Items banned at Eastbury Community School are, weapons, alcohol, illegal drugs, cigarette including electronic cigarettes, solvents, and stolen items.

The act allows authorised persons to examine data on electronic devices / portable media if they think there is a good reason to do so. In determining a 'good reason' to examine or erase the data or files the authorised 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 could break the school rules.

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.

The Executive Headteacher must publicise the school behaviour policy, in writing, to staff, parents / carers and students / pupils at least once a year.

## **Responsibilities**

The Executive Headteacher is responsible for ensuring that the school policies reflect the requirements contained within the relevant legislation. The formulation of these policies may be delegated to other individuals or groups. The policies will normally be taken to Governors for approval. The Executive Headteacher will need to authorise those staff who are allowed to carry out searches.

This policy has been written by and will be reviewed by: Senior Leadership Team, Governors and the Network Team.

Eastbury will ensure that there is a list of authorised staff to carry out searches of electronic devices and the deletion of / files of those devices.

The Executive Headteacher may authorise other staff members in writing in advance of any search they may undertake, subject to appropriate training.

## **Training / Awareness**

Members of staff should be made aware of the school's policy on "Electronic devices – searching and deletion":

- at induction
- at regular updating sessions on the school's e-safety policy

Members of staff authorised by the Executive Headteacher to carry out searches for and of electronic devices and to access and delete data / files from those devices should receive training that is specific and relevant to this role.

Specific training is required for those staff who may need to judge whether material that is accessed is inappropriate or illegal.

## **Policy Statements**

### **Search:**

The school Behaviour Policy refers to the policy regarding searches with and without consent for the wide range of items covered within the Education Act 2011 and lists those items. This policy refers only to the searching for and of electronic devices and the deletion of data / files on those devices.

Pupils / students are allowed to bring mobile phones or other personal electronic devices to school and use them only within the rules laid down by the school.

If pupils / students breach these rules the sanctions can be found in the Behaviour Policy.

Authorised staff (defined in the responsibilities section above) have the right to search for such electronic devices where they 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 school rules.

- Searching with consent - Authorised staff may search with the pupil's consent for any item.
- Searching without consent - Authorised staff may only search without the pupil's consent for anything which is either 'prohibited' (as defined in Section 550AA of the Education Act 1996) or appears in the school rules as an item which is banned and may be searched for.

#### **In carrying out the search:**

The authorised member of staff must have reasonable grounds for suspecting that a student / pupil is in possession of a prohibited item i.e. an item banned by the school rules and which can be searched for. Whether there are 'reasonable grounds' is a matter decided on by reference to the circumstances witnessed by, or reported to, someone who is authorised and who exercises properly informed professional judgment and has received appropriate training.

The authorised member of staff should take reasonable steps to check the ownership of the mobile phone / personal electronic device before carrying out a search. The powers included in the Education Act do not extend to devices owned (or mislaid) by other parties eg a visiting parent or contractor, only to devices in the possession of pupils / students.

The authorised member of staff should take care that, where possible, searches should not take place in public places eg an occupied classroom, which might be considered as exploiting the student / pupil being searched.

The authorised member of staff carrying out the search must be the same gender as the student / pupil being searched; and there must be a witness (also a staff member) and, if at all possible, they too should be the same gender as the student/ pupil being searched.

There is a limited exception to this rule: Authorised staff can carry out a search of a student / pupil of the opposite gender including 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.

#### **Extent of the search:**

**The person conducting the search may not require the student/ pupil 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 (outer clothing includes hats; shoes; boots; coat; blazer; jacket; gloves and scarves).

'Possessions' means any goods over which the student / pupil has or appears to have control – this includes desks, lockers and bags.

A student's / pupil's possessions can only be searched in the presence of the student / 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 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.

Use of Force – force cannot be used to search without consent for items banned under the school rules regardless of whether the rules say an item can be searched for.

#### **Electronic devices**

An authorised member of staff finding an electronic device may access and examine any data or files on the device if they think there is a good reason to do so.

The examination of the data / files on the device should go only as far as is reasonably necessary to establish the facts of the incident. Any further intrusive examination of personal data may leave the school open to legal challenge. It is important that authorised staff should have training and sufficient knowledge of electronic devices and data storage.

If inappropriate material is found on the device it is up to the authorised member of staff to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of school discipline) or whether the material is of such seriousness that it requires the involvement of the police. Examples of illegal activity would include:

- child sexual abuse images (including images of one child held by another child)
- adult material which potentially breaches the Obscene Publications Act
- criminally racist material
- other criminal conduct, activity or materials

Members of staff may require support in judging whether the material is inappropriate or illegal. One or more Senior Leaders should receive additional training to assist with these decisions. Care should be taken not to delete material that might be required in a potential criminal investigation.

### **Deletion of Data**

Following an examination of an electronic device, if the authorised member of staff 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. (i.e. 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 school rules).

If inappropriate material is found on the device, it is up to the authorised member of staff to decide whether they should delete that material, retain it as evidence (of a possible criminal offence or a breach of school discipline) or whether the material is of such seriousness that it requires the involvement of the police.

A record should be kept of the reasons for the deletion of data / files.

### **Care of Confiscated Devices**

School staff are reminded of the need to ensure the safe keeping of confiscated devices, to avoid the risk of compensation claims for damage / loss of such devices

The school may wish to add a disclaimer to the relevant section of the Behaviour Policy which may assist in covering the school against damage / loss claims.

### **Audit / Monitoring / Reporting / Review**

The responsible person CP Lead/Behavioural Lead will ensure that full records are kept of incidents involving the searching for and of mobile phones and electronic devices and the deletion of data / files. (a template log sheet can be found in the appendix)

These records will be reviewed by ... (E-Safety Officer / E-Safety Committee / E-Safety Governor) at regular intervals This policy will be reviewed by the head teacher and governors annually and in response to changes in guidance and evidence gained from the records.