

BHA BRIEFING: 'Faith ethos' Academies and Free Schools explained

April 2012

Briefing from the British Humanist Association (BHA)

'Faith ethos' Academies and Free Schools are Academies and Free Schools that have not legally registered as having a religious character, but nonetheless are run by an organisation with a religious ethos. This organisation can use its ethos to exert control over some aspects of governance, employment and curriculum.



The Department for Education does not know which Academies and Free Schools have a 'faith ethos', although has begun to record this for Free Schools from 2013.

Why are these schools possible in the Academies sector but not the maintained sector?

In the state-maintained school sector, if the authority or foundation that runs a school wants to appoint any governors on the basis of their religion, then the school must formally register with the government as having a religious character.¹ In other words, not having a religious designation essentially means not having control over the school.

However, in the independent school sector, such registration is permissive, and left up to the school's proprietor.² Academies and Free Schools are legally independent schools, so it is permissive for them as well.

Can maintained schools without a religious character be run by a religious organisation at all?

With regards to community schools, run solely by the local authority, the answer is no. For the local authority to be a religious organisation would break the Human Rights Act and the public sector equality duty.

With foundation schools, it is possible to have a foundation or trust that is religious, without the school being religiously designated. But the foundation/trust would then have no control over the governance, admissions or curriculum. And a consequence of lack of control over governance is lack of control over employment, so the use of genuine occupational requirements for senior staff isn't really feasible.

What control can a religious organisation exert over a 'faith ethos' school?

Formally registering with a religious character allows a school to gain certain control over its admissions, employment, RE and Collective Worship that it would not otherwise enjoy. However, as all Academies and Free Schools enjoy a large number of freedoms, it is therefore the case that faith groups that do not formally register their schools as having a religious character still get a lot of

¹ Section 5 of *The Religious Character of Schools (Designation Procedure) Regulations 1998* – <http://www.legislation.gov.uk/ukxi/1999/2432/made> – specifies that 'The Secretary of State shall designate a foundation or voluntary school as a school which has a religious character if he is satisfied that– (a) at least one member of the governing body of the school is a person appointed as a foundation governor to represent the interests of one or more religions or religious denominations'.

² See *The Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003* – <http://www.legislation.gov.uk/ukxi/2003/2314/made>

control over the school: control that they would not get with a state-maintained school. 'Faith ethos' schools are allowed to religiously select all the governors; use a religious genuine occupational requirement in appointing senior staff;³ and also put a religious slant on some aspects of the curriculum, such as sex and relationships education (SRE).⁴

Finally, a school could gain or lose a 'faith ethos' at any time simply through a change in ownership – no discussion with the local community is required.

What examples are there?

'Faith ethos' Academies have been feasible [since at least 2003](#), but have been growing rapidly in number since the coalition government started expanding the number of Academies in 2010. It is unclear exactly how many there are, but known examples include [Canary Wharf College](#), [Priors Free School](#), [Sandbach School](#) and [Discovery New School](#) – four of the six Christian Free Schools to open in 2011; [Swindon Academy](#), a United Learning Trust Academy set up in 2007 that shares the ULT's Anglican ethos; and the [Grace Academies](#) of Coventry, Darlaston and Solihull, which have a Christian ethos.

We have also seen a few more examples applying this year: a [Catholic ethos school in Chalfont St Peter](#) and a Sikh ethos school in Leeds.

In addition, the Church of England has [recently announced](#) that it will encourage former community schools, upon converting to Academies, to join into partnership with it and perhaps adopt an Anglican ethos.

Finally, we would argue that the [Maharishi Free School](#) that opened in 2011; the [Steiner Academy Hereford](#) that opened in 2008; and the [Steiner Academy Frome](#), due to open this September; have a religious ethos, or at the very least a 'belief ethos', under the definition of belief in the Equality Act.

It can be very hard to spot these schools as they do not publicly register their ethos anywhere, and do not need to make it known in any prominent way.

The situation in different types of Academies

Mainstream Academies, Free Schools and 16-19 Academies can have a designated religious character or a 'faith ethos'. Our understanding for the other types of Academy is that:

- Special Academies – these schools cannot have a religious character, but can have a 'faith ethos'. The 2013 application form for special Free Schools recorded whether the proposed schools would have a 'faith ethos'.⁵ This month has also seen the first Special sponsored Academy being established, with the sponsor being a Catholic school (though it does not

³ We got Julian Huppert MP to ask a parliamentary question confirming this is possible in January; see the last paragraph of Nick Gibb's answer at <http://www.theyworkforyou.com/wrans/?id=2012-01-23a.90376.h>

⁴ The limit of this is what the DfE are willing to sign up to when negotiating a funding agreement. For RE and collective worship, the rules in the model funding agreement are for maintained schools, i.e. RE must be religiously neutral, and collective worship must be Christian – so the school cannot get away with much here. For PSHE and SRE, there is very little that is required, so schools can teach what they like. For other curriculum subjects, it depends upon what the government considers 'broad and balanced', and what Ofsted would be happy with when inspecting a school. The recent requirement that Academy Trusts are precluded from 'the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations' is another limit.

⁵ <http://media.education.gov.uk/assets/files/pdf/a/application%20form%20-%20special.doc>

appear that the school would adopt a Catholic ethos in any meaningful sense).⁶ It is likely we will see the first special 'faith' school soon.

- Alternative provision Academies – following on from the *Alternative Provision Academies (Consequential amendments to Acts) (England) Order 2012*, these schools will not legally be able to designate with a religious character. However, they could have a 'faith ethos', and like with special schools, the 2013 application form for alternative provision Free Schools recorded whether the proposed schools would have a 'faith ethos'.⁷
- University Technical Colleges and Studio schools – unlike special and Alternative Academies, but like mainstream Free Schools, these two types of school are identical in law to mainstream Academies, and only differ in their funding agreements. There is nothing in the law stopping them from being religiously designated; but the government does not intend to enter into funding agreements with any that will designate, so these will not occur in practice.

The government don't know which are which

As of this year, the government are now recording which Free School applications will have a 'faith ethos' – whether special, alternative and mainstream.⁸ However, previously the government had not been seen to record this (and still isn't for UTCs and Studio schools). It was unclear to us whether they knew which were which.

As a result, in January, we submitted a Freedom of Information request to the DfE asking them if they know which schools have a 'faith ethos', and if so, to list them. In February, the DfE replied saying that they do not know.

⁶ <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-15856173> and <http://www.st-pauls.org.uk/Recruitment/PDRecruitmentLetter.pdf>

⁷ <http://media.education.gov.uk/assets/files/pdf/a/application%20form%20-%20alternative%20provision.doc>

⁸ Mainstream application form at <http://media.education.gov.uk/assets/files/pdf/a/application%20form%20-%20mainstream.doc> – note the form asks first, 'Do you intend that your proposed school will be designated as having a religious character?' and then, 'Do you intend your proposed school to have a faith ethos (but will not be designated as having a religious character)?'