

Answers to our members' questions on the boycott of SATs

Version 3: Monday 26 April 2010

Question 1:

As a primary school governor, what do I need to do as regards the boycott?

Answer: Your Chair should ask the headteacher whether they are planning to boycott the SATs administration. If they are not going to boycott the SATs, the governing body does not need to do anything. Even if a head is an NAHT or NUT member, he or she might decide not to take the action. The unions have said that the action will not be mandatory, but "enabling", meaning members would be within their rights not to boycott the tests. NUT guidance to its members says "Members are free to decide how they will respond to this request [to take boycott action], regardless of the way that they voted in the ballot".

If the headteacher says that s/he is going to boycott the tests, the Chair might want to remind him/her that administering SATs is a statutory duty and that the DCSF contends that the headteacher will be acting unlawfully if they do not arrange for the tests to take place. The legal advice from the unions involved (NAHT and NUT) and the DCSF contradict each other. The NGA has not yet been convinced that the action would constitute a legal trade dispute, as it is hard to make the direct link between SATs administration and terms and conditions of employment. However, ministers have not yet indicated whether the DCSF is going to mount a legal challenge to the boycott. Therefore the NGA is advising its members to conduct themselves as though the boycott is a legitimate trade dispute. We will inform members if a legal challenge to the boycott is mounted.

Remember this boycott is not strike action; any staff involved will be in school throughout the tests boycott. This action is limited to the NAHT and NUT; the other teaching unions/professional associations (ASCL, ATL, NASUWT and Voice) are not involved.

Headteachers must ensure their schools comply with all aspects of the key stage 2 assessment and reporting arrangements. This legal duty falls directly on the headteacher and the NGA contends that the administration of the tests is an operational matter, and therefore not the province of the governing body. There is a legal requirement on governing bodies (in section 88(1A) of the Education Act 2002) to exercise their functions with a view to securing that the current assessment arrangements are implemented, as well as 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. However, if the industrial action is lawful (as the NGA suggests it has to be considered until there is case-law to draw on) the NGA would caution governing bodies against making alternative arrangements.

If a headteacher decides to boycott the tests, the governing body should not get involved in operational matters and should not get involved in the administration of the tests. However it is reasonable for the Chair to ask how the decision to boycott the tests is being communicated to children and parents/carers. You may be interested to know that when gathering evidence on parents' views of testing and assessment, DCSF found that 75% of parents who responded valued the information currently provided by the tests.

Question 2: Our headteacher has asked if we will support the boycott?

Answer: The NGA does not support a boycott of the Key Stage 2 tests, and whatever members' personal views may be as regards SATs, the NGA advises that governing bodies do not sign supporting statements.

Question 3:

Should governing bodies hold an emergency meeting to agree their positions?

Answer: We do not think this is necessary, given the very limited actions governing bodies can take as outlined in the answer to question 1. The chair should keep other governors informed as to whether the tests are going ahead at the school, and only call an emergency meeting if s/he deems it necessary because of the particular situation at the school.

Question 4:

How should we respond if a headteacher wants to boycott the test, but another member of the leadership team and/or the Year 6 teacher wants to administer them? (updated 26 April 2010)

Answer: The ability of another person to 'administer' the tests rests on the headteacher's willingness to co-operate. The chair of governors should ask the headteacher whether they are planning to take part in the boycott and if so, would they be willing for another member of staff to administer the tests, if the answer to this question is yes, then it appears to the NGA that it would be possible for the SATs to go ahead. Although the statutory duty to administer the tests falls on the headteacher, paragraph 57.4.2 of the School Teachers' Pay and Conditions document allows for delegation of duties to other members of staff. If the headteacher is unwilling to administer the SATs, but is willing for another member of staff to do so then this would appear to be allowable.

If the headteacher is undertaking the boycott and is not willing to allow such delegation then it does not appear to the NGA that there is any power for the governing body to intervene and instruct a third person to do so.

Question 5:

- a) Where the headteacher is non-NAHT/NUT but Year 6 teachers are NUT, can the headteacher organise for alternative staff to administer the tests?

Answer: The headteacher can do the administration him/herself, or organise for alternative staff (whether internal or external) to administer them. Although some headteachers, especially those who are union members, may be reticent to use alternative people on the grounds that a fellow union member is undertaking industrial action, the Chair could remind them that classroom teachers were not balloted about the boycott. This was on the basis that the unions decided that "Classroom teachers cannot be required to routinely participate in administration or invigilation arrangements that do not call for the exercise of professional skills and judgement so will not be expected to undertake such duties relating to SATs".

b) How should we respond if a headteacher decides to go ahead with the SATs, and other staff, who are NUT members, picket or put pressure on children and their parents to boycott them?

Answer: We do not expect that staff will formally 'picket' as this is not strike action and they will be working in school. We very much hope teachers will not put pressure on children and parents and we have no information to suggest that this is happening, but if it does please let us know and we will advise our members how to proceed depending on what has been said.

Question 6: What if the headteacher wants to administer the SATs but not submit them for external marking and instead have them internally marked; would the governing body have the right to see the pupil outcomes?

Updated answer: If the headteacher suggests this as a course of action, you should inform them that this would not be legitimate industrial action. This is because the unions have asked members from 4 May to:

- Refuse to follow the test opening, checking and administrative procedures;
- Refuse to carry out the 2010 tests;
- Refuse to ensure that all eligible and able pupils take the test.
- Store the unopened test papers securely until such time as they are collected.

The action is therefore not to administer the tests at all from 4 May. However we understand that a few headteachers may be considering getting children to sit the tests, but not submitting them to the statutory external marking. If this happens, then yes, in the NGA's opinion, the governing body could reasonably request to see the outcomes of the tests. However we would expect the majority headteachers to follow the advice of their union and not to take this route. Swapping the tests for marking with another school would not fulfil the statutory requirement for 'external marking'.

Question 7: In his press statement, the Secretary of State said he was in discussions with the NGA; when will the outcome to these discussions be known?

Answer: We had requested that guidance be issued by the DCSF to chairs of governing bodies as soon as the unions announced their decision. We are disappointed that this has not happened. The DCSF is urging headteachers to carry out their statutory duty to administer the tests. As soon as we receive written guidance from DCSF, we will make it available on our website.

Question 8: How can the school carry out the requirement to pass pupils' test results on to their secondary schools if the tests have not taken place?

Answer: Again it is the statutory responsibility of the headteacher and not the governing body. If Key Stage 2 tests have not been administered at your school s/he will not be able to pass that data on to secondary schools.

Question 9: How will I, as a secondary school governor, manage without Key Stage 2 test data?

Answer: Again this is not yet determined. It may be that teacher assessments will be used.

Question 10: Are teacher assessments likely to be recognised by Ofsted inspectors, for schools which have boycotted the tests?

No decision has been made on this. NGA will keep asking these questions of the Department and will update our answers when we are able.

If you are a member of NGA and have further questions you would like answered, please feel free to e-mail:

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