

BACKGROUND BRIEFING

Legal Duties of Governing Bodies and headteachers

Governing bodies have a statutory duty to ensure that the tests are administered in accordance with all the statutory requirements.

Head teachers are under a statutory duty to make arrangements for the tests to take place, and are required to administer the tests in accordance with the law, including the instructions in the Key Stage 2 Assessment and Reporting Arrangements, as they have done in previous years. Failure on the part of head teachers to administer the tests would be a breach of their statutory duty.

Legal Background

The requirements on Governing Bodies include the duty under section 88(1A) of the Education Act 2002 (“the 2002 Act”) to exercise their functions with a view to securing that the current assessment arrangements are implemented, and the duty under regulation 5 of the School Staffing (England) Regulations 2009, SI 2009/2680, to ensure that the head teacher “complies with the duties imposed upon the head teacher” by any order under section 122 of the 2002 Act (power to prescribe pay and conditions of school teachers).

The current order made under section 122 is the Education (School Teachers’ Pay and Conditions) Order 2009, SI 2009/2132. The Order gives effect to the School Teachers’ Pay and Conditions Document 2009 (“the STPCD”). The STPCD can be found at <http://www.teachernet.gov.uk/management/payandperformance/pay/>

Paragraph 54.1 of the STPCD provides that the head teacher must carry out their professional duties in accordance with and subject to the Education Acts and orders and regulations under those Acts. That includes carrying out their duties in accordance with the duty on head teachers to secure that the current assessment arrangements are implemented (section 88(1A) of the 2002 Act) and the duty to arrange for National Curriculum Tests to be administered under article 5 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003 (SI 2003/1038).

Advice to Governors

You should find out whether the head teacher intends to administer the tests. If a head does not intend to do so, you should remind them of their statutory duty to administer the tests.

If a head teacher still does not intend to administer the tests themselves, it would be wrong for them to frustrate another competent person from administering them, and you should establish that they would not do so.

When you have established this, we recommend that you speak to your local authority and/or diocesan authority about next steps. If necessary, you may consider whether to

instruct the head teacher to remain absent from school at times when the tests are due to take place, while another person administers the tests.

Staff belonging to other trade unions and those members of NUT who are not in leadership positions are not part of the industrial action, and should be carrying out their duties normally, including in relation to supervising tests or handling test papers. However, those staff cannot be expected to take on any duties which heads are specifically responsible for but are refusing to take on.

In addition to ensuring that parents understand whether the tests will be taking place, Governing bodies should ensure that the QCDA's National Curriculum assessments helpline on 0300 303 3013 is informed of any instances where it is known that tests will not be administered.

Questions and Answers:

How should Governing Bodies find out if the headteacher is planning to boycott?

The Chair of Governors acting on behalf of the Governing Body would normally ask the headteacher for this information.

Who is responsible for telling parents that the headteacher is boycotting the tests?

Having spoken with the head teacher, Governing Bodies will want to inform parents, making sure that parents are aware of arrangements for assessment.

In addition to ensuring that parents understand whether the tests will be taking place, Governing bodies should ensure that the QCDA's National Curriculum assessments helpline on 0300 303 3013 is informed of any instances where it is known that tests will not be administered.

What should Local Authorities do?

Planning for administration of Key Stage 2 tests is being carried out as usual. Local Authorities have a statutory duty to exercise their functions with a view to securing that the assessment arrangements are implemented. They must do everything they can to ensure that the tests are carried out properly, fulfilling their role in providing guidance and undertaking monitoring visits in the usual way. Local authorities should make sure schools understand and follow statutory requirements, as they have done in previous years.

Do Local Authorities have to carry out a full programme of monitoring visits?

Yes. Local Authorities should make unannounced visits to 10 per cent of their Key Stage 2 schools before, during or after the test period, as they did last year.

Detailed guidance on carrying out monitoring visits for local authorities can be found on the Monitoring page of the Local authority section of the QCDA Tests and exams website: www.qcda.gov.uk/local_authorities

What should Local Authorities say to Head teachers who ask for advice on what action to take in relation to the proposed boycott?

Local Authorities should assure head teachers that planning for Key Stage 2 tests is going ahead as scheduled. Schools will not wish to disrupt pupils' learning. Local Authorities should remind head teachers that they have a statutory duty to administer the tests in accordance with the statutory requirements, including the instructions in the Assessment and Reporting Arrangements;

What is the Government doing about the boycott?

We are continuing our discussions with the National Governors Association, Local Authorities and Local Authority organisations, to assess the likely impact of disruption and to decide on next steps. Planning for National Curriculum Tests in 2010 is going ahead as scheduled.

DCSF has been clear that head teachers have a statutory duty to administer the tests. Pupils and teachers have been working hard all year, have been preparing for the tests and are now expecting them to take place. They should all be given the opportunity to demonstrate their achievements in tests which are set and marked properly. Only a small percentage of head teachers voted for action to take place and Ministers have been clear that it would be better to work together to strengthen the assessment system than to take action which will deprive parents of an update on their child's, and their school's, progress.

We trust head teachers and teachers' experience and professionalism, and are confident that schools will not wish to disrupt pupils' learning.