

# City Solicitor's Office

# EDUCATION

## newsletter



Welcome to the Autumn edition of the City Solicitor's Office, Legal Services' Education Newsletter. This edition provides legal updates together with practical advice relating to day-to-day school management. Informative articles and guidance are also included relating to the prevention of hair discrimination in schools, the backing of the free school meals campaign by medical professionals and, recognition and wellbeing resources for our valuable Teaching Assistants.

Since our last edition we have continued to support school career events via attendance at career talks, mock interviews and cv advice sessions for secondary school pupils. Should your school be hosting such events and require support, or your pupils be interested in hearing further about a career in law, our Professional Support Lawyer, Nikki Roberts, can assist and provides career talks advising upon the different pathways to a career in law, different areas of law and life as a local government lawyer. Such advice is offered remotely or via attendance and please don't hesitate to contact Nikki direct for further information (0151 351 1132/07593 130286 [nikki.roberts@liverpool.gov.uk](mailto:nikki.roberts@liverpool.gov.uk)).

We've also continued to welcome your requests for advice relating to the difficulties that arise within school communities and received positive feedback in respect of our handbook containing guidance, template letters, notices, and useful links; "Disruptive or aggressive behaviour by parents and carers whilst on school premises; Guidance to school personnel and governing bodies". Please don't hesitate to get in touch if you are yet to receive a copy and/or wish your school leadership team to receive training on how to deal with disruptive and aggressive parents, serial or unreasonable complainants and inappropriate social media posts (0151 351 1132/07593 130286 [nikki.roberts@liverpool.gov.uk](mailto:nikki.roberts@liverpool.gov.uk)).

Here at the City Solicitor's Office, we hope all school communities have a well-deserved rest over the Winter Break ready for all the exciting learning opportunities which 2023 brings! As always, UK Parliament Education continue to provide a wide choice of valuable resources in the new year with a range of school workshops available to encourage students to gain an understanding of parliamentary work. Such events are inclusive to all students; open to primary schools, secondary schools, home education, SEND and post-16 providers, and delivered via MS Teams. Within the sessions UK Parliament staff will discuss the role of MPs, explain how laws are made and what students can do to get their voices heard. With the opportunity for open discussion, this is a brilliant chance for students to enhance their debating skills, understand a democratic society and get involved with Members of Parliament.

Sessions available for students aged 7-16 years include an introduction to UK Parliament; Laws and Debating; and a virtual tour of Parliament. Whereas sessions available for students Post 16 include an explanation relating to General Elections; Law and Debating; and the virtual tour.

Please utilise the links for further information:

[Home Education Workshop - Primary](#)

[Home Education Workshop - Secondary](#)

[SEND Workshop Event](#)

And there's more! Any post-16 students studying Government and Politics, or Modern Studies are also invited to an *Experience Day* at Parliament on Friday 10<sup>th</sup> February 2023. The event will include:

- A Palace of Westminster tour focusing on the composition, roles, functions, relationship and respective powers of Government and Parliament
- A visit to a Select Committee room and Public Bill Committee room to learn about different scrutiny functions
- An interactive workshop which compliments and consolidates learning.

There are limited spaces available for this event so sign up as soon via the link; [Experience Day](#)

Alternatively, the award-winning Outreach team can bring UK Parliament to your school! They will deliver high-quality engaging assemblies, each one giving students an understanding of how UK Parliament works, who works there and how to get their voices heard. Please see link for further information and booking: [Outreach Assembly](#)

### **School Exclusion Reviews**

Legal Services continue to seek volunteers to become panel members to sit on School Exclusion Reviews. If you are interested in serving on such a panel in either a non-lay capacity (serving or retired head teachers/teachers) or lay capacity (governors or volunteers who have never worked in a school in a paid capacity), or you know someone who would be, please email: [education.appeals@liverpool.gov.uk](mailto:education.appeals@liverpool.gov.uk) to discuss further.

**We hope you find this newsletter informative, and we welcome your suggestions in respect of articles that you would benefit from seeing included in our next edition together with any questions that you would appreciate guidance upon. As always, we greatly value your feedback and please email your comments, questions and training requests to our Professional Support Lawyer, Nikki Roberts ([nikki.roberts@liverpool.gov.uk](mailto:nikki.roberts@liverpool.gov.uk))**

Whilst every effort has been made to ensure the accuracy of the contents, this newsletter is intended as a general overview and not as a substitute for legal advice in a specific situation. No responsibility is taken for any actions taken or not taken on the basis of this publication.

<b>Contents</b>	<b>Page</b>
<b>Legal updates</b>	<b>3</b>
<b>Guidance:</b>	<b>5</b>
<ul style="list-style-type: none"><li>• Prevent duty guidance</li><li>• Updated Privacy Notice Model Documents</li><li>• What Maintained Schools Must Publish Online</li><li>• School Admissions Appeal Code 2022</li><li>• Preventing Hair Discrimination in Schools</li></ul>	
<b>Articles:</b>	<b>8</b>
<ul style="list-style-type: none"><li>• Doctors back Free School Meals Campaign</li><li>• Debate on Apprenticeships and Teacher Training</li><li>• Online Safety</li><li>• Teaching Assistants; recognition and wellbeing</li></ul>	
<b>Frequently Asked Questions:</b>	<b>10</b>
<ul style="list-style-type: none"><li>• Changing the recorded gender on a pupil's record</li><li>• Consent relating to vaccinations</li><li>• Academic year length.</li></ul>	

## Legal updates

### **School prosecuted following mountain rescue team evacuation**

Earlier this year, following stranded schoolchildren requiring evacuation by Keswick Mountain Rescue Team (KMRT) whilst on a school trip, Health & Safety Executive (HSE) investigations revealed risk assessment inadequacies leading to a guilty plea for the breach of health and safety duties.

By way of background, a group of thirteen Year 10 pupils from The Gateshead Cheder School were on an organised trip to Helvellyn in the Lake District. The trip was led by one teacher and a teaching assistant, and neither had any formal qualifications in mountain leadership or experience with such environments. Due to the conditions on the day of the trip being cold and icy, there was more danger imposed when ascending above the snow line. Despite such conditions and the Lake District Weatherline Report highlighting the additional danger, and two members of the public warning the party to turn back, it was decided to proceed with the trip as planned.

When descending the mountain, the group inadvertently veered off path and were soon faced with a section of steep terrain presenting vertical rock faces of around 20 metres high. Unfortunately, one of the pupils slid on the ice and fell several metres, sustaining minor cuts. In sheer panic, another pupil ran down the mountain away from the group and whilst the school personnel remained with the injured party and the other schoolchildren, it was getting dark, and the temperature began to drop. Eventually locating the group, KMRT conducted a rescue and thankfully, members of the public found the other pupil.

Following the HSE's investigation, The Gateshead Cheder School pleaded guilty to breaching their duties relating to the health, safety, and welfare of those within their employment and those not (the pupils), pursuant to sections 2(1) and 3(1) of the Health and Safety at Work Act 1974. The school was subsequently fined £30,000 and required to pay costs amounting to £4,574.90. The HSE Inspector clarified that although no members of the party were seriously injured in this case, the pupils were placed at risk of severe harm. Further, it was confirmed that despite it being known that the school personnel present lacked the appropriate skills, knowledge, and experience to lead the trip, the school had incompetently failed to seek advice from a suitably skilled individual to plan or organise the excursion. This, in the HSE's view, evidenced the school's failings to adopt sensible safety precautions, particularly regarding their awareness of the weather conditions.

To avoid such claims, schools need to ensure that reasonable and proportionate measures are taken to control the risks that such trips pose. Should a school not have access to the necessary expertise in-house, then licensed school trip providers are available to manage the technical aspects of a given activity and should be utilised. In the event this is not required, relevant risk assessments should be undertaken by competently trained personnel at the school and kept securely for future referral. Clearly, in this case, had the school adopted sensible, reasonable precautions and sought the expertise of adventure activity providers, then this incident, and the sentencing, could have been entirely avoided.

## **School not vicariously liable for sexual assault incident**

A school has been found not vicariously liable for the sexual assault of a current pupil (C) aged 13 years, by an 18-year-old former pupil (P), due to the relationship between P and the school not being akin to employment; the incident occurring sometime after P's time there; and the school not creating the risk of the tort being committed.

Here, the claim was brought by the pupil, who sought damages from the defendant school on the grounds of vicarious liability for serious sexual assaults perpetrated by P. Hoping to qualify as a physical education teacher, P was undertaking work experience at the school whilst also attending college and the school had not hesitated in offering him a placement since he had been well thought of as a former pupil. C was sexually assaulted by P, and a guilty plea to engaging in sexual activity with a child was entered however, the issue to be decided was whether the school should be vicariously liable for P's proven torts.

For the imposition of vicarious liability, the relationship between the defendant (the school) and the primary tortfeasor (P) must be akin to employment or sufficiently analogous to employment. There must also be a connection linking that relationship to the act or omission by P too. Upon consideration of the matter, the court concluded that the relationship between the school and P was not one which was akin to employment, it being clarified that upon P approaching the school in asking for the opportunity to spend a week on work placement, he was effectively asking for a favour, and this was how the school had viewed his request. Further, P was only 18, unqualified and had been on the placement for learning purposes and the school had not intended to derive value from P's presence; in fact, his work placement imposed more of a burden, than any benefit.

In those circumstances, the court were of the view that it would not be fair, just, and/or reasonable to find that a one-week work experience scheme amounted to a relationship akin to employment. The court also clarified that whilst it was apparent that the school had more funds, i.e., deeper pockets, than P to compensate the claimant, this should not in itself be the principled reason upon which to find the school vicariously liable for P's tortious acts. Further, the tort was committed well after P's placement had ended, removing it from taking place within the course of employment and the school could not be said to have created the risk of P committing the tort. Therefore, although the claimant was undoubtedly the victim of appalling criminal acts of sexual assault, the school was held not vicariously liable for the torts committed against her.

# Guidance

## Prevent duty guidance

In October 2022, the Department for Education (DfE) produced guidance to assist all working in education settings on how to best safeguard those learners vulnerable to radicalisation. All education providers are required to have due regard to the necessity of preventing pupils from being drawn into terrorism and extends to safeguarding children, young people and adult learners from extremist ideologies and radicalisation.

The DfE's updated advice is divided into four sections. The first provides a helpful introduction to the Prevent duty and provides guidance for those with safeguarding responsibilities, focussing upon the individual staff duties. It also covers the process of how concerns relating to radicalism should be raised and how extremism should be reported.

The second section of the guidance addresses how individuals can understand and identify the risk of radicalisation in an education environment, and specifically deals with how learners may become exposed and the associated risk factors; emphasising the importance of safeguarding personnel understanding how to recognise this. It also draws attention to how mixed, unclear, or unstable cases should be dealt with whereas the third section deals with the identification and management of radicalisation risk factors and indicators which suggest that a Prevent referral is necessary.

The final section of the updated guidance helpfully contains case studies, providing various examples of when it is necessary for the Prevent duty to be engaged, and discusses the role of the designated safeguarding lead (DSL) in such situations, protective intervention, how to respond to concerns in the classroom and the role of the police in a referral. For further information, please utilise the link below:

[PREVENT - Safeguarding learners vulnerable to radicalisation](#)

## Updated Privacy Notice Model Documents

The Department for Education (DfE) has produced updated material for a number of resources in its privacy notice model documents, providing data protection advice and advising schools and local authorities to issue such notices to staff, parents, and pupils in respect of their data collection.

Such guidance consists of a new series of model privacy notices, including:

- Explanation of privacy notices.
- Privacy notice: suggested text for pupils.
- Privacy notice: suggested text for school workforce.
- Privacy notice: suggested text for school and trust governance roles.
- Privacy notice: suggested web text for a local authority.

- Privacy notice: suggested text for looked-after children and children in need.

However, whilst the documents provide tips and suggestions, they do not constitute formal legal guidance and it is ultimately the responsibility of a school/local authority to develop their own data protection procedures in compliance with legislation. The guidance does stress the importance of an effective privacy notice, and schools are encouraged to make use of the resources, linked below.

[Data Protection and privacy notices](#)

### **What Maintained Schools Must Publish Online**

Pursuant to The School Information (England) (Amendment) Regulations 2012 and 2016, every local authority-maintained school must publish specific information on its website and the Department for Education (DfE) have updated their guidance, listing the information which maintained schools should disclose in the 2022-23 academic year.

The updated guidance includes whether data on test, exam, and assessment results from the 2021-22 academic year is required to be published, together with details relating to school uniform. It confirms that when developing and implementing their uniform policy, schools must have regard to the DfE guidance regarding the cost and should be clear in terms of what uniform items are optional, seasonal and those items which must be branded. Such policy is required to be published on a school's website and the importance of clarifying within the uniform policy whether an item can only be purchased from a particular retailer, or is available more widely, is emphasised.

Further, new information is included within the guidance relating to school opening hours confirming that a school's opening and closing times should be published (including the compulsory open times) together with the total time this amounts to in a typical week. Information relating to admission arrangements, Ofsted reports and curriculum etc. are also dealt with by the DfE and please utilise the hyperlink below for direct access to their guidance: [What maintained schools must publish online](#)

### **School Admissions Appeal Code 2022**

Local authorities are under a statutory duty to enable the parents of children within their area to express a preference in respect of the school or schools they wish their child to attend. The law on school admissions is quite complex since no child is guaranteed a place at their parents' school of choice which can be problematic, particularly with popular oversubscribed schools.

The statutory framework regulating the law on school admissions is contained in the School Standards and Framework Act 1998. In addition to this, school admissions are specifically covered by a statutory code of practice, which was updated on the 1<sup>st</sup> October 2022, and the School Admissions Appeal Code (Appointed Day) (England) Order 2022 was brought into force.

The new statutory Code was issued by the Department for Education (DfE) applies to admission appeals for all maintained schools and academy schools in England and introduces changes such as having the option to hold appeals via video conference, in person or a “hybrid” combination of the two. Please use the link to access the Code for further consideration: [School Admissions Appeal Code Order 2022](#)

### **Preventing Hair Discrimination in schools**

The Equality and Human Rights Commission (EHRC) have published new guidance regarding preventing the discrimination of hair in schools in response to particular hairstyles being banned within schools and some pupils being prohibited to wear their hair in natural Afro styles. The ECHR’s new resources, endorsed by World Afro Day and the All-Party Parliamentary Group for Race Equality in Education, provides guidance on how to stop hair discrimination, together with practical examples; a decision-making tool to help school leaders draft and review their policies; and an animated video to raise awareness of indirect race discrimination in schools.

Although the new guidance references other protected characteristics, the resources focus on race due to the disproportionate impact on pupils from specific racial groups. Race is a protected characteristic under the 2010 Equality Act, which in this context provides that a person must not be discriminated against because of their hair or hairstyle, if associated with their race or ethnicity. Therefore, uniform and appearance policies that ban certain hairstyles on this basis, will likely be unlawful.

The ECHR’s decision-making tool encourages schools who invoke hairstyle rules to make adjustments to, or develop, a policy which does not unlawfully discriminate against pupils with protected characteristics such as: disability, gender reassignment, race, religion or belief, sex, or sexual orientation. Such policy should meet pupils’ needs and take into consideration their sense of identity, culture, mental health, wellbeing, and confidence.

A case law example provided by the ECHR involved a school’s uniform policy which banned locks and, due to locks being a fundamental principle of the student’s Rastafarian beliefs, the policy was challenged in court as discriminatory based on race and religion or belief. It was agreed that the school’s policy was indirectly discriminatory, and the school agreed to review it, which was essential in complying with the Equality Act 2010.

Further case law examples can be accessed via the ECHR’s *Preventing Hair Discrimination in Schools guidance*, hyperlinked below. From which you can also view their decision-making tool and important videos for awareness and safeguarding: [ECHR Preventing Hair Discrimination in Schools](#)



## Articles

### Doctors back Free School Meal Campaign

Following the revelation by The Food Foundation that four million children now live in households affected by food poverty, more than 150,000 doctors and medical students have written to the Chancellor and Health Secretary calling for free school meals to be expanded, to fight malnutrition. The Charity also highlighted that around 800,000 children in families in receipt of Universal Credit (UC) are still not getting access to free school meals.

Such correspondence also highlighted their support of the *Feed the Future* campaign by healthcare professionals, charities, and organisations which likewise urges the Government to extend the eligibility of free school meals, enabling all children in households in receipt of UC to access them as a first step towards universal provision. The healthcare professionals highlighted how they 'see the impact of hunger and malnutrition' every day, and requested that all children across England should be guaranteed a 'hot, nutritious meal at school', demonstrating how this one step would benefit 'health, the economy and the NHS'.

A recent report commissioned by *Impact on Urban Health* from the analysts PWC was also referred to, which estimated that the expansion of free school meals to primary school children would benefit Britain's economy by an £8.9 million annual boost in improved productivity and health. The significance of children's access to healthy, nutritional food was reiterated, with a request that the Government 'act now to protect the health of the nation's children'.

### Debate on Apprenticeships and Teacher Training

In October, Richard Holden MP led a Westminster debate focusing upon apprenticeships and teacher training, stating that apprenticeships are a '*vital but underutilised part of our economy*' and highlighting that they drive productivity and growth, whilst allowing young people to earn whilst they learn. The debate led to a discussion of the degree qualification requirements for the teaching profession, and the viability of a teaching career being achieved via the apprenticeship route, which could potentially enable thousands of enthusiastic individuals' to be eligible to enter the teaching profession.

Since the education sector is looking to recruit, it was argued that teaching apprenticeships could be critical in increasing the productivity of enrolment, tackling regional inequalities, and improving educational outcomes. The MP also highlighted, with teachers as ambassadors for the apprenticeship route, it encourages students to have a positive outlook on apprenticeships as being invaluable and prestigious career paths. Whilst it was recognised the benefits of any reform in this regard are multi-faceted, it was appreciated they are far more extensive than just the teaching profession itself. With the potential for undergraduate apprenticeships to possibly fuel an economy-wide uptake, the support and further debate in such regard is encouraged by Westminster.

## **Online Safety**

After a series of delays, it was announced on the 24<sup>th</sup> November, the Online Safety Bill is to be returning to Parliament for its third reading; progressing further towards the House of Lords and subsequently on to the final stages of its approval. The third reading of the Bill in Parliament has been welcomed as a positive milestone that will encourage the progression of online safety.

The significance of child online safety has also been promoted through the release of new online bullying resources by ProjectEVOLVE. The resources are available for ages 3-11 years and have been created with consultation and feedback from partner organisations around online bullying. Available for within the free toolkit, the materials offer statements helping students to identify scenarios that may be recognised in relation to online bullying, along with some appropriate ways of responding to them. Some of these include describing, ways in which some people are unkind; the differences between online bullying and bullying in the physical world and how report concerns and access support in school and at home. For further information, please utilise the link here: [Projectevolve - Bullying Resources](#)

The valuable assistance provided by the Harmful Sexual Behaviour Support Service should also be promoted, which aims to provide support to all professionals working with children and young people when responding to incidents involving harmful sexual behaviours. The Service provides telephone and email support to professionals and has responded to over 600 cases. Those who have been in touch with the helpline include school staff and senior leaders, social workers, medical professionals, and care assistants, and over its 10 months in operation, the service has also gathered a wealth of knowledge and understanding of these incidents; together with providing the support required to respond appropriately. Please utilise the link to access their valuable resources: [Harmful Sexual Behaviour in Schools](#)

For information on how well schools are performing in protecting children online, the Online Safety Index 2022 ranks performance within the country and can also be accessed here: [Online Safety School Index-2022](#)

## **Teaching assistants; recognition and wellbeing**

Where would we be without teaching assistants? They make up a quarter of the education workforce and provide support and assistance to students wherever and whenever needed. At times, it may be difficult to see the challenges faced and the burdens placed on teaching assistants, however, not only are they trying to teach the next generation the relevant skills and knowledge needed for a successful life, they also play a huge societal role in schools.

It's, therefore, no surprise that many teaching assistants face stressful and worrying times and in recognition of this, Education Support have produced wellbeing resources for teaching assistants which cover a variety of topics ranging from how to manage anxiety to talking to your line manager about financial worries. These valuable resources may be used as a support mechanism and are designed to keep teaching assistants both healthy and informed. They can be accessed below for the benefit of your school community: [Wellbeing Resources - Teaching Assistants](#)

## Frequently Asked Questions

**Question: If both parents with parental responsibility (PR) have consented to the change of their child's gender, is it possible for a school to change the recorded gender on a pupil's record? Alternatively, is a gender recognition certificate obtained after the child turns 18?**

**Answer:** Gender reassignment is a protected characteristic under section 7 of the Equality Act 2010. Paragraph 3.4 of the Department for Education's (DfE) guidance (Equality Act 2010; advice for schools) outlines that in order to be protected under the Act, a student does not necessarily need to be undergoing any medical procedures to change their gender, but they must be taking steps to live in the opposite gender or be proposing to do so.

In terms of the Equality Act 2010 guidance, there are more resources that cover gender reassignment in employment. However, in respect of changing the gender recorded on an individual's school records, our understanding is as follows.

As readers are aware, every school in England is required to complete a census return each term. The DfE's *Complete the School Census* is a manual providing guidance for schools and local authorities on what data is needed and how to submit it and includes a section on data items containing every piece of information a school is required to send in Autumn 2022, Spring and Summer 2023. In relation to pupil gender, it states:

"[The DfE needs] this data for both on and off roll pupils. The gender of the pupil in the format of "M" (male) or "F" (female).

Gender should be self-declared and recorded according to the wishes of the parent and/or pupil. Individuals are free to change the way their gender is recorded".

Given the above guidance, it appears that a school can change the school records in accordance with the pupil and their parent's wishes. Alternatively, if parents with PR can show they have been given a court order to this effect, a formal change may be effected in this way.

**Question: How are schools involved in the consent process of vaccinations? Can parents refuse to have their child vaccinated and what happens if a parent has not consented, but their child wishes to be vaccinated?**

**Answer:** In relation to the recent pandemic, the government produced resources for COVID-19 vaccination programme for children and young people, which contains guidance for schools utilising the programme for 12- to 15-year-olds.

In terms of the consent process, schools simply host immunisation services, and they are not responsible for securing parental or child consent, assessing *Gillick* competence or mediating between parents and children who may disagree on whether or not to consent. That responsibility lies with the School Aged Immunisations Service (SAIS), who have extensive experience and expertise in handling these issues and are professionally accountable for their decisions. In addition to this, legal

accountability remains with the SAIS and not with the school in respect of offering COVID-19 vaccines to children and young people.

With regard to the refusal of vaccinations, this is permitted since they are not mandatory. Parents with parental responsibility (PR) will be asked to give their consent for the vaccination, but children may express a wish to have the vaccine and, depending on their age, may have the capacity to provide informed consent themselves. It is advised that parents are encouraged to speak to their children in advance, so that there is a mutual agreement by the date of the vaccination session.

Where a parent has not consented, but the child wishes to be vaccinated, '*Gillick* competence' must be established and is determined by ensuring a young person fully understands what is involved in a proposed procedure, such as a vaccination, and can therefore legally give consent. If a child is judged to be *Gillick* competent by the healthcare professional, the child can be vaccinated however, the healthcare professional will make every attempt to contact a parent for confirmation before proceeding. Should the parent still refuse to consent, the healthcare professional will engage with the parent and child in an effort to reach an agreement however, it should be noted, that a parent cannot overrule the decision of a *Gillick* competent child. Should no consent be received, and the child is not *Gillick* competent, or does not want to be vaccinated, the immunisation will not proceed.

Further, a vaccination will not be administered if the child's parents have different views concerning vaccination. Whilst, it is usually sufficient for a child to be vaccinated if the consent of one person with parental responsibility for the child is received (s2(7) Children Act 1989), if one parent objects, the immunisation should not be carried out unless there is a specific court approval that the immunisation is in the best interests on the child (*Green Book*). Further reading can be accessed via the links:

[Covid -9 vaccination resources for schools](#)   [PHE -Greenbook of immunisation chapter 2 - consent](#)

**Question: What is the length of a school or college year in terms of weeks and sessions and does this differ depending on whether the school is maintained or an Academy?**

**Answer:** The minimum number of school sessions that should be held during an academic year in every school is outlined in Regulation 3(2) Education (School Day and School Year) Regulations 1999. This includes every special school and those maintained by a local authority. The number of sessions is at least 380, amounting to 190 days. However, for the year 2021-2022, the school year was reduced from 380 to 378, to enable schools to close for the additional bank holiday on the 3<sup>rd</sup> June 2022.

Academies, including free schools, have the freedom to set their own term dates and school year. For further information regarding practical issues related to academies, please use the resource below:  
[Legislative & Practical Issues - Academies](#)

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