

22/05/2018



25 Red Lion Square
London WC1R 4RL

TEL: 020 7404 3126

FAX: 0870 762 8971

EMAIL: enquiries@secularism.org.uk

WEB: www.secularism.org.uk

Operating the Independent School Regulatory System: NSS consultation response

1. The National Secular Society works for the separation of religion and state and equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs.
2. Our interest in the independent school regulatory system relate to our work ensuring that:
 - a. Pupils attending independent schools do not have their rights undermined based on the religion or belief of the school.
 - b. Independent faith and non-faith schools are held to the same standards.

i. Do you agree that the government should issue a single document giving non-statutory advice on the independent school standards?

3. We support the current Independent School Standards, which are very much in line with our own recommendations when they were consulted on by the DfE.¹ Bringing together the advice on these eight areas into a single document should help create clarity and consistency over the standards expected.
4. If making the guidance (and associated policy regarding enforcement) non-statutory works well it should provide more flexibility and space for constructive work between the regulator and schools to address concerns. If, however, this leads to inconsistencies or confusions as "The policy set out here does not, therefore, automatically determine the outcome of decisions" then the DfE should be open to making this guidance statutory.

ii. What comments do you have on the consultation draft advice?

5. We strongly support the draft advice and the regulations on which they are based. They strike the right balance between protecting children's educational (and other) rights and the freedoms of independent schools. The few changes since the Jan 2015 ISS are generally improvements and we are pleased to see that there has been no dilution of the 2015 standards despite the difficulty some faith schools have had at adapting to them.²

¹ <https://www.secularism.org.uk/news/2014/08/nss-responds-to-government-consultation-on-school-standards-and-british-values>

² <https://www.secularism.org.uk/news/2017/11/half-independent-faith-schools-failing>

6. For ease of reference we will use the paragraph numbers from the advice for our specific comments.

Para 10: Where schools have an ideological objection to the use of IT/electronic media – as in some independent faith schools – they should not shield pupils from a basic level of knowledge of technology they are likely to encounter in their everyday life. Similarly, where schools do not include a practical element in aesthetic or creative education, they should not close pupils’ potential by discouraging them from participating in such activities.

Para 13: We would recommend changing: “Independent schools may teach creationism as part of a belief system but it should not be presented as having a similar or superior evidence base to scientific theories.” To “Independent schools may present creationism as part of a belief system but it should clearly be differentiated from science and evidence based views of origins.”³

Para 17: We are concerned that the “wide discretion” to teach PSHE in accordance with a schools ethos should not provide *carte blanche* for religious inculcation. Schools ability to promote their ethos cannot override their duty to provide accurate information for pupils. This is particularly important in PSHE where accurate information is important for safeguarding.⁴

Para 18-21: We welcome the unequivocal statement that PSHE teaching must be consistent with the Equality Act 2010. Where schools have generalised statements of respect for all people, but shield pupils from knowledge of specific groups they must be seen as failing in their duty.⁵

Para 22: Schools must take a holistic approach to this. It is not sufficient to issue general platitudes that people of different genders are capable of pursuing different roles, if gender roles are promoted elsewhere that suggest particular roles are more suited to pupils of a particular gender.

Para 26: We would welcome a specific requirement on independent schools to demonstrate how they are preparing pupils with the life skills to flourish, whether or not they remain in a specific religion/belief community.

Para 27: See comments below on para 4. The UK’s tradition of accepting single-sex schooling (particularly in the independent sector) is not predicated on or supportive of gender segregation in wider society. Pupils in single-sex schools should understand that gender-mixing is the norm in most areas of wider society.

Para 35: If correctly handled ‘extremist’ materials and materials with views counter to ‘Fundamental British Values’ can have a legitimate educational purpose. The question of whether or not such materials are relevant to the school meeting the standards, needs to be more nuanced than whether or not they are specifically used in teaching.

Para 39: Inspector must be clear that platitudes about respecting the rights of others – even when embedded in official policies – are insufficient if violated in practice.

Para 40: We welcome this advice being updated in light of the Al-Hijrah ruling.⁶

³ <https://www.secularism.org.uk/news/2018/02/damning-ofsted-report-for-school-which-teaches-creation-as-science>

⁴ <https://www.secularism.org.uk/sex-education/>

⁵ <https://www.secularism.org.uk/news/2017/03/unacceptable-for-ultra-orthodox-faith-schools-to-shun-children-with-transsexual-parents-says-dfe>

⁶ <https://www.secularism.org.uk/opinion/2017/10/al-hijrah-school-ruling--the-fight-to-end-segregation-has-only-just-begun>

Para 16: We agree that “The duty to actively promote mutual respect and tolerance of those with different faiths does not require schools to ‘promote’ teachings, beliefs or opinions that conflict with their own.” However schools must demonstrate that basic understanding of different groups must be actively promoted.

Para 51: We worry about the potential conflict here. While independent schools can teach about particular religious ‘laws’ or codes, if the pupils are encouraged to ‘respect’ such codes, they should learn that the onus is on them to find a way to follow them consistent with the rule of law and the rights of others.

Para 59: This should require schools to specifically acknowledge the existence of varying gender identities. Otherwise it risks generic platitudes.

Para 61-67: This touches on a tension at the heart of English education law which goes beyond the scope of this consultation. Whether in the independent or state sector, schools may not promote partisan political views, yet many may promote partisan religious views, which have the potential to overlap.

Para 68: According to our research in 2016, only 35% of secondary schools in the state sector had such policies, and only 16% of had policies which specifically addressed the promotion of partisan beliefs. This is an area where the DfE could show leadership and help schools meet this standard by bringing out model guidance.⁷

Para 78: Care must be taken so that where schools discourage the use of mobile phones or technologies, that this does not undermine safeguarding (including advice on safe usage) and anti-bullying policies.

Para 84: This could be strengthened to make clear that schools cannot exclude pupils or parents based on community ostracism and that the anti-bullying policy specifically cover unacceptable behaviours related to ostracism. As an example, we cite the case of J-v-B where Mr Justice Jackson felt he had no choice but to deny a transwoman any access to her children, so great was the level of ostracism likely to face the family at their independent Jewish schools. A teacher at one of the children's schools said that "where there is risk of negative influences from the outside world to other children in the School, the School will experience tremendous pressure from the Parent body and the governors not to allocate a place to any child who will bring these potential risks."⁸

Para 94: We welcome this clarification, particularly as it relates to some independent faith schools seeking to shield pupils from knowledge of LGBT+ people and other aspects of modern Britain that they believe do not apply to ‘their’ community.

Para 99: It is important that independent schools are not a gateway to the unregistered (illegal) school sector, and that where pupils are entering the legitimate independent school sector from the unregistered sector that appropriate safeguarding is in place.

Para 115: It is important that such information is made available to all stakeholders. The best way to do this would be to ensure that it is published online – preferably on the school’s website.

⁷ <https://www.secularism.org.uk/news/2018/04/six-independent-islamic-schools-had-serious-failings-says-dfe>

⁸ <https://www.secularism.org.uk/news/2017/01/children-lose-contact-with-transgender-parent-because-orthodox-community-will-ostracise-them>

iii. do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed document?

7. That independent faith schools have had (and are likely to have) a higher propensity to fail to meet these standards, has been held up in some areas as 'evidence' of an anti-religious bias since 2015. We therefore welcome and agree with the assessments made by the DfE regarding the proposed advice's compliance with both the Equality Act and the UNCRC. The proposed advice is a proportionate means of ensuring the legitimate aims of safeguarding the rights of children in independent education. The fact that some people may hold religious objections over some aspects of the requirements does not materially affect their freedom of religion or belief.
8. We would welcome a clearer positive statement on how the proposed guidance will improve the state's duty to safeguard Articles 3, 28 and 29 of the UNCRC.
9. We believe insufficient attention is given in the equalities Log, for the positive impact of the proposed advice on those pupils sharing the protected characteristics of sex, sexual orientation and gender identity.

iv. do you agree that the department should replace the existing regulatory policy statement with one which also covers enforcement action?

10. Yes.

v. Do you agree with the change in policy highlighted at paragraph 10 above?

11. Yes. The DfE should work constructively with independent schools to address concerns and the most powerful sanctions are not always the most appropriate. However, the DfE should not permit a situation where independent schools which repeatedly fail to meet standards (or are in particularly gross violation of standards) continue to operate.⁹

vi. What comments do you have on each section of the draft policy statement?

Para 7: While enforcement is the highest sanction available to the DfE and should therefore be used sparingly, there may be situations (beyond those emergencies referred to in paragraph 30) where failures to meet the ISS are so extreme that enforcement procedures should begin without allowing excessive time for potential improvement.

Para 11: It may help transparency and efficiency if these notices could be delivered by the inspectors and a record of all such notices made available.

Para 21: In cases where it is necessary to permanently or temporarily remove a school from the school register, intelligence should be shared with local authorities to prevent it simply becoming part of the unregistered school sector.

Para 26: We support a targeted and constructive approach to enforcement that places the best interests of children in independent schools centrally to the process. We wish to avoid 'securitised' language that can lead to oversight being seen through the lens of security or extremism, rather than education and children's rights

Para 26: Just as 'consistency' means that independent faith schools should not be treated less favourably than similarly situated independent non-faith schools, they should not be treated more

⁹ <https://www.secularism.org.uk/news/2017/09/ofsted-repeatedly-fails-dozens-of-independent-faith-schools>

leniently. A faith ethos or 'context' should not mitigate an independent school's duty under the Equality Act.

vii. do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed document?

12. Our comments here are not materially different to those in response to iii. It is true that independent faith schools have (and are likely to have) a disproportionate likelihood of failing the ISS and therefore being subject to enforcement. Provided enforcement follows the standards set out in this policy it should not give rise to indirect discrimination.¹⁰

Update

On 29 May the following was added to our consultation response via email, that in addition to our response to question vi (*What comments do you have on each section of the draft policy statement?*):

13. We would like to see either a duty requiring, or presumption that, local authorities will issue school attendance orders with regards to all children affected by an independent school being deregistered.
14. In support of this the DfE should notify local authorities when an independent school is deregistered, providing them with the necessary information to issue school attendance orders with regards to all children affected.
15. The same should apply with respect to any children affected where the DfE requires that independent school reduces enrolment numbers.
16. This will help prevent children entering the illegal (unregistered) school sector in the unfortunate situation where enforcement action must be taken against an independent school.

Consultation response prepared by Alastair Lichten
Education and schools officer
National Secular Society
22May 2018
For more information please contact:
education@secularism.org.uk

¹⁰ <https://www.secularism.org.uk/news/2018/05/dfe-warned-12-more-private-faith-schools-over-failures-in-one-month>