

Freedom of Information report on organisation of 'faith' schools in the maintained sector

April 2012

Report from the British Humanist Association (BHA)



About us

The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We promote Humanism, support and represent the non-religious, and promote a secular state and equal treatment in law and policy of everyone, regardless of religion or belief.

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Executive summary

The BHA submitted Freedom of Information (FOI) requests to the Department for Education on school openings and closures in the maintained sector covering the period from May 2007 (when the current framework was established by the Education and Inspections Act 2006) to February 2012 (when it was amended by the Education Act 2011). This was to establish the route through which schools open and the reasons they close, as the information was not previously in the public domain. Depending upon the results, the hope was to then seek to influence changes that could result in the school applications system being more transparent and equitable.

Report highlights

The results of the FOIs reveal a system where religious groups are uniquely and reliably able to avoid local parents being able to choose a viable alternative. Furthermore, when 'faith' school proposals do compete with other bids, they are less likely to be successful than those other bids.

Over the past five years:

- Religious groups in England have frequently avoided applying to open schools through competition. Almost two-thirds of maintained 'faith' schools (14/22) opened outside of competition. By comparison, less than one in six (6/39) new maintained schools without a religious character opened outside of competition.
- When religious groups did apply to competitions, they were more likely than other proposals to be rejected. Only 35% (8/23) of 'faith' schools were successful in competitions. This compares to 47% (37/78) of other proposals.
- However, when they avoided competition, they were never rejected – 100% (14/14) of faith-based proposals outside of competition were approved. This contrasts with other proposals, which were typically unsuccessful. Only 46% (6/13) were approved.
- The Catholic Church only submitted one bid for a school in competition – versus 14 bids from the Church of England. And yet, both groups proposed to open the same number of schools outside of competition.
- In addition, many schools were closed and re-established to gain a religious character, but no school was re-founded to lose one. And no schools lost a religious character through amalgamation, but 32 without a religious character gained one.

Report recommendations

- The law should be amended to remove the ability of religious groups to open state-funded schools by the back door.
- National guidance should be amended to remove the current preference for closing inclusive schools rather than religious ones.
- When schools are amalgamated, the resulting school should be at least as inclusive as the most inclusive of the previous two schools – not less so.

Introduction

This report presents the findings of Freedom of Information (FOI) requests submitted to the Department for Education (DfE), on maintained school openings and closures during the period of May 2007 and February 2012, with a particular focus on 'faith' schools. The requests were submitted by the BHA between October 2011 and February 2012.

This report looks at how schools opened, closed, changed type of establishment or religious character; why they would do so; and data on how many have moved (or tried to move) in each direction, including individual proposals and closures. The period examined is from 25 May 2007 (when new rules on school organisation came into force) until 1 February 2012 (when the rules were modified by the Education Act 2011). Coalition Academies are not examined.

In England, maintained schools make up 72% of the state secondary school sector, and 97% of the state primary school sector. Before the Academies Act 2010, this was 94% and 100%, respectively. 59% of maintained schools are Community schools; 21% are Voluntary Aided (VA) schools; 13% are Voluntary Controlled (VC) schools; and 7% are Foundation schools.

Almost all VA and VC schools and a minority of Foundation schools are 'faith' schools. All 'faith' schools have a daily act of collective worship in line with the religious character of the school; beyond that, the situation varies. VC and Foundation schools are obliged by law to teach non-confessional Religious Education (RE) that approaches different religions and beliefs from a neutral perspective, while VA schools are permitted by law to teach confessional 'RE' in line with the tenets of the religion of the school. VC and Foundation schools can only use a religious test in appointing up to a fifth of staff, while VA schools can do so for all staff. Local authorities are the admissions authority for VC schools, and most do not religiously select if oversubscribed. However, VA and Foundation schools are their own admissions authorities, and most have admissions policies which discriminate on religious grounds.

The BHA advocates a genuinely inclusive school system in which all pupils are educated together, not separately according to the beliefs of their parents. We believe that the rights and entitlements of both the religious and the non-religious can be respected within inclusive community schools.

Our education policies arise out of humanist principles and our concern for the common good and for social cohesion, as well as our awareness of the needs of non-religious people and experience of working with members of religious groups.

Appendices to this report are available in a separate document, and go into more detail including on individual proposals and closures.

Statute and strategic context

The statutes discussed in this section govern the opening of state-maintained schools, which were amended by the Education Act 2011 to further promote the Free Schools programme. Changes to the rules on school opening made on 1 February 2012 are discussed in Appendix A.

Routes through which schools could open

On 25 May 2007 [sections 7-14](#) of the Education and Inspections Act (EIA) 2006 [were commenced](#). These sections were amended by the Education Act (EA) 2011, when [schedule 11](#) of that Act [was commenced](#) on 1 February 2012.

During these five years, the ways in which schools could be opened were:

- **Competition.** Types of establishment that could be proposed through this route included Community, Voluntary Controlled (VC), Voluntary Aided (VA), Foundation and Academy schools. The local authority invited groups to submit proposals, and could also choose to submit a proposal itself. Proposals were then judged against each other, and one or several could have been accepted to open, or all proposals could have been rejected. Academy proposals were decided first of all by the Secretary of State. Proposals were decided by the local authority (LA) or (if the LA was a bidder) by the Schools Adjudicator ([EIA 2006 section 7](#)).
- **Outside competition, with consent of the Secretary of State.** Types of establishment that could be proposed through this route include Community, VC, VA and Foundation schools. Proposals must first have been accepted by the Secretary of State, and then have been decided by the LA or (if the LA was the bidder) by the Schools Adjudicator ([EIA 2006 section 10](#)).
- **Outside competition, without consent of the Secretary of State.** Types of establishment that could be proposed through this route include VC, VA and Foundation schools, but only when they are providing education suitable only to the requirements of persons above compulsory school age, or are to replace a private school. Proposals were decided by the LA ([EIA 2006 section 11](#)).
- **'Labour' Academies.** As introduced by the Education Act 2002, until [its repeal](#) by the Academies Act (AA) 2010 on 29 July 2010. Outside competition, decided by the Secretary of State. Sponsored Academies were opened through this route ([Education Act 1996 section 482](#)). These proposals are discussed in Appendix D.
- **'Coalition' Academies.** [As commenced on](#) 29 July 2010. Outside competition, decided by the Secretary of State. Academies (specifically Free Schools, a type of Academy) can be proposed through this route ([AA 2010 sections 9 and 10](#)). In what follows, these sections are not considered.

Routes through which schools can change type of establishment or religious character

On 25 May 2007 [sections 18\(4\)-20](#) of the Education and Inspections Act 2006 [were commenced](#). [Section 19](#) allows alterations to be made to a school, except that [section 18](#) prohibits the following changes to maintained mainstream schools:

- (a) any change in the religious character of the school;
- (b) any change whereby the school would acquire or lose a religious character;
- (c) any change of category from Foundation or Voluntary (Aided or Controlled) school to Community school

Therefore, schools can change from Community schools to Foundation or Voluntary schools, and change between Voluntary and Foundation.

On 29 July 2010 [section 4](#) of the Academies Act 2010 [was commenced](#). This section allows maintained schools to convert to Academies, with consent of the Secretary of State. Note also that Academies can change, acquire or lose a religious character without closing or re-opening. These routes are not considered in this report.

Data on changes in type of establishment can be found in appendix F.

Reasons for which schools may close

Schools may close for a number of reasons. They may:

- close outright
- close and re-open if they want to change religious character
- close and re-open if they want to acquire or lose a religious character (although none have done so to lose a religious character)
- close and re-open to change from a Foundation or Voluntary (Aided or Controlled) school to a Community school (although none have done so)
- close due to amalgamation with other schools (which could also lead to a change in religious character)
- close and re-open in order to have a fresh start (which could also lead to a change in religious character, although none have done this)

In addition, the [national guidance on school closures](#) states that '[t]he Decision Maker (either the council or the schools' adjudicator) should not normally approve the closure of a school with a religious character where the proposal would result in a reduction in the proportion of denominational places in the area.'

Findings

1. Schools opening through section 7 – competition

There were 101 proposals to open schools (religious or otherwise) across 53 competitions, of which 45 were approved, 50 were rejected and six were withdrawn. The full table of competitions and proposals can be found in Appendix B.

23 of the 101 proposals were for 'faith' schools. Of these, eight were approved, 14 were rejected and one was withdrawn. Faith-based proposals were one-third less likely to be rejected than other proposals (35% approval rate versus 47% for others).

No competition resulted in multiple approvals, whereas eight resulted in no approvals. Two of those eight competitions involved faith-based bids.

11 competitions saw a 'faith' school proposal lose out to a school without a religious character, and 26 competitions saw a school without a religious character open without any competition from a 'faith' school. Six resulted in a school without a religious character losing out to a 'faith' school, whereas two saw a 'faith' school open with no competition from schools without a religious character.

In total then, of 53 competitions, 32 did not involve any faith-based bids to start with. Of the 21 competitions remaining, 11 saw a school with no religious character approved; two did not see any bid approved; two saw a religious bid approved but with no opposition; and just six saw a religious bid defeat a bid with no religious character.

Or to put it another way, **where there was a competition between a religious proposal and another, the religious proposal won 35% of the time. However, there was only a religious proposal for 40% of the competitions, and only 23% of the bids were faith-based. This compares with 55% of the bids outside of competition being faith-based – and none of these bids were rejected.**

Religious groups therefore have a strong incentive to avoid competitions, which make it less likely for their bids to be accepted.

The Catholic Church in particular appears reluctant to bid for schools through competition. 14 bids through competition came from the CofE (plus one jointly with the Methodist Church, and one jointly with the Catholic Church). On the other hand, the Catholic Church only submitted one bid through competition (plus one jointly with the Church of England). This means there were less bids for Catholic schools through competition than Muslim schools – and less bids than outside of competition.

Outcomes of individual competitions

Type of school that won	Competition?	Number of instances
'Faith' school	Competition from schools without a religious character	6
'Faith' school	No competition from schools without a religious character	2
School without a religious character	No competition from 'faith' schools	26
School without a religious character	Competition from 'faith' schools	11

Note that three of the schools without a religious character that faced no competition, and one that did face competition, were Academy schools.

Approved proposals

Type of School	Number	Religious character
Community	7	N/A
Voluntary Controlled	1	1 CofE
Voluntary Aided	6	4 CofE, 1 CofE/Methodist, 1 Hindu
Foundation	27	1 CofE (26 have no religious character)
Academy	4	
Total	45	6 CofE, 1 CofE/Methodist, 1 Hindu (37 have no religious character)

Rejected proposals

Type of School	Number	Religious character
Community	4	N/A
Voluntary Controlled	0	
Voluntary Aided	9	4 CofE, 2 Muslim, 1 CofE/RC, 1 RC (1 has no religious character)
Foundation	18	1 Christian (17 have no religious character)
Academy	19	3 CofE, 2 Christian (14 have no religious character)
Total	50	7 CofE, 3 Christian, 2 Muslim, 1 CofE/RC, 1 RC (36 have no religious character)

Withdrawn proposals

Type of School	Number	Religious character
Community	0	N/A
Voluntary Controlled	1	1 CofE
Voluntary Aided	0	
Foundation	4	(All 4 have no religious character)
Academy	1	(1 has no religious character)
Total	6	1 CofE (5 have no religious character)

2. Schools opening through sections 10 and 11 – outside competition

There were 24 proposals for schools brand new to the state sector through section 10 (three of which were previously private schools), and seven proposals through section 11 (all of which were previously private schools). Of these 31 proposals, 17 (55%) were faith-based.

Of the 22 proposals for new schools through section 10 that were accepted, 16 were for ‘faith’ schools. Some of these 22 proposals are currently going through local consultation. But for those that have completed the process, every single one of those schools was subsequently approved in the local competition and were opened. **Not a single religious group that proposed to open a school through sections 10 and 11 was rejected – a 100% success rate. On the other hand, seven proposals by groups without a religious character were rejected by the Secretary of State, making for a success rate of 46%.** One proposed Muslim school and one school proposed without a religious character were withdrawn before being considered.

Every concluded proposal through section 10 that was approved by the Secretary of State went on to be approved by the Local Authority during the subsequent consultation. Similarly, all 7 proposals were former independent schools. Every proposal was approved by the Local Authority during the subsequent consultation.

In addition, 12 schools without a religious character closed and re-opened as Church of England schools. Four Catholic schools closed and reopened as Catholic/CofE schools. No schools lost a religious character.

Section 10, approved by the Secretary of State – brand new or former independent schools only

Note that two of the Roman Catholic proposals, in Richmond, have been approved by the Secretary of State but are yet to gain local approval.

Type of School	Number	Religious character
Community	1	N/A
Voluntary Controlled	0	
Voluntary Aided	11	3 RC, 3 Muslim, 2 CofE, 1 Jewish, 1 Sikh (1 no religious character)
Foundation	3	1 CofE (2 have no religious character)
Total	15	3 CofE, 3 RC, 3 Muslim, 1 Jewish, 1 Sikh (4 have no religious character)

Section 10, rejected by the Secretary of State – brand new or former independent schools only

Type of School	Number	Religious character
Community	3	N/A
Voluntary Controlled	0	
Voluntary Aided	0	
Foundation	4	(4 have no religious character)
Total	7	(7 have no religious character)

Section 10, withdrawn prior to approval – brand new or former independent schools only

Type of School	Number	Religious character
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Community	0	N/A
Voluntary Controlled	0	
Voluntary Aided	1	1 Muslim
Foundation	1	(1 has no religious character)
Total	2	1 Muslim (1 has no religious character)

Section 11 schools

Type of School	Number	Religious character
Voluntary Controlled	0	
Voluntary Aided	5	2 Muslim, 2 Jewish, 1 Seventh Day Adventist
Foundation	2	(2 have no religious character)
Total	7	2 Muslim, 2 Jewish, 1 Seventh Day Adventist (2 have no religious character)

Section 10, approved by the Secretary of State – change or gain in religious character only

12 schools gained a religious character, and 4 changed their religious character.

Resultant type of School	Number	Change in religious character
Community	0	N/A
Voluntary Controlled	6	6 no religious character to CofE
Voluntary Aided	8	4 no religious character to CofE, 4 RC to RC/CofE
Foundation	2	2 no religious character to CofE
Total	16	12 no religious character to CofE, 4 RC to RC/CofE

Section 10, rejected by the Secretary of State or withdrawn prior to approval – change or gain in religious character only

No schools that applied to re-open with a changed religious character withdrew their proposals, or were rejected by the Secretary of State.

3. Schools closing

What follows excludes schools closed to re-open as Academies, or Academies that change, gain or lose religious character (which does not require closure).

Schools opening due to a gain or change in religious character, due to a fresh start, or due to amalgamation are also detailed in the part about section 10. In addition, the following schools closed outright:

Closures to change or gain religious character

This table is as above, in the section on schools opening through section 10 – except that a Community school in Cheshire West and Chester has been approved to re-open as a CofE school, but is yet to close.

No schools closed to lose religious character, but 11 schools gained one. 4 schools changed their religious character.

Resultant type of School	Number	Change in religious character
Community	0	N/A
Voluntary Controlled	6	6 no religious character to CofE
Voluntary Aided	7	3 no religious character to CofE, 4 RC to RC/CofE
Foundation	2	2 no religious character to CofE
Total	15	11 no religious character to CofE, 4 RC to RC/CofE

Closures to amalgamate, that also saw a gain or change in religious character

No schools lost a religious character through amalgamation, but 32 without a religious character gained one. 6 'faith' schools changed religious character.

Resultant type of School	Number	Change in religious character
Community	0	N/A
Voluntary Controlled	22	20 no religious character to CofE, 1 no religious character to CofE/Methodist, 1 CofE to Christian
Voluntary Aided	15	8 no religious character to CofE, 3 RC to RC/CofE, 1 RC to CofE, 1 no religious character to RC, 1 no religious character to RC/CofE, 1 no religious character to Muslim
Foundation	1	1 CofE to CofE/RC
Total	38	28 no religious character to CofE, 3 RC to RC/CofE, 1 CofE to CofE/RC, 1 CofE to Christian, 1 RC to CofE, 1 no religious character to RC, 1 no religious character to RC/CofE, 1 no religious character to CofE/Methodist, 1 no religious character to Muslim

Conclusions

This report presents proof that the system is tilted in favour of state-funded religious schools which discriminate in their admissions, and against inclusive schools. When given a choice, the public typically indicate that they do not want religious schools – they want more inclusive schools.

However, religious organisations continue to open schools by the back door, collaborating with local authorities to avoid competition entirely. This option has always been successful, and as a result, the proportion of all schools that have a religious character is [rising very fast](#).

Taken together with the preference shown [in government guidance](#) for community schools to close rather than religious ones, we see a system which is built against inclusive schools and in favour of selective ‘faith’ schools.

Key recommendations for moving forwards

On the basis of the results of the FOI data, the BHA has made the following key recommendations:

- The law on opening new maintained schools should be amended, at the very least to ensure that it is the same for all types of establishment, whether VA, VC, Foundation or Community. Religious groups should not be able to open schools by the back door.
- The national guidance on school closures should be amended to remove the preference for closing inclusive schools instead of religious schools. Ultimately, the BHA would like to see this preference reversed. A specific concern is schools closing and re-opening to acquire a religious character.
- When schools are amalgamated, the BHA would prefer that the resultant school is *at least* as inclusive as each of the two amalgamating schools. Parents should not have their choice of schools restricted due to an amalgamation any more than is inherently necessary. An amalgamation involving a school without a religious character should result in a school without a religious character.