



# EDUCATION law

NEWS AND ADVICE FROM BIRKETT LONG

At Birkett Long we understand that education law can be complex, and that there are many reasons why you might find yourself in need of legal advice.

As education law solicitors we are always looking for ways to support our clients and work hard to put ourselves in your shoes. Importantly, we know that you are constantly balancing your commitment to students with commercial objectives, governance and regulation and funding challenges.

At Birkett Long, our education law team is ready to help you with all the legal issues associated with a multi academy trust, academy, school, college or other educational institution. Our firm has experts in almost all areas of law, enabling us to cover a wide range of specialisms such as employment, property and contract law. We also offer a retainer scheme that takes care of your human resource requirements.

For further advice or for a free 15-minute telephone consultation, please contact Thomas Emmett on 01245 453847 or email [thomas.emmett@birkettlong.co.uk](mailto:thomas.emmett@birkettlong.co.uk).

## Legislation update

How new governance issues will affect you and your school

## MATs - teacher redeployment

The latest research gives an insight into how staff are redeployed across multi-academy trusts

## Pupil numbers

What does the future hold?

## Holidays in term time

Recent case law may offer a glimmer of certainty on the interpretation of this tricky area of legislation

# Legislation update

school governance

Two sets of regulations were made in 2012 to deal with the issue of governance in maintained schools in England; both of these have now been updated. Thomas Emmett explains how these are likely to affect your school.

**The School Governance (Federations) (England) Regulations 2012** set out, amongst other things, when a federation can be established and dissolved (including details of the procedure for doing so). Also covered in the regulations are the types of governor that can be appointed and the composition of federation schools' governing bodies.

**The School Governance (Constitution) (England) Regulations 2012** detail the constitution of governing bodies of maintained schools, including setting a maximum term for governors. The regulations also cover the principles for determining the size and composition of a governing body.

Both regulations have, however, recently been amended by **The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2017**.

The 2017 regulations include provisions to:

- Remove the rounding up and down provisions for calculating the number of school governors
- Clarify the order of preference categories of parents from whom the governing body can appoint parent governors
- Add a procedure for governing bodies to remove elected governors
- Add a provision relating to the disqualification of an elected parent or staff governor from holding office, or continuing, as a governor for five years after their removal from office
- Clarify who may make an application for an Academy order under section 3(6) of the Academies Act 2010 in respect of a federated school

All of the above changes are now in force.

In July, the Department for Education released statistics projecting the number of pupils in schools, measured by type of school and age group: the results make interesting reading.

## Pupil numbers

what does the future hold?

For state funded primary schools and nurseries, it was reported that the population occupying both has been increasing since 2009 and reached just over 4.5 million in 2017. However, that rate is now slowing.

The secondary school population rose in 2017 and is projected to rise until 2025, at which time the secondary school population is expected to stabilise.

The increases could lead to more admission appeals in the foreseeable future and schools may need legal assistance in dealing with these.

We have created four different retainer schemes that will help education institutions deal with admission appeals as well as the various other legal issues that schools and academies need to address.

# MATs

the dynamics of teacher redeployment

Research published in June relating to staff redeployment across multi-academy trusts (MATs), is certainly worth a read.

The National Foundation for Educational Research (NFER) found in its research that staff movement between schools in the same MAT is higher than staff moving between schools that do not form part of the same MAT.

Around 10% of teaching staff who work in a MAT move to another school each year, higher than the average among all schools, which is 7%. One in ten of those teachers from a MAT move to another school in the same MAT (1% overall). That may seem low, but the NFER point out that staff movement between schools in the same MAT is more than ten times higher than movement expected between any two schools that are not in the same MAT. They suggest, as a result of their findings, that MATs could be described as having “internal teacher labour markets”.

The research suggests that there are three reasons for this:

- MAT leaders strategically redeploy staff to where they are needed most

- MAT leaders use the range of opportunities existing within the MAT to develop future leaders to ensure career progression opportunities for staff
- Information about vacancies is more easily accessible from within the MAT than from the outside

The report suggests that heads of MATs are taking a strategic approach in that they direct their workforce to schools in more disadvantaged areas, which would be in contrast to teachers’ preferences for moving generally, i.e. preferring to move to a school with a less disadvantaged intake. Such deployment can only help support schools that struggle to recruit and retain teachers.

MATs are legal employers and we pride ourselves in supporting employers with their employment law matters.

# Transgender and non-binary pupils

It has been reported that some schools have failed to recognise the chosen name of transgender and non-binary pupils, have enforced gendered uniform rules and have not used the pupil’s preferred pronoun.

Under the Equality Act 2010 schools have an obligation to not subject a pupil to any detriment as a result of their sex, sexual orientation or gender reassignment. The Act infers upon transgender and non-binary pupils rights to wear the uniform of the gender they identify with, use gender specific facilities and be addressed as the gender with which they identify.

The Government Equalities Office has responded by announcing an initiative to fund projects in primary and secondary schools, which is intended to educate pupils on sexual orientation and gender identity, and to prevent bullying on those grounds. This will involve teaching students to accept and respect individuality in “an age-appropriate way”. The current DfES guidance on relationships and sex education is in the process of being updated to reflect lesbian, gay, bisexual and transgender issues for school pupils.

Read more at [www.birkettlong.co.uk](http://www.birkettlong.co.uk).

# RE

the rules say it must be on the curriculum

Following a Freedom of Information request by the Religious Education Council and the National Association of Teachers of RE (NATRE), a survey has been published which reveals that there is a lack of religious education teaching in schools.

The statistics released by NATRE show that 26% of state schools do not teach RE. Among academies, 34% do not teach RE to 11-13 year olds and 44% did not offer it to 14-16 year olds.

Under the School Standards and Framework Act 1998, local authorities, governing bodies and head teachers are under a statutory obligation to ensure that religious education is provided as part of the basic curriculum.

Whilst academies have significant freedom when setting their curriculum, the rules remain the same for maintained, academies or free schools – they must teach RE at all key stages of a child’s education. Parents can withdraw their children from all or part of RE lessons and children may remove themselves once they reach 18.

The Department for Education reports that, “Good quality RE can develop children’s knowledge of the values and traditions of Britain and other countries, and foster understanding among different faiths and cultures.” Humanists UK Education Campaigns Manager, Jay Harman, comments in support of the DfE’s statement that, “Providing children with an objective, balanced, and inclusive education about different religions and humanism is vital to promoting mutual understanding and challenging prejudice”.

More information can be found on our website at [www.birkettlong.co.uk](http://www.birkettlong.co.uk).



The media has covered - at some length - cases of parents who take their children out of school during term time and are subsequently prosecuted for doing so. But is there any certainty for schools in knowing how the law applies?

## Holidays in term time

### some certainty on 'regular attendance'

The outcome in the case of the Isle of Wight Council v Platt (2017) depended entirely on the meaning of the word 'regularly' as it appears in section 444 of the Education Act 1996. The section states that if a child fails to attend school 'regularly', a parent will be guilty of a criminal offence and can be prosecuted unless they pay a penalty notice.

Mr Platt took his daughter on a one-week holiday during term time, despite permission being refused by the school for him to do so. The school referred the matter to the local authority, which issued a penalty notice. Mr Platt refused to pay in accordance with the notice and was therefore prosecuted in the magistrates' court.

The magistrates, and then the High Court, ruled that he had no case to answer, as Mr Platt's daughter had an attendance record of between 90% and 95%, even including this one-week unauthorised holiday, and therefore it could not be said that his daughter's attendance was not regular.

However, the local authority appealed the High Court's decision and the case reached the Supreme Court. It decided that a parent would commit the offence of their child failing to attend school 'regularly' if the child fails to attend in accordance with the rules prescribed by his or her particular school.

This decision does raise the question of whether every local authority will now produce its own set of guidelines, which will invariably differ across the country. If that were to happen, would parents be criminalised in certain areas of England and Wales more than in others?

In summary, the result of this judgment is that a parent will be guilty of a criminal offence if they take their child out of school to go on holiday during term time without authorisation, even if the child's level of attendance is otherwise excellent.

#### BIRKETT LONG LLP

PHOENIX HOUSE  
CHRISTOPHER MARTIN ROAD  
BASILDON SS14 3EZ  
T 01268 244144

1 AMPHORA PLACE, SHEEPEN ROAD  
COLCHESTER CO3 3WG  
T 01206 217300

FAVIELL HOUSE, 1 COVAL WELLS  
CHELMSFORD CM1 1WZ  
T 01245 453800

E NEWS@BIRKETTLONG.CO.UK  
WWW.BIRKETTLONG.CO.UK

Birkett Long LLP is authorised and regulated by the Solicitors Regulation Authority (Number: 488404)

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.

© Birkett Long LLP 2017. We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217334.

Reference: NEWS/EDUCATION10/2017



## New statistics

The Department for Education and the Education and Skills Funding Agency (ESFA) have published statistics about learner participation, outcomes and highest qualifications held in further education and skills. The statistics indicate that:

- Government funded apprenticeship participation in the 2016/17

academic year is greater than in 2015/16

- Participation in government funded adult further education reported in 2016/17 is less than in 2015/16, and has continued to fall since its peak in 2011/12.