

Appendix 6 – Establishing a New School

Where a LA thinks a new school needs to be established in their area, section 6A of Education and Inspections Act 2006 places the Local Authority under a duty to seek proposals to establish an academy/free school and to specify a date by which proposals must be submitted to the Local Authority. In considering the need for a new school, Local Authorities should factor in any free school projects that the department has approved and are due to open. They should also refer to published guidance on the process for establishing new maintained schools (including voluntary aided schools) and new published guidance on expanding and closing schools.

Local authority consultation

It will be for LAs to decide how to consult on the proposed new school and with whom (e.g. potential providers, other schools, academies, the wider community, diocese and any others affected by the proposals). LAs should be clear from their school place planning about the type (e.g. mainstream, special educational needs, pupil referral unit), age range, gender and capacity of the academy/free school they wish to see established, and the expected cost. This clarity is particularly important as potential proposers will be submitting bids on the basis of the specification set out by the LA.

Impact assessment

As part of the planning process for new schools, LAs must also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils from an equalities perspective. This is to enable the Secretary of State to meet her duties under section 9 of the Academies Act 2010 and under section 149 of the Equality Act 2010. Most LAs will already do this, so in practice it will just be a matter of providing the Secretary of State with a copy of their assessment. However, in the unlikely event that the Secretary of State has concerns about the level of analysis, she reserves the right to ask a LA to undertake further work on their impact assessment.

Seeking proposals

The LA should take all necessary steps to ensure that the widest possible range of groups or organisations that might be interested in establishing the new school are aware of the opportunity to do so and have sufficient time to develop proposals. Local good or outstanding schools that are interested in submitting a proposal to run a new school will need to have or acquire both academy status and sponsor approval. The department's list of approved sponsors can be accessed on the internet. The department will also play a role in generating interest from high quality

proposers – by posting details of new academy/free school proposals on its own website, encouraging key stakeholders to do the same and by sign-posting proposals to existing sponsors or potential sponsors who we are aware are keen to operate in that region.

Funding arrangements

As under the previous new school competition arrangements, the LA is responsible for providing the site for the new school, and meeting all associated capital costs.

Local authorities are also required to meet the revenue costs of the new provision. They must make provision in their growth funds to support increases in pupil numbers relating to basic need. This relates to the per-pupil revenue funding in addition to all funding for pre-opening development costs and post-opening funding required to address diseconomies of scale until a school reaches full capacity. This is because the new academy or free school will be funded on a recoupment basis. School funding arrangements allow LAs to retain funding centrally to cover these costs.

Local authorities are expected to work with selected proposers to agree a reasonable and mutually acceptable funding allocation for the LA to cover pre- and post-opening costs. Upon opening, the school will be funded by the Education Funding Agency on the same basis as other academies and free schools in the same LA area.

Notifying the department – school specification

- The LA must notify the department as soon as the need for a new school has been agreed, forwarding to the department:
 - i. a copy of the new school specification, including confirmation:
 - ii. that the LA has identified the required capital to establish the new school, the amount and its source (e.g. LAs basic need funding);
 - iii. that the LA will meet all pre- and post-opening costs associated with establishing the new school (paragraphs 18-20);
 - iv. that the LA will provide the site for the new school;
 - v. of the address of the site for the new school, or all sites where a school will operate from split sites;
 - vi. of site ownership or tenure arrangements and how these will operate for the new school;
- their impact assessment (paragraph 16);
- a link to the LA's website page where the relevant information will be available to interested parties.

Notifying the department – proposals

Once the specified date for submitting the academy/free school proposals to the LA has passed, the LA must provide the Secretary of State with details of the steps the authority has taken to seek proposals for an academy/free school and any proposals submitted to them.

Sponsor approval

The Secretary of State will only consider entering into a funding agreement with an approved sponsor. (See the department's approved sponsor list. Consequently, new proposers will need to be assessed by the department through the normal sponsor approval route. See information on the department's sponsor approval process). We recommend that LAs make it clear when publishing their invitation for proposals that proposers that are not approved by the department will have to go through this approval process and should contact the department at the outset, and certainly before submitting a formal proposal to the LA. If a non-approved sponsor does submit a proposal, the LA should immediately advise the proposer to apply to become a sponsor.

Completing the assessment

There is no requirement of LAs to assess the capacity and capability of proposers as this will form part of the department's assessment. If the LA chooses to carry out an assessment, it should be based on the criteria set out in their published specification and a clear and transparent process should be followed. Any recommended proposal should give strong, credible evidence that the new school will raise the overall standard of education available in the local area, adding very high quality places to the system. LAs should be mindful that the final decision on the choice of proposer rests with the Secretary of State. She reserves the right to put in place a proposer of her own choice, particularly where there is further evidence about the suitability of a proposer, or the availability of a better proposer. LAs should await the Secretary of State's decision before making any public announcements.

All proposals received will undergo a two stage assessment process as detailed below.

Stage one

Local authorities may assess proposals against their specification for the new academy and can, if they wish, recommend their preferred proposer. LAs should provide the Secretary of State at the earliest opportunity with any assessment including their scoring of the proposals.

Stage two

Department officials will assess the capacity, capability and performance of all proposers, taking into consideration any assessment and/or recommendation made by the LA. The purpose of the DfE assessment of proposals is to ensure that the department's data on individual sponsor capacity, capability and track record is taken into account in rating the suitability of those sponsors who have submitted a proposal. The department's assessment will focus, in particular, on strategic vision, educational capacity and performance, financial planning and operational capacity and governance. For existing sponsors, the department will also focus on the credibility and track record of the proposer (which will be informed by their latest results and Ofsted inspections), their capacity to take on new projects and the local infrastructure that will support the proposal. For new sponsors, the department will also focus on the information supplied through the sponsor application process. This assessment will enable the Regional Schools Commissioner (RSC), on behalf of the Secretary of State, to choose the best proposer possible to take forward the new school. If none of the proposers is assessed as suitable, the Secretary of State reserves the right to put in place any proposer of her own choice.

Funding agreement

Before deciding whether or not to enter into a funding agreement with any proposer, the Secretary of State will need to be satisfied about their suitability to set up and run an academy/free school. The LA should therefore undertake due diligence checks on new proposers. Any proposals put forward by organisations which advocate violence or other illegal activity will be rejected. In order to be approved, proposals should demonstrate that they would support UK democratic values including respect for the basis on which UK laws are made and applied; respect for democracy; support for individual liberties within the law; and mutual tolerance and respect. In order to enable the Secretary of State to take an informed decision, the department may ask proposers to provide additional information about themselves and to consent to checks being carried out.

As soon as a suitable proposer is agreed "in principle" by the Secretary of State, the department will notify the LA, the successful proposer and the local MP. It will then be for the successful proposer to work towards establishing the new academy/free school with support from the LA and the department, as required. The Secretary of State will consider signing a funding agreement with the sponsor once she is content that the school is prepared to open.

Once the LA has been notified of the successful proposer, it is their responsibility to inform other applicants that they have not been successful.

Sponsor consultation

The successful proposer is under a duty, as required by section 10 of the Academies Act 2010, to consult such persons as they think appropriate on whether they should enter into a funding agreement for the new school with the Secretary of State.

The LA will continue to have an interest because of its duties to secure sufficient suitable schools.