



Department  
for Education

# Free schools

**Pre-opening proposer group guidance  
for: mainstream, special, alternative  
provision and 16-19 free schools**

**February 2016**

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# 1. Introduction

## Free schools programme: the pre-opening phase

- 1.1. If the Secretary of State for Education has agreed your free school application, then you will enter the 'pre-opening' phase. This is the implementation period between the approval of your application and when your free school opens.
- 1.2. We have produced this guidance to help you navigate the pre-opening phase and open your school successfully. It contains information and supporting materials needed to complete the critical tasks required to open a successful free school.
- 1.3. Setting up your school will be challenging and will require commitment and determination from every member of your group, but it will also be rewarding, especially when you welcome the first pupils to your new school.
- 1.4. Free schools have more autonomy than local authority maintained schools and we encourage you to make full use of the freedoms and flexibilities available to secure excellent educational standards in your school.
- 1.5. There are a number of things to think about straight away to get your project up and running; these are set out in the section ['Managing your project'](#).

## Working with the department

- 1.6. During pre-opening you will be assigned a contact in the department's Free Schools Group (FSG). The contact's role is described in the [Who does what?- roles & responsibilities](#) section. They will work with proposers clarifying, where necessary, what needs to be in place in order to open your school and will ensure the project remains faithful to the aims of the free school programme.
- 1.7. Your contact will set up a kick-off meeting and schedule further meetings as necessary. These meetings will be used to discuss progress on your project. This is explained in more detail in the [Who does what?- roles & responsibilities section](#).
- 1.8. You will receive specialised support to help you secure your site and buildings for your free school (this is covered in more detail in the [Site and buildings](#) section). Some projects will receive additional educational support, depending on the needs of the project. This is covered in the [staffing, education plans and policies](#) section of this guidance.

## How to use this guide

- 1.9. This document includes more detailed guidance on each of the key tasks you will need to undertake, including: an explanation of the task and why it is important,



including any legal requirements; the main activities required to complete each task; how the department will work with you; and a checklist confirming what you need to do and by when.

- 1.10. Unlike previous years, where most of the tasks were linked to a pre-determined checkpoint cycle, we have introduced phases during which specific activities should happen. The phases are based on the opening date of your school rather than when the project entered the pre-opening process.
- 1.11. There are five phases in pre-opening, which act as a countdown to when your school opens. An explanation of each phase is shown below:
  - Phase 1: 12 months or more before the school opens
  - Phase 2: 8-11 months before the school opens
  - Phase 3: 5-7 months before the school opens
  - Phase 4: 3-4 months before the school opens
  - Phase 5: 2 months or less before the school opens
- 1.12. Each phase includes a set of tasks that should be completed. Further details are shown in the phases timetable at the end of this document. We have also included a [project task checklist](#), which provides more detailed information on the tasks to be completed.
- 1.13. The completion of these tasks is critical to ensuring your school will open successfully. Ministers will defer or cancel a project if they judge there to be a genuine risk of a school not opening on time, not recruiting enough pupils to be financially viable, evidence of poor leadership and/or governance or not delivering a good standard of education.
- 1.14. Section 7 on site and buildings notes that, whatever your preferred opening date, you should not suggest in your marketing or public communications that you are working towards an opening date that has been agreed with the department until you have written confirmation to that effect. That confirmation will depend on identification of a suitable site and an assessment of whether the school is likely or not to open in permanent or temporary accommodation.
- 1.15. You may have been set specific conditions that need to be met in order for your project to progress successfully through the pre-opening phase. Additional conditions may also be set during pre-opening. Any project specific deadlines set for these conditions to be satisfied will supersede the dates in this guidance.

## 2. Managing your project

- 2.1. It is vital that your project benefits, from the very beginning, from good leadership, strong capacity and capability, sound governance and a robust project plan.
- 2.2. You will also need to put in place quickly, and act on, an effective marketing strategy to engage with parents, the community and key stakeholders. Effective marketing will be vital to recruiting pupils.

### Things to think about early on

#### Capacity and capability

- 2.3. You will need to consider the capacity and capability within your proposer group and governance structure to undertake all the tasks required. You will have provided some details already in your application, but as you enter pre-opening you should, as a group, challenge yourselves to ensure you have the skills, experience and time to complete all the tasks needed to open a successful free school. You will be asked to supply information on this to the department.
- 2.4. You must have access to appropriate educational and financial expertise, either within your group or externally, but you are likely to need people with other skills and expertise. You will receive a project development grant, which may be used to buy in additional expertise. There is more information about the [funding](#) you will receive in section 6.

#### Project planning and management

- 2.5. It is critical that you put in place robust planning and project management arrangements immediately because the timetable for opening a free school is very demanding.
- 2.6. At the start of the project, we will agree a critical path with you to ensure that all the key actions needed to ensure that the school opens successfully, such as the appointment of a suitable principal designate and the agreement of robust governance arrangements, are completed on schedule. **We expect you to inform the department immediately of any risk of delay to any key milestone.**
- 2.7. You will want a named person responsible for managing your project, bringing together the various strands of activity, tracking progress and managing risks. You may use the project development grant to buy in project management support. More information about the [procurement of additional project management support](#) is provided in section 3.

## Good governance

- 2.8. You will need to put in place sufficiently strong governance arrangements to manage your project through its pre-opening phase and to manage the school, once it opens. Your trustees will take the lead in both phases, so ensure you recruit trustees who are committed and have the experience and skills to drive the project, ensure the proper running of the company (the trust) and to hold the school's leadership to account.
- 2.9. Your governance structure is important: you will need to ensure that trustees' roles and lines of accountability are clear, and that every trustee carries out their responsibilities unimpeded by conflicts of interest.
- 2.9 The board of trustees should only be as big as it needs to be to ensure it has the full range of skills it needs to be effective; free schools tend to find this is between six and 12 in number. More information on developing strong [governance](#) arrangements for your school is provided in section 4.

## Marketing and stakeholder engagement

- 2.10. Educational and financial viability depends on recruiting enough pupils, so a strong marketing plan is essential. You will need to keep pupils, parents, the community and key stakeholders up to date on the progress of your project, including reaching out to new parents and keeping in touch with those who have already expressed an interest. You will find guidance on marketing in section 8.
- 2.11. Before opening your school, your academy trust will be required by law to consult publicly on whether to enter into a funding agreement with the Secretary of State, to open your proposed free school. The statutory consultation is explained in more detail at section 10.

## Links to further information

View [Table 1 Managing your project: checklist of activities](#)

New Schools Network provides [a wide range of tools and guidance documents](#) to help you plan your approach to pre-opening, based on the experience of those who have opened free schools successfully in the past.

## 3. Procurement and additional support

### Purchasing additional support and services

- 3.1. Free school trusts are classed as public bodies and must comply with public procurement regulations. It is important that you understand the requirements when you are planning any purchase. Essentially, the rules are about using a fair and open procurement process to help ensure that you achieve the best outcomes for your free school and best value for money.
- 3.2. More detailed guidance is given in the [procurement advice](#) section available on gov.uk.

### Summary of the key tasks

- 3.3. You will need to make sure that you understand the rules and regulations governing public spending and decide early on how you will make any spending decisions. As a general guide, the higher the value of the purchase and the more public money you're spending, the more regard you should have to the procurement rules.
- 3.4. It is a good idea to set out the trust's approach to procurement within your financial management policy. This means thinking about how you will approve and review your expenditure; and how any financial powers will be delegated so that it is clear who is responsible for what.
- 3.5. You will need to be clear about how best to use your project development grant. You should review your group's capacity and capability to decide what you can deliver for no cost; and to estimate the total value of what you need to buy. Remember that value for money is not always about the lowest price but is about getting the right balance between quality and cost. Think about how you will measure both of these when you specify and evaluate your purchase. You are spending public money and need to be able to show that you are using it well. It is always useful to ask yourself if your procurement decisions can be satisfactorily defended in public. There is more detail on typical areas of project expenditure in section 6 [funding](#).
- 3.6. Having a good range of expertise in your group can help you to decide when you need to buy in support – what you can do for yourselves at no cost and when you will need to buy in support because your capacity and/or capability is likely to be stretched. It will also help you to negotiate and push back on costs to get a better deal.
- 3.7. Good procurement decisions will help you get the right support and achieve value for money. Conversely, if you don't follow a fair and transparent process and apply

criteria consistently, you are less likely to identify the best proposals from potential suppliers. Poor procurement decisions risk wasting time and money and slowing down progress. They also risk reputational damage if potential suppliers think you are not playing fair, and if people think you are not using public money properly. If you have not followed the requirements of public procurement law you could be open to legal challenges from suppliers. If challenges are successful, this can lead to contracts being cancelled, competitions having to be re-held and financial penalties incurred (compensation).

## Procurement regulations

- 3.8. All public sector procurement must comply with the Public Procurement Regulations, which incorporate the requirements of the European Procurement Directive. These regulations are designed to safeguard fair competition principles and are legally binding on anyone with responsibility for spending public funds. More information on EU financial limits is provided below from paragraph 3.25, on [open procurement](#).
- 3.9. Remember, buying in services and/or goods is not just about processes. You need to ensure that you secure the right services at good value for money and use an approach that is proportionate to the estimated value of the contract you plan to let.
- 3.10. You must manage potential conflicts of interest. When using public money to award contracts you need to demonstrate the highest standards of propriety. In particular, you need to have considered the scope for conflicts of interest, and taken steps to manage them. This means that no members or trustees of the trust should be involved in any decision over awarding a contract if they or any of their relatives, friends or business associates are involved with or employed by any of the companies bidding.
- 3.11. It also means that if a member or trustee of the trust successfully bids for work, there must be arrangements in place to enable the trust to hold that individual or their company to account for the delivery of the contract.
- 3.12. When spending money you should also check that your plans comply with your articles of association as these will include specific conditions on who can be employed by the trust or enter into a contract for the supply of goods or services to the trust.
- 3.13. The Education Funding Agency (EFA) guidance [Academies Financial Handbook](#) (paragraph 3.1), sets out a number of rules governing financial transactions using public money.
- 3.14. If you decide you need to buy in additional support using your project development grant, you have two options:

- open tendering, whereby the trust agrees and issues a specification for the required services and appoints a supplier based on an evaluation of the bids received; and
- in-house, whereby the trust has and uses its own employees to deliver specified services on an 'at cost' basis.

3.15. You can use a combination of these options to buy any or all of the additional support and services you need. More detail on these options is provided below.

3.16. On 1 September 2015 a revised version of the [Academies Financial Handbook](#) (AFH) came into force. A copy is available on the website, alongside a factsheet detailing each of the revisions. Free schools in pre-opening, as academy trusts, are expected to abide by the principles in the AFH.

3.17. The new handbook has been drafted to be much clearer about our expectations around delivery of services to academies and free schools from anyone with a governing relationship to the school. To summarise:

- All those with a governing relationship, including individual members and trustees and bodies related to them, as well as sponsors and sponsor related bodies, are required to bid for and deliver services to their academies and free schools at cost.
- It has always been the case that open, fair and proportionate procurement processes must be followed whenever outsourcing services from the academy trust – including if sourcing such services from the sponsor.
- The definition of “at cost” has been amended to ensure at cost delivery is sustainable for the supplier in the long term.

3.18. As these requirements are now included in the AFH, it is the responsibility of the academy trust to ensure that they are met, and that audit trails are kept. The AFH includes a requirement for academy trusts to secure a statement of assurance and open book arrangement with restricted suppliers, but beyond this it is up to the academy trust to decide how best to meet the requirements.

## Open procurement

3.19. Under this option you can invite any third-party supplier to bid for your work by tendering. You will need to specify what it is you want to buy, and what criteria you will use to assess the tenders.

3.20. If a member of the applicant group wants to bid for any work the trust must make sure that it complies with its articles of association and follows the guidance in the Academies Financial Handbook. The trust will also need to ensure that it has put in place robust arrangements to manage any potential conflicts of interest.

- 3.21. The procurement approach you use should be proportionate to the estimated value of the contract you plan to let. The greater the value, the more you need to demonstrate to all potential bidders that the competition is open and fair. Your trust will need to decide the approach it will take at different contract values.
- 3.22. It is up to the trust to decide its procurement thresholds but typical values might be:
- Low value – below £10,000
  - Medium – between £10,000 and £40,000
  - High – over £40,000 but below the EU threshold
- 3.23. At lower values the procurement process could be very simple – such as getting two or three telephone quotes to help you check that you are getting a fair market rate. We provide some further [guidance](#) on low-value procurement on our website which sets out what you need to think about when writing a statement of requirement. This need not be a complicated document: a paragraph might suffice.
- 3.24. Not every purchase will require a competitive process. For example, if you are advertising in the local press, you may have only one option. In these cases the expectation is that the trust will negotiate the best deal that it can within the market and keep a record of its spending decisions.
- 3.25. EU limits: under the EU Directive, there are set financial limits which apply to all public sector procurement across the European Union. This means that where the value of a specific procurement is likely to go over the thresholds for goods, services or works, the procurement process has to comply with the EU Directive.
- 3.26. The current thresholds (revised January 2014) are: goods or services – £172,514; building works – £4,322,012. You cannot artificially ‘split’ contracts in an attempt to avoid these rules. It is unlikely that many purchases during the pre-opening phase will exceed the EU thresholds but should you need it, more information and guidance on the process is available on gov.uk: [procurement advice](#).

## **In-house delivery**

- 3.27. In-house delivery is where the trust uses its own employees to deliver specified services, using the project development grant to cover the employment costs of the staff involved. This arrangement can include staff brought in through a secondment or a fixed-term contract of employment, as long as they are not appointed as a way of circumventing public procurement rules.
- 3.28. In choosing this option the trust needs to be sure that it has the experience and capacity in place to undertake these tasks and that the services it provides through the in-house route and the costs quoted offer good value for money.



- 3.29. Where a trust uses its own employees, the salary levels must be set at reasonable levels that are appropriate to the skills, qualifications and experience of the jobholder, and are in line with what similar employees in similar jobs would be paid in the local area. Employees may also receive reasonable actual costs for their incidental travel expenses and (if required) accommodation and essential subsistence where they need to travel to fulfil their duties for the trust. Remember that the trust will also have to budget for national insurance, pension, essential training and other directly employee-related costs. Salary levels for employees should normally be significantly lower than the day rates charged by consultants and other contractors. A definition of 'at cost' is included in your project development grant letter.
- 3.30. It is up to you as the trust to ensure you comply with existing legislation in respect of employment and have the appropriate employment contracts in place. Where a secondment is put in place, you should ensure that there is agreement on the services that will be delivered. HMRC provides [guidance](#) on its website.

## **How we will work with you**

- 3.31. Trusts are accountable for their decisions and expenditure.
- 3.32. Your department contact will monitor the progress of the project and check that expenditure returns are received and appropriate.

## **Other helpful sources of information**

### **Support from open free schools**

- 3.33. You may find that working with an existing free school is a good way to access some of the skills and expertise you need. Using your project development grant to cover the backfill expenses of any school you work with can be an appropriate use of your funding.

### **Support from other organisations**

- 3.34. There are a range of other organisations that are willing to provide paid or unpaid support to free schools. For example, the Government Procurement Service (GPS) offers a range of support on procurement to help free schools during pre-opening and post-opening stages. You can find information on some of these organisations and how to contact them on the following pages: [Free Schools: Information and Resources](#). You can also find a range of organisations which provide services and support to free schools on NSN's [Service Provider Directory](#) on their website.
- 3.35. Please note that neither NSN nor the department endorse any particular provider of services.



## Links to further information

[View Table 2 Procurement and additional support: checklist of activities](#)

- [Academies Financial Handbook](#)
- [Low to medium-value quotes - schools](#)
- [Procurement essentials guide](#)
- [HMRC guidance on employing staff](#)
- [NSN Service Provider Directory](#)
- [Information and resources available to free schools](#)

## 4. Governance

### Good governance

- 4.1. You need to put in place strong governance arrangements during pre-opening, to deliver your school and ensure your trustees are ready to manage your free school effectively once it opens.
- 4.2. Every free school is run by an academy trust: a charitable company limited by guarantee.
- 4.3. A trust's governance arrangements are laid out in its articles of association. The DfE provides [model articles of association documents](#) for groups to use.
- 4.4. **Members** of the academy trust are akin to the shareholders of a company. Members are not involved in the day to day management of the school but have a role in appointing trustees (see below). They also play a role in ensuring that the governance structures in place are fit for purpose. Trusts must be established with at least 3 members, though it should be noted that trusts can have more should they choose to and we recommend five. This ensures that the trust has enough members to take decisions via special resolution (75% of members agree) without requiring unanimity while minimising circumstances in which a split membership prevents decisions being taken by ordinary resolution (at least 51% of the members are in favour). Members must not be employed by the Trust.
- 4.5. The **board of trustees** is responsible for the strategic operation of the Academy Trust. Trustees perform a similar role to that of governors in maintained schools. As academy trusts are charitable companies, trustees have additional responsibilities as company directors and as charitable trustees. They are also responsible for ensuring that the trust complies with its funding agreement and the Academies Financial Handbook.
- 4.6. Trustees are responsible for setting the strategic priorities for the school, holding the senior leadership team to account and ensuring that money is spent properly and effectively.
- 4.7. The role of trustee requires commitment as well as the right experience and skills.
- 4.8. Trustees' roles and lines of accountability must be clear, and trusts must put in place arrangements to ensure members and trustees avoid conflicts of interest. Every company member, trustee and local governor (on Local Governing Bodies in Multi Academy Trusts) will need to submit a Section I form and apply for an enhanced Disclosure and Barring Service (DBS) check to provide assurance on individual suitability. There is more information about [due diligence](#) in section 5.

- 4.9. While individuals who are members can also be trustees, retaining some distinction between the two layers ensures there are members independent of the trustees who can provide oversight and challenge to the trustees to ensure they are effectively delivering their core functions. This is especially important in multi-academy trusts in which trustees are responsible for a number of academies.

## Summary of the key tasks

### Making sure you have established your academy trust properly

- 4.10. The academy trust will be the signatory to the funding agreement, and the legal owner of the school's site and other assets. Setting up your academy trust allows you to open a company bank account, into which the department will pay your pre-opening grant (see section 6 on [funding](#)). You should have set up your trust before submitting your application.
- 4.11. The Articles of Association describe your trust's constitution and establish the framework of your governance arrangements. The department's model articles have been designed to follow best practice in corporate, charitable and school governance. This is why we expect you to use our model articles to establish your academy trust. Trusts moving from single to multi academy trust arrangements will also be expected to move to the department's model master and supplemental funding agreements when the time comes to sign the funding agreement for their new free school.
- 4.12. Where the group is an existing academy trust and therefore already has articles in place, we would expect you to consider adopting key provisions from the latest model. Where the group is a new trust, you should base your articles on the latest model. We will discuss with you any particular governance issues that you will need to consider.
- 4.13. The model articles are flexible enough to accommodate most governance models adopted by free school proposers. Your contact will need to see your articles and be satisfied that they are in line with our model before recommending that ministers enter into a funding agreement to open your free school.
- 4.14. Your contact will ask to see a governance plan to examine structure, roles and responsibilities, details of internal controls, see pen portraits of governors recruited and look at any skills gaps and vacancies. They will ask you throughout the pre-opening process how trustees are managing the transition from pre to post-opening.

## Size of your board of trustees

- 4.15. The number of trustees you need should be determined by the needs of your particular free school. The board of trustees should only be as big as it needs to be to ensure it has the full range of skills it needs to be effective. Between six and 12 high-calibre trustees ought to be sufficient to manage your trust effectively. Any specialist knowledge can be provided as and when required by committees or other experts such as the clerk to the trustees or the trust's legal advisers.
- 4.16. You will have indicated the size of your board of trustees in your articles. The articles require you to specify: how many trustees will be appointed by the members; how many additional trustees the board of trustees will be able to appoint themselves using the co-opted trustee provisions; that you have or will appoint a minimum of two parent trustees (or, in a MAT, two parent local governors on each governing body where the trust has Local Governing Bodies (LGBs)), plus any other type of trustee.
- 4.17. You should expect your contact to challenge you if the number of trustees set out in your articles is greater than twelve. The department will want to be assured that any larger body is justified, according to the likely demands of running your free school. Your contact may suggest that you ask some individuals to stand down if it is not clear that they will bring essential skills to the board of trustees, or if they judge the size of the group to be unwieldy.
- 4.18. The model multi-academy trust provisions of the articles also require the election of two parent trustees unless the trust has one or more local governing bodies, in which case two elected parents are required for each one. In establishing a local governing body you should ask yourself the same questions about size, skills and structures as you would when setting up a board of trustees for a single academy trust. You should also consider what powers and responsibilities should be delegated from the trust board to it. These should be set out in a clear written scheme of delegation.
- 4.19. No more than one third of the total number of trustees can be employees of the academy trust.

## Ensuring you are recruiting the right people as trustees

- 4.20. You need to ensure that the people you recruit as trustees understand the requirements of the role and have the commitment, experience and skills to be effective. As a free school trustee, they will need to:
  - use attainment and other data (in particular the Ofsted [dashboard](#) and [RAISE online](#)) to assess the school's progress, strengths and weaknesses.

- build a productive and supportive relationship with the principal and senior leadership team, and have the confidence to hold them to account for the school's performance. Depending on when trustees are appointed they may also be responsible for selecting and appointing the free school's first principal designate.
- be independent of mind, with the confidence and experience to drive through change, for example in making the case for, and helping to embed, academy freedoms on the curriculum and the school day.
- use financial and workforce data to inform decision-making about the trust's spending commitments, to ensure appropriate and effective use of public money. Recruiting at least one trustee who holds an accountancy qualification is recommended.
- maintain the highest professional standards as a trustee, exemplifying the [seven principles of public life](#) as set out by the Nolan Committee.

4.21. These attributes will be particularly important for the person you recruit as your chair of trustees. The chair's relationships with the principal and the trust members are key to effective accountability between the trustees and the school, and between the trust members and the board of trustees. The department and National Governors Association guidance 'Leading governors: the role of the chair of governors in schools and academies' will provide a useful guide to the skills you need to look for in a chair, and help them settle into the role, on appointment. You can find this guide via the National Archive.

4.22. The trustees of a free school need to be assured that its financial systems, transactions and risks are being adequately assessed and addressed. Trustees are also responsible for establishing internal controls that recognise public expectations about governance, financial management and financial probity, and expectations on the stewardship of public funds by the EFA's accounting officer and Parliament. Free schools need to check that their financial and other controls are operating effectively. More information on how a free school can do this can be found in the [Academies Financial Handbook](#).

4.23. You should expect your contact in the department to challenge you about your trustees. Your contact will want to be clear about the skills and experience each trustee brings and what role they will fulfil. They will also want to see that there is sufficient independent challenge and internal scrutiny within the trustee board.

4.24. Multi-academy trusts usually appoint a chief executive as a trustee of the trust. This is often an experienced principal designate, whose role includes challenging and mentoring other principals, as well as managing the trust's operation. Such individuals are usually referred to as the executive principal, rather than chief executive.

- 4.25. Parent trustees are elected by other parents, not the trust<sup>1</sup>, but they are expected to act in the best interests of the trust in the same way as all other trustees. They take on the same responsibilities as every other trustee so it is vital that you do what you can to ensure that candidates understand the role and have the necessary skills and commitment (the term of office is four years). This will help to avoid disruption caused by parents (or for that matter any other trustee) stepping down early because they had not appreciated the demands of the role.
- 4.26. Most free school proposers dedicate some of their pre-opening grant to trustee training. We strongly recommend that you follow suit. You will want to consider signing your chair of trustees up to the [leadership development programme](#) for new chairs, run by the National College for Teaching and Leadership. The programme is delivered by licensed providers in every region, with enrolment on a termly basis and courses taking around a year to complete. It can, therefore, be started by a new chair during pre-opening. The cost of the course is £399 per person.

## Finding trustees

- 4.27. SGOSS, Governors for Schools, helps schools find trustees in their area.
- 4.28. In recruiting your board of trustees you should aim to have recruited a capable chair and identified the majority of your trustees at least six months before your school's proposed opening date (i.e. by March 2016 for schools planning to open in September 2016). This does not include staff or parent trustees, who you can appoint during the first term post-opening. Your contact will challenge you on progress on trustee appointments throughout the pre-opening period and governance will be a key focus at your readiness to open meeting, where the chair will be expected to play a full part in the discussion, alongside the principal.
- 4.29. You may be tempted to appoint, as trustees, individuals who make a strong contribution to the pre-opening project team. This can be appropriate but only if you are confident that an individual will make a full contribution as a trustee in the longer term, based on the skills and experience outlined above. If not, there are other ways to involve supporters and give people a say over the running of the school, for example as non-trustees sitting on committees, or on informal working groups reporting to the trustees.

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<sup>1</sup> Unless too few parents stand for election, in which case the trustees can appoint as many parent trustees as they require to fill the places on the board of trustees.

## Trustees' commitments, post-opening

- 4.30. As a guide, trustees have in the past tended to commit between 10 and 20 days each year; three full board of trustees' meetings each year, plus committee meetings, which individual trustees may attend. This picture is changing rapidly though, as academies, free schools and an increasing number of maintained schools reconfigure their governance arrangements, which may require more frequent meetings of the board of trustees.
- 4.31. The burden on individual trustees can be lessened through effective use of committees and working groups. They can work on behalf of the trustees to explore specific areas of interest, make recommendations to the board of trustees, or take decisions on the board of trustees' behalf.

## The transition from pre- to post-opening

- 4.32. During pre-opening many trustees take on additional responsibilities as part of the project team, which can mean leading on the development of operational policies. This contribution can be vital and is welcomed, but you must ensure that trustees understand the need to take a more strategic role as the free school moves toward opening.
- 4.33. Taking a strategic role is not just about handing over plans to the principal designate and senior leaders. A key task for your trustees during pre-opening will be to think about how they will monitor and assess the school's strengths, weaknesses and progress, and how they will support and challenge the principal designate and senior leadership team. The process of defining the trustees' role should be led by your chair, working with other trustees and the principal designate.
- 4.34. To help your trustees begin to define their role as strategic leaders, we recommend focusing first on the [Ofsted inspection framework](#). Ofsted will use these measures to assess the effectiveness of your board of trustees, so they should be central to your trustees' thinking about their role and priorities. The National Governors Association has published [a list of twenty questions for a governing body to ask itself](#), covering membership and skills, focus and activities. Some questions will be more appropriate as a prompt for review and continuous improvement, once the school opens, but most will be useful in helping you to plan during pre-opening. For more detailed guidance you should consult the department's [Governors' Handbook](#), which describes the role and duties of governors in maintained schools and trustees in academies.

## Other key appointments

### Accounting officer

- 4.35. Each free school must designate a named individual as its accounting officer. The individual must be a fit and suitable person for the role. The Trust, on appointment of the accounting officer, is responsible for ensuring that the AO undertakes sufficient training to undertake the role. In single free schools this should be the principal. If a free school is joining a multi academy trust it should be the chief executive or executive principal of the multi academy trust.
- 4.36. The role of the accounting officer includes a personal responsibility to the EFA's accounting officer and to Parliament for the financial resources under the free school's control. The free school's accounting officer must be able to assure the EFA's accounting officer, Parliament and the public of high standards of probity in the management of public funds. This requires the free school's accounting officer to have appropriate oversight, alongside the board of trustees for:
- The establishment, maintenance and monitoring of the free school's internal control arrangements;
  - Ensuring the free school's assets and property are under proper control;
  - Reducing the risk of fraud or irregularity; and
  - Keeping full and accurate accounting records to ensure ongoing viability.
- 4.37. The free school's accounting officer is also required to sign the following:
- A statement on regularity, propriety and compliance which is included in the free school's audited annual accounts; and
  - An annual value for money statement explaining and demonstrating with examples how the free school has secured value for money.
- 4.38. It is, therefore, very important that the trustees of the free school establish robust internal control arrangements leading to the efficient clearance of these documents.
- 4.39. More detail on the role of the accounting officer and how this can be discharged can be found on NASBM's website.

### Chief finance officer

- 4.40. Free schools must demonstrate a capacity in their governance and financial management structures to safeguard public funds. An integral element is that free schools must appoint a chief finance officer (CFO) who will act as the trust's finance director, business manager or equivalent, to lead on financial matters. However, in smaller free schools it may not be possible to justify the salary of a CFO. Trustees can elect to have this position filled by employing staff or



contractors with relevant skills or knowledge at the appropriate time, provided effective governance and robust financial management is preserved. More detail on the role of the CFO can be found on [National Association of School Business Management's website](#).

### **Clerk to the Trustees**

4.41. You are strongly encouraged to appoint a clerk to the trustees who will administer board of trustees' meetings and ensure that all the necessary legal procedures are followed. Each meeting of the board of trustees must be formally recorded so that it is clear what matters were discussed and what action was approved. There may also need to be formal documents produced and circulated before or after the meeting. All of these duties are performed by the clerk. More information on [the role of the clerk and how to appoint a clerk](#) can be found on the gov.uk website.

### **Delivering assurance**

4.42. Academy trusts must have in place a process for checking its financial systems, controls, transactions and risks. This programme of risk review and checking of financial controls can be managed in the way that you deem most appropriate your circumstances. Options include:

- the appointment of an internal audit service (either in-house, bought-in or provided by a sponsor);
- the performance of a supplementary programme of work by the trust's external auditor;
- the appointment of a non-employed trustee with an appropriate level of qualifications and/or experience to check the trust's internal controls, who neither charges, nor is paid by the trust for their work. This appointment is not mandatory but is one way trusts are able to conduct their internal checks;
- a peer review, with the work being performed by the chief financial officer, or a suitably qualified or experienced member of the finance team, from another academy trust, as an independent reviewer.

Further information on internal scrutiny can be found in the Academies Financial Handbook.

### **Structures**

4.43. During pre-opening you will need to determine how your board of trustees will be structured. A key consideration will be how to make most effective use of sub-committees, if you are a MAT including local governing bodies, and/or working groups. Boards of trustees are expected to have a finance committee, but can set up other committees covering other areas of business, for example curriculum and attainment.

- 4.44. Trustees can formally delegate decision-making powers to a committee, in accordance with the trust's articles, allowing it to make decisions on behalf of the board of trustees. Other committees will focus on issues and make recommendations to the trustees. The constitution of committees is for the trustees to decide (except where you do not have two parents on the board of trustees. Multi Academy Trusts must then have two parents on each local governing body). Non-trustees can be co-opted onto committees and can vote on that committee, although (except in the case of local governing bodies) the majority of committee members must be trustees. Committees can therefore be a helpful way to bring additional expertise to support the trustees. Your decision on whether to establish a committee should be made solely on the needs of your school and the skills of your trustees. It is also important to remember that the board of trustees retains overall accountability, regardless of what powers it delegates to any committee.
- 4.45. As an alternative to a standing committee, you could consider setting up a working group to offer advice to the trustees on specific issues or to give a voice to a particular group such as parents or the community. Because of its informal nature it can be easier to stand down a working group once an issue has been resolved, avoiding unnecessary demands on people's time. You cannot delegate decision-making powers to a working group.
- 4.46. The department's [National Leaders of Governance](#) (NLG) programme was set up to provide governing bodies in open schools with advice, support and coaching from experienced chairs of governors who have effectively developed leadership capacity on their own boards. The programme is also open to free schools in pre-opening, to help proposer groups put in place effective governance arrangements. NLG support is usually free. To identify an appropriate NLG contact [governors.mailbox@education.gsi.gov.uk](mailto:governors.mailbox@education.gsi.gov.uk)
- 4.47. The gov.uk website provides examples of the challenge and support you can expect to receive from NLG, including helping the chair to set priorities, understand essential data and build a relationship with the principal, as well as more general advice on embedding effective procedures for the board of trustees and setting priorities. Ideally you will have recruited your chair of trustees before drawing down support from an NLG. You should also have a plan for trustee recruitment based on an initial assessment of the skills needed to run your free school, and have given some thought to how your board of trustees will be structured.
- 4.48. The [latest model articles](#) for academies give significant flexibilities to MATs with regard to setting up local governing bodies. Trusts can decide how many LGBs they set up and the responsibilities delegated to them. This can vary from a high level of delegation to wholly advisory LGBs.

- 4.49. The articles also provide for LGBs to oversee more than one school within a trust. An LGB set up in this way can then have sub-committees for individual schools, with some responsibilities delegated to them or act more as an advisory body. The sub-committees report to the LGB, which has a more strategic perspective and the ability to compare and contrast between schools. Governance structures that span more than one school can bring significant benefits and allow you to make the most of the skills and experience of your best people.
- 4.50. Alternatively, instead of using LGBs to oversee a group of schools, you can set up a sub-committee of the trust board to carry out this function. Under this type of structure LGBs can also have some responsibility or be mainly or wholly advisory over individual schools and report into the sub-committees. They can consist of some trustees of the MAT as well as individuals who are not trustees, but who are seconded on to it.
- 4.51. Where a MAT establishes local governing bodies, we will expect you to be as rigorous in selecting its local governors and setting its operating arrangements as you would be in establishing a board of trustees for a single free school. If you choose not to establish a local governing body, you will need to demonstrate that your trust has the capacity to manage your new free school centrally. This might be more challenging if your trust has only run mainstream academies and is setting up a special, alternative provision or 16-19 free school, or where the free school is some distance from your centre of operations, or simply because the volume of work will increase as each new school comes on line.

## Conflicts and due diligence

- 4.52. A conflict of interest can be defined as:

‘Any situation in which a trustee’s personal interests, or interests that they owe to another body, may (or may appear to) influence or affect their decision making.’

- 4.53. It is inevitable that conflicts of interest will arise at some time and even the perception of a conflict of interest can damage your trust’s reputation. Your priority should be to ensure that your trustees understand their responsibilities for managing public money, which are set out in detail in the [Academies Financial Handbook](#) and include putting the right mechanisms in place to identify and manage conflicts of interest.
- 4.54. Conflicts are most likely to arise where trustees or their relatives intend to provide goods or services to the trust, or where a trustee’s personal, family or professional relationships will, could, or might be seen to compromise their ability to act solely in the interests of the trust. The latter could be caused by the appointments you make, for example, a couple who take the role of chair of trustees and finance director, or where a trustee owns, is employed by or has a personal relationship

with, a third party seeking to contract with the trust. Your department contact will challenge any appointment they feel creates an unacceptably high risk of a conflict for your trust, but the responsibility is yours and we will expect you to ensure that:

- Any individual or organisation represented as a member or trustee of your academy trust, or with influence over the trust through other means, understands that they will only be able to bid for contracts from the trust on an 'at cost' basis. This is in line with the approach taken by the department with approved academy sponsors.
- Any individual or organisation expecting to provide goods or services to the trust has no role in nominating the members or trustees of your academy trust.
- Trustees and members comply with the protocols set out at Articles 6, 97 and 98 of the model articles, which ensure that decisions are taken without bias and that individuals who are 'conflicted' take steps to avoid influencing a decision.
- Trustees establish and maintain a register of interests to identify and record potential areas of conflict. The register should be completed and kept up to date by all trustees and any staff with budgetary control, covering them and their family members. This will show that your trust's decisions are being made free from conflict. The register of interests should be a standing item at every meeting of the board of trustees.
- Trustees and members understand the need for all procurement to follow an open and fair competition. The gov.uk website provides guidance on procurement for free schools. The [Charity Commission](#) has also produced helpful guidance on identifying and avoiding conflicts of interest.

4.55. The department will take very seriously any failure to manage conflicts of interest – real or perceived – properly. Negligence in relation to this could ultimately lead to the cancellation of the project.

## **How we will work with you**

4.56. At your first meeting with the department, your contact will need to confirm that your trust has been established and that your articles are in line with the department's model. Your contact will also check the proposed size of your board of trustees and request the governance structure. They will challenge you on any amendments, or if your proposed board of trustees looks unnecessarily large.

4.57. Your contact will ask you to confirm the names of any members and trustees you have already appointed. You are required to advise Companies House within 14 days of appointing a director (your trustees are your directors) and to advise the department within 14 days of any change (appointment or removal) of any trustee or member of the trust. Academy trusts are not regulated by the Charity

Commission so you should not seek to register the trust with the Commission or provide them with details of your members and trustees. Your contact will challenge you should any concerns arise about an individual's appointment, including where the department has a concern about a potential conflict of interest.

- 4.58. By the beginning of phase two your contact will expect you to have resolved any concerns regarding the constitution or size of your board of trustees. You will have completed an initial trustee skills audit as part of your application and your contact will want to see evidence that you have reviewed this as new trustees are appointed and confirmed what gaps remain. They will also want to know what plans you have to recruit and train your trustees to ensure you have sufficient skills and experience in place. They will be particularly keen to understand your plans to recruit a chair. They will also ask for updates on trustee appointments, and for a pen-portrait of each new trustee, setting out their skills and track record. By the end of phase one your contact will also expect you to have put in place effective procedures for managing conflicts of interest, including setting up a register of interests.
- 4.59. Also by the end of phase one your contact will expect you to have drawn up plans for how your board of trustees will operate including plans for committees. They will also want to hear how your plans for recruiting a chair and other trustees are progressing.
- 4.60. Your contact will expect you to have recruited the chair of trustees by the end of phase two - who should be working with the principal designate - and have identified or appointed the majority of remaining trustees and support staff (i.e. the clerk, and a responsible officer). As a minimum, you will need to have a workable plan to fill outstanding vacancies.
- 4.61. The department is likely to be considering entering into a funding agreement around phase three. In recommending to ministers that they enter into a funding agreement, your contact will need to provide an assurance and evidence that your governance arrangements are appropriate and rigorous, and that you have recruited high calibre trustees.
- 4.62. As the school moves towards opening, your trustees should be working with the principal designate on the board of trustees' key documents and protocols, ahead of the first board of trustees meeting. These will include the school's development and improvement plan and a scheme of delegation (the document that confirms any delegation of spending and other decision-making powers from the board of trustees to committees or employees). Many examples of academies' schemes of delegation are published online, including [this one from the Harris Academy in South Norwood](#).

4.63. Your chair of trustees will be expected to attend the [readiness to open meeting](#), and should be expected to answer questions on the education plans and trustees' priorities in the run-up to and immediately after opening.

## Links to further information

[View Table 3 Governance: checklist of activities](#)

- [The role of the chair of governors](#)
- [Governors' handbook](#)
- [Academies Financial Handbook](#)
- [Model Articles of association](#)
- [The role of the clerk and how to appoint a clerk](#)
- [National Leaders of Governance](#)
- [Ofsted dashboard](#)
- [RAISE online](#)
- [Seven principles of public life](#)
- [Leadership development programme](#)
- [SGOSS Governors for Schools](#)
- [Ofsted inspection framework](#)
- [Twenty questions for a governing body to ask itself](#)
- [Charity Commission guidance on avoiding conflicts of interest](#)
- [Harris Academy scheme of delegation](#)
- [NSN's resources and guidance about expanding academy trusts.](#)

## 5. Due diligence

- 5.1. The department will carry out a number of checks on those applying to establish a free school. These will include due diligence checks, credit checks, Disclosure and Barring Service (DBS, formerly Criminal Records Bureau (CRB)) checks and other checks necessary to ensure only those who are suitable to do so are able to set up and run a free school. There are several distinct actions for members and trustees to take as part of the due diligence process. Groups should engage with these requirements proactively and early in the process to avoid delays in the Secretary of State agreeing to enter into a funding agreement with your trust or opening your school.

### Summary of the key tasks

#### Section I Suitability and Declarations form

- 5.2. The department's Due Diligence Unit carries out suitability checks on all members and trustees of a company set up to run a free school. Those listed on your free school application will have been checked during the application process. You must keep the department informed of any changes to the members and trustees of your trust during pre-opening and after the school has opened. At your initial kick-off meeting, your free schools group contact will explain how we would like you to do this. All new members and trustees (and principals designate, when appointed) must complete the [Section I Suitability and Declarations form](#) and send it to the Due Diligence Unit, ensuring that all sections of the form are complete, the declaration page is signed and a passport-sized picture is included. All completed forms should either be scanned and emailed to [due.diligence@education.gsi.gov.uk](mailto:due.diligence@education.gsi.gov.uk) or sent by registered post to Due Diligence Unit, Department for Education, 4th Floor, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.
- 5.3. New trustees will also need to register their details with Companies House by completing an [AP01](#) form (this is a legal requirement under the Companies Act 2006).

#### Disclosure and Barring Service (DBS) checks

- 5.4. As part of the checks to ensure that only suitable people are involved in establishing your free school, all members and trustees of the trust must hold an enhanced DBS certificate. They are not obliged to reapply if they hold a DBS certificate issued within the previous two calendar years.



- 5.5. The chair of trustees (of the trust, not a chair of a local governing body) **must** apply via the department as the Independent Schools Standards require that the DBS certificate is counter-signed by the Secretary of State.
- 5.6. All other members and trustees must obtain an enhanced DBS certificate. They can apply online via an umbrella body which will carry out the checks on their behalf. The Disclosure and Barring Service's website has a searchable database of umbrella bodies that offer an online service, available at the following link: [DBS umbrella body directory](#) that will be able to conduct the necessary checks on your behalf. As volunteers you will not be charged the £44 by DBS for an Enhanced Disclosure. Umbrella bodies request a small payment of around £10-£20 per application.
- 5.7. Alternatively, you can submit your form for the Department for Education to counter-sign sending it via registered post.

The department does not counter-sign DBS certificates for principals designate and the Due Diligence Unit does not require proof that a certificate has been obtained. The principal designate will be an employee of the school and as such the school is required to ensure that all relevant checks (including vetting and barring checks) are conducted in line with safeguarding requirements.

## **Applying for an enhanced DBS check: guidance for members and trustees**

### **Chair of Trustees**

The Chair of Trustees (of the trust, not a chair of a local governing body) must hold an enhanced DBS certificate counter-signed by the Department for Education. If the Chair of trustees does not already hold an enhanced DBS counter-signed by the Department for Education that is dated within the past two years they must request a new DBS certificate by following this route.

Complete both **an enhanced DBS form and a Verify form** and send both in the same envelope to the Department for Education

- Download the Veri-fy form [here](#) and follow the instructions on the screen
- Once completed obtain sign off from an eligible person (listed at the Verify link above)
- Phone DBS on 03000 200 190. Ask for a DBS Enhanced Disclosure application form, state it is for the Department for Education reference number 20881800002 and that you are a volunteer
- Complete the DBS form in black ink and capital letters following the instructions on the form



- Make sure that you include your email address and telephone number so that we can contact you if further information is required
- Post the Veri-fy form and the DBS form at the same time by registered post to:
- Due Diligence Team, Department for Education, 4th floor Sanctuary Buildings, Great Smith St, London, SW1P 3BT
- We do not require you to post identity documents to us at any stage of the process – photocopies or scanned documents are fine.
- We complete the back of the DBS form then send both forms to the Disclosure and Barring Service
- Once you receive your certificate email a scanned copy of the certificate together with this declaration to [due.diligence@education.gsi.gov.uk](mailto:due.diligence@education.gsi.gov.uk)

**Declaration:** I confirm that the certificate provided is an exact duplicate of that returned to me by the Disclosure and Barring Service (DBS). I understand that any false declaration or alteration of this certificate would be a criminal offence under Section 123 of the Police Act 1997.

Full name:.....Date:.....

- If the chair of trustees does already hold an enhanced DBS that is counter-signed by the Department for Education and dated within the past two years they may send a scanned copy of the certificate together with the above declaration to [due.diligence@education.gsi.gov.uk](mailto:due.diligence@education.gsi.gov.uk)

### **All other members and trustees**

#### **Members and trustees who already hold a valid enhanced DBS certificate:**

- Members and trustees (other than the Chair of Trustees) who hold an enhanced DBS certificate received within the past two years from any registered body should email a copy to [due.diligence@education.gsi.gov.uk](mailto:due.diligence@education.gsi.gov.uk) together with the above declaration.

#### **Members and trustees who do not already hold a valid enhanced DBS certificate should either:**

- **apply online via an umbrella body** found on The Disclosure and Barring Service's searchable database: [DBS umbrella body directory](#). As trustees and members are considered to be volunteers, you will not be charged the £44 by DBS for an Enhanced Disclosure. Umbrella bodies may request a small payment of around £10-£20 per application. Members and trustees are expected to fund any such costs through the trust's Project Development Grant;

- or
- apply via the Department for Education (as per guidance for the Chair of Trustees, above); or (where the trust is already a counter signatory) apply directly to DBS.
- 
- Once a certificate has been obtained from DBS, this should be sent to [due.diligence@education.gsi.gov.uk](mailto:due.diligence@education.gsi.gov.uk) as per guidance for the chair of trustees above.

## Links to further information

[View Table 4 Due diligence: checklist of activities](#)

- [Section I Suitability and Declarations form](#)
- [Companies House appointment of director form AP01](#)
- [Veri-fy form](#)
- [Gov.uk website: DBS checks](#)

## 6. Funding

- 6.1. The funding you receive is public money, and you will need to be able to demonstrate that the way you use it meets high standards of propriety, is transparent and defensible, and secures good value for money. Your trust will need sound financial procedures, the capacity and capability to handle public money, and good governance arrangements. You must consider the potential conflicts of interest and have arrangements in place to deal with them appropriately. You will want to agree your expenditure profile from the start of the project to the opening of your free school. Your trust will need to develop robust financial plans and controls to make effective use of the project development funding and be sure that the school will be viable and well managed on opening.
- 6.2. The key elements of this are:
- planning and managing expenditure up to the school's opening - including meeting the terms of the project development grant agreement;
  - putting in place robust governance arrangements and accounting procedures to allow the school to manage public funding responsibly once open; and
  - developing a financial plan that demonstrates the school's viability on opening within the available funding based on a realistic and evidenced number of pupils, realistic staffing requirements and an up-to-date estimate of expenditure.

## Summary of the key tasks

### Pre-opening funding: the project development grant (PDG)

- 6.3. In the run up to opening the department will provide a fixed-rate project development grant (PDG) to help cover essential non-capital costs up to the point at which the school opens. Your trust will need to develop robust financial plans and controls to make effective use of the project development funding. The rate of funding is set out in table 1 below. You will be issued with a grant agreement setting out the terms under which the project development grant will be paid. You must read these terms before signing the agreement and return it to the named contact. Your trust will need its own bank account into which the funds can be paid. You cannot use a personal or other similar bank account. If your school is part of a MAT, their account may be used, but there must be systems to ensure clear separation and accounting of the expenditure and income that relate to each school.
- 6.4. The grant will normally be paid in four instalments or nine instalments if the school is opening over a period of longer than one year. The dates and amounts of these

payments will be set out in the grant agreement. The payments will be slightly front-loaded to ensure you have flexibility in your cash-flow. Make sure you have planned your expenditure throughout the year before you start to spend the grant. It is likely that some of the most significant costs, for example employing the largest number of staff, will fall closest to opening.

- 6.5. You must provide regular statements of expenditure throughout the pre-opening stage. A template is provided in the grant agreement. Once you have received your first payment, and in advance of your second, you should provide a budget profile showing full details, month by month, of how you intend to spend your PDG up until the date you open. Thereafter, within 14 days of each subsequent payment, you must provide a statement detailing expenditure made up to the date of the payment. A final statement of expenditure up to the date of the school opening should be provided within four weeks of opening. These statements should be sent to your contact.
- 6.6. Future payments will be delayed or stopped at any time if the terms of the grant are not upheld, for example, by not making timely expenditure returns or through inappropriate use of public funds, or if your project does not make satisfactory progress.
- 6.7. If your project is cancelled before the school opens, you must not incur any further expenditure and must return any unused project development grant funding, in accordance with the conditions of grant set out in the grant agreement.
- 6.8. If you have any project development grant funding left over when the school opens, you should roll this over into the school's budget. The level of project development grant has been set based on previous free schools' costs in the pre-opening phase. We would not anticipate that schools will roll substantial amounts into their school's budget beyond any unspent contingency, which is likely to be small. We do not expect schools to assume that they will carry forward any funding into their funding plans for the open school.
- 6.9. After opening, academies can reclaim VAT on expenditure incurred during the pre-opening stage from HMRC. More information can be found on the [HMRC website](#). You should seek advice from your local tax office on reclaiming VAT once open - the DfE and your contact are not able to advise on tax policy. The school can also retain any VAT it recoups from HMRC on project development grant expenditure. (Note: the terms of other grants may differ. For example, schools must return any VAT reclaimed from capital grant expenditure provided by the EFA sites team, in accordance with the terms of that grant from EFA).

### **Project development grant (PDG) rates**

- 6.10. The amount of PDG you receive will vary depending on whether the trust is opening a secondary, primary, AP etc. Independent schools receive a much

smaller allocation, reflecting the fact that they join the programme with much of their staff and other resources in place. Trusts opening a single school in an academic year will receive the full PDG rate for the type of school they are opening. Trusts which have been approved to open more than one school in a given academic year will receive full PDG funding for the first school; however we expect there is scope to realise efficiencies in expenditure and a reduced amount of PDG funding will therefore be received for each additional school – amounts are shown below. Areas where we might expect to see savings are project management; educational services; administration and office costs.

6.11. Where you are opening multiple schools, the amount of PDG will be determined by the school's expected opening date, regardless of when the project was approved to pre-opening. The current rates which are payable to projects in the pre-opening stage are set out in the table below.

Type of school	(a) Project development grant funding for first school opening in a given academic year	(b) Project development grant funding for each additional school opening in the same academic year
Primary	£220,000	£150,000
Secondary and all-through	£300,000	£200,000
Special	£220,000	£150,000
AP	£220,000	£150,000
16-19	£250,000	£170,000
Independent converters	£25,000	£25,000

**Table 1 Project development grant rates**

6.12. The numbers of schools that a Trust is opening in a single academic year will include any schools approved to pre-opening from 2014.

6.13. Trusts which are only opening one school in any given academic year will be funded at the full PDG rate for the type of school which they are opening (box (a) above). Where a Trust is opening more than one school in a single academic year, they will receive the full funding for the first school (box a) but will be funded at the reduced rate (box b) for each additional school.

### **How the Project Development Grant will be allocated**

6.14. Where a Trust is opening a number of schools in a single academic year, only one project will receive the higher rate PDG (box (a) above). All subsequent projects

opening in that same academic year will be funded at the lower PDG rate (box (b) above).

- 6.15. When deciding the level of PDG payable, any projects that were approved to pre-opening from January 2014 onwards, including those projects which have deferred their opening to the academic year in question, will be taken into consideration.
- 6.16. Where there are no other schools sponsored by the Trust opening in that same academic year (including deferrals), then the project that provides the highest PDG rate, as a result of its school type, will be considered the 'first' project and funded at the highest grant rate (box (a) above). All remaining projects opening in that same academic year will be funded at the lower rate according to their type (box (b) above).
- 6.17. Where the Trust has more than one school of a particular 'type' opening in the same academic year, which could attract the higher PDG rate, then the Trust will be asked to choose which school they wish to designate as their higher rate PDG project.

#### **Where a project defers its year of opening**

- 6.18. Note this only applies to projects which were approved to pre-opening from January 2014 onwards (Wave 5 onwards). Any projects that were approved before January 2014 and subsequently deferred their year of opening are disregarded when allocating higher or lower rate PDG.
- 6.19. Upon deferral, the project will retain the **current PDG grant rate** that it is already receiving (although the payment profile will be amended to reflect the longer pre-opening period):
  - Where a higher PDG funded project has deferred, any new projects from subsequent applications due to open in the same academic year will be funded at the lower rate, according to their school type.
  - Where a lower rate project has deferred the higher grant level will be paid to the highest earning project from a later round (if there are any).

#### **Planning your project development grant budget**

- 6.20. Ensure that all spending is essential to the development of the school during the pre-opening stage and provides good value for money. The department does not expect to provide any other funding to meet pre-opening costs. You should therefore think very carefully about how to allocate your budget before committing to any expenditure.
- 6.21. The project development grant is intended to cover all revenue costs up to the opening of the school. Capital costs to secure and develop the school's site, and ICT to support the curriculum, are provided by the EFA. Books and other

curriculum materials required on opening may be purchased in the month before opening, using an advance of the materials component of the post-opening grant.

6.22. Typically projects will use their project development grant funding to pay for:

- project management (support to coordinate all work leading to the development of the school);
- educational services;
- staff recruitment (including the principal designate);
- salary costs (which often include the principal designate, finance/business manager and administrative support in advance of opening);
- marketing costs;
- consultation costs and open evening costs;
- pre-opening office costs;
- administration of admissions (including applications and appeals);
- trustee induction and support.

6.23. Many projects also use their project development grant to purchase the financial and management information system that the school requires in advance of opening. Where possible, it is good practice to maintain a contingency of about 5% in your initial financial plan to cover unexpected costs. As set out above, if any grant funding is left when the school opens it should be rolled into the school's budget.

6.24. It is up to you to decide how you allocate your project development grant spending. Requirements vary from project to project depending on the local context, the school and the wider resources available to the trust. You may want to look at these [Sample pre-opening budgets](#) for mainstream primary and secondary schools and think about the different needs of your project to develop your own budget. We cannot, of course, guarantee that you can deliver the activities for the figures shown and if some costs are higher you will need to adjust elsewhere. The New Schools Network provides a [budget planning tool](#) which you can use to plan your spending during pre-opening. The tool includes examples of how different types of proposers have used this funding in the past, in order to help you benchmark your spending. They have also published [guidance on how to manage your project development grant](#) to accompany this tool.

## Accountability

6.25. One person within the trust should have overall responsibility for managing the financial plan and project development grant expenditure. They should be accountable to the trust and the department for ensuring that funding is used properly and the budget is managed well.

- 6.26. The funding you receive is public money, and you will need to be able to demonstrate that the way you use it meets the highest standards of propriety, and secures good value for money. The principles of good governance described below should apply throughout the project to open the school.
- 6.27. Information about how the trust can procure additional project support is available in [section 3](#). This provides guidance on the different procurement options when using public money and will help to ensure that your project secures value for money as well as compliance with the relevant regulations. The key thing to remember is that you must use a fair and open process for all levels of procurement. This includes keeping an accurate record on your spending decisions.

### **Setting up governance and accounting arrangements**

- 6.28. Before opening, your trust will need to put in place effective systems for managing the public funding that it receives. Putting good governance arrangements in place at this stage will help develop a strong framework for the school on opening.
- 6.29. You will need to ensure that the trust's spending choices and decisions are in the school's best interests and are transparent and defensible. Your trust will need sound financial procedures - the capacity to handle public money, and good governance arrangements. You must consider the potential for conflicts of interest and have an agreed policy in place setting out how you will deal with them. Your contact will consider the progress made towards developing effective financial governance arrangements for the open school.
- 6.30. You will need to agree how you will manage payments and any related decisions, such as how you will award contracts. You will also need to retain original copies of all receipts, invoices, contracts and tender documents which the department may review at any time.
- 6.31. On opening, the school will need to have a robust framework to manage its funding and ensure proper accountability and procedures are maintained. At the pre-opening stage, key tasks to deliver this include:
- setting out the role of the finance director or business manager as a member of the school's senior leadership team and recruiting an appropriate person;
  - forming the finance committee of the governing body, agreeing its terms of reference and making sure that the committee's membership includes appropriate financial expertise;
  - preparing appropriate auditing arrangements (including the appointment of a responsible officer as set out in the DfE guidance Academies Financial Handbook);



- ratifying the appointment of the accounting officer (normally the principal for a SAT);
- securing formal governing body approval for the first year's budget; and
- developing policies and manuals covering procurement (including competitive tendering), delegation of responsibilities, financial procedures, internal control (including a split between purchasing, authorising and payment roles) and management of conflicts of interests.

6.32. The governance section of this guide gives further advice on some of these tasks.

## The Academies Financial Handbook

6.33. The Academies Financial Handbook sets out the funding arrangements and financial management requirements that your school must follow. You must refer to this handbook alongside your funding agreement for information about the financial systems and controls that your school should have in place.

6.34. The [Academies Accounts Direction](#) sets out the elements to be included in the academy trust accounts and the accounting treatments required. It also provides a model format for the accounts to aid consistency of treatment between academy trusts. In accordance with the Memorandum and Articles of Association, the trust's academy financial year ordinarily runs to 31 August. The trust's initial accounting period may be more or less than 12 months in accordance with the restrictions of company and charity law. This depends on the date when your trust was incorporated (registered) as a company at Companies House, and not the date when your academy opens. Company law permits an initial accounting period (i.e. the period immediately after incorporation) of up to 18 months. To illustrate, this gives two scenarios for the 2015/16 academic year:

- If your trust was incorporated on or after 1 March 2015, you may defer your first period of accounts to cover the period ending 31 August 2016.
- If your trust was incorporated on or before 28 February 2015, you cannot extend your first period of accounts to 31 August 2016. Rather, you should prepare your first accounts to cover the period ending 31 August 2015.

6.35. Filing requirements for accounts vary on when you enter into a funding agreement by the end of your accounting period. For school that has entered into a funding agreement with the Secretary of State for Education by the end of its accounting period (i.e. 31 August), the requirements are in line with those for open academies. The timetable for submission and publication of accounts, including how accounts are submitted, is set out in detail in the Accounts Direction. Key deadlines are given below:

- By 31 December following 31 August year-end: the trust should send audited accounts and auditor's management letter to EFA. These must be

submitted as scanned electronic documents, in pdf form, to [academiesFinancialMonitoring.EFA@education.gsi.gov.uk](mailto:academiesFinancialMonitoring.EFA@education.gsi.gov.uk)

- By 31 May following 31 August year-end (i.e. within nine months of the end of the accounting period): academy trust to file accounts with Companies House. This is with the exception that where a trust is preparing accounts for its first period after incorporation and is preparing them for a period of greater than 12 months, accounts must be filed within 21 months of incorporation, or within three months of the end of the accounting period, whichever is later.
- By 31 May following 31 August year-end: academy trust to publish accounts on trust website (although this should be done as soon as possible after approval by the board of trustees).

6.36. The Companies House website also provides the date that companies must file their accounts with them.

6.37. The [financial management and governance self-assessment \(FMGS\)](#) is for new academies. It highlights the main requirements academies must have in place soon after opening. It can be a helpful tool to assess your financial governance and compliance with these requirements during pre-opening. The deadline for the FMGS return to EFA is four months after opening.

## Insurance cover

6.38. You are eligible to benefit from the government's risk protection arrangement (RPA) as an alternative to insurance, whereby the UK Government funds any losses that arise. RPA will be provided free of charge in pre-opening. The current rate for open schools is £25 per pupil/place. The RPA is a simple, once-only activity and eliminates the need for time-consuming procurement of commercial insurance cover.

6.39. Further information about RPA and the membership rules can be found [here](#). If you would like to join the RPA scheme, please email your lead contact with the type of cover you need (church or standard) and start date.

6.40. There is no compulsory requirement to enter into the RPA and you are free to make your own insurance arrangements. If you do not think the RPA cover is right for you, we would welcome your feedback, so that we can consider whether any changes to the arrangements should be made in the future.

## Working with the department

6.41. Your contact will send you the project development grant letter shortly after the project proceeds to the pre-opening stage. They will monitor the progress of the project and check expenditure returns are received and appropriate. They will

challenge projects, where necessary, on their use of project development grant funding, and can arrange for payments to be delayed or stopped where necessary.

- 6.42. Contacts will liaise with colleagues where necessary to assess the school's financial plan before entering into a funding agreement and in advance of issuing your indicative funding letter which will set out the level of funding you should expect upon opening.

## **Developing a viable financial plan for a proposed mainstream school**

- 6.43. Once the school is open, it will be funded by the EFA. The funding for free schools is set at an equivalent level to funding for all other state-funded schools, after taking account of functions that a free school will have to fulfil for itself rather than relying on a local authority.
- 6.44. Funding is largely based on a payment for each pupil who attends the school, but the detailed funding methodology may vary over time with changes to the funding of the school system as a whole. Financial, and therefore, educational viability is dependent upon you admitting sufficient pupils.
- 6.45. In order to provide a sustainable, broad and balanced curriculum, there is a presumption that primary provision should have a minimum of two forms of entry of 25/30 pupils, and secondary provision have a minimum of four forms of entry of 30 pupils. We do not expect financial plans submitted to the department, unless stated in your application, to be based on fewer pupil numbers. If you expect this to be the case then please contact your lead contact to discuss the rationale.
- 6.46. The free school financial template is updated in spring each year to reflect the changes in national and local funding rates. When you make your application, therefore, the rates in the template you use may not be the ones for the year in which you will open. You will need to ensure that you refresh your financial plan in the spring before opening when the new rates are available. Your contact will keep you updated on any changes. The approval of your application to the pre-opening stage is therefore conditional on you submitting revised financial plans at key points during pre-opening so that the department can be assured that your school is on-course to be financially viable on opening. In particular, you will be asked to share your current financial plans with the department before entering into a funding agreement (this should also include a version modelled around the lowest viable number of pupils for year 1) and in June before opening in order for draft funding allocation packs to be issued.
- 6.47. You should be ready to submit plans at these points with evidence to underpin your pupil number assumptions which must be realistic and achievable. The department will want to see that as far as possible the plans reflect your income based on the best estimates of available grants, your outgoings and the likely

number of pupils. The plans should show that your school will not go into deficit at any point.

- 6.48. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of pupils become clearer and other costs are more confidently established.
- 6.49. Further updates should take account of the number of staff required to cater for these pupils. This may change over time and updates will ensure staffing structures are affordable and appropriate.
- 6.50. The assumptions boxes on the plan should be used to set out the basis for any estimates of pupil numbers and pupil characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).
- 6.51. A [guide to mainstream free school revenue funding](#) on the GOV.UK website explains how your funding will be calculated and also contains details of how the post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.
- 6.52. Your contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and financial governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.
- 6.53. The department will not enter into a funding agreement if it is not confident that the school has a viable financial plan.

## **Developing a viable financial plan for a 16-19 free school**

- 6.54. Once the school is open, it will be funded by the EFA. 16- 19 free schools are funded on the basis of the post- 16 national funding formula.
- 6.55. Funding is largely based on a payment for each student who attends the school, but the detailed funding methodology may vary over time with changes to the funding of 16- 19 provision as a whole. Financial and therefore educational viability is dependent upon you admitting a sufficient number of students.
- 6.56. The free school financial template is updated each year to reflect the changes in funding rates. When you make your application, therefore, the rates in the template you use may not be the ones for the year in which you will open. You will need to ensure that you refresh your financial plan in the spring before opening when the new rates are available. Your contact will keep you updated on any

changes. The approval of your application to the pre-opening stage is therefore conditional on you submitting revised financial plans before entering into a funding agreement and when the relevant funding information is available.

- 6.57. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of pupils become clearer and other costs are more confidently established.
- 6.58. Further updates should take account of the number of staff required to cater for these students. This may change over time and updates will ensure staffing structures are affordable and appropriate.
- 6.59. The assumptions boxes on the plan should be used to set out the basis for any estimates of student numbers and student characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).
- 6.60. A [guide to 16-19 free school revenue funding](#) on the GOV.UK website explains how your funding will be calculated, and also contains details of how the post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.
- 6.61. You may be eligible for a programme weighting funding uplift if you offer a curriculum which is particularly expensive to deliver, such as engineering. As a guide, a curriculum made up of A levels (whether primarily arts, sciences or humanities) would not be considered particularly expensive to deliver. You may also be eligible for funding uplift if you anticipate higher disadvantage levels than the LA average. If these things apply, you will be asked to provide a business case to establish any additional funding you might attract in order to reflect the extra costs associated with technical programmes of study or high levels of disadvantage.
- 6.62. Your contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.
- 6.63. The department will not enter into a funding agreement to open a school if it is not confident that it has a viable financial plan.

## **Developing a viable financial plan for a proposed special free school**

- 6.64. Once the school is open, funding will be calculated and paid by the EFA.

6.65. Funding in special free schools is based on:

- funding from the EFA for full-time equivalent places. The fixed per-place funding will be paid for a number of places which will be subject to regular review. The detailed funding methodology may vary over time as changes are made to the school and funding systems.
- per-pupil top-up funding paid by the local authority – top-up funding agreed between the provider and commissioning local authority and paid to the provider directly by the local authority for each place for pupils with statements or EHCPs.
- a per-pupil basis for pupils without a statement of SEN or EHCP, based on the number on roll. The per-pupil funding level will be based on the local level of funding for pupils without a statement of SEN or EHCP with SEN in mainstream schools.

6.66. Special free schools also receive national 16-19 formula funding for 16-19 pupils, plus an additional £6,000 for each high-needs pupil aged 16-19 that the local authority places in the free school.

6.67. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of places needed become clearer and other costs are more confidently established.

6.68. Further updates should take account of the number of staff required to cater for these pupils. This may change over time and updates will ensure staffing structures are affordable and appropriate.

6.69. The assumptions boxes on the plan should be used to set out the basis for any estimates of pupil numbers and pupil characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).

6.70. A [guide to special free school revenue funding](#) on the GOV.UK website explains how your funding will be calculated and also contains details of how the post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.

6.71. Your contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and financial governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.

6.72. The department will not enter into a funding agreement if it is not confident that the school has a viable financial plan.

## Developing a viable financial plan for a proposed alternative provision free school

- 6.73. Once the school is open, it will be funded partly by the EFA, and partly by local authorities and others schools commissioning places and services from the free school. Alternative provision (AP) free schools will have been established in response to demand by local authorities and/or local schools. Evidence of this demand was produced to support the establishment of the schools. Local authorities are responsible for ensuring adequate AP facilities are available for pupils in their area who are not at school. Authorities often share this responsibility with their mainstream schools, which use AP for short term placements and preventative work with respect to pupils with behavioural difficulties, as well as longer term placements for excluded pupils.
- 6.74. From the third year after opening, the EFA will start to deduct an appropriate proportion of the base funding from the dedicated schools grant of the local authorities who commission (or whose schools commission) places at the AP free school. Some AP free schools accept pupils from local authorities other than the one in whose area they are located, or from schools and academies in other local authority areas. There may be situations where the funding deducted does not constitute the total base funding for places EFA will pay to the free school.
- 6.75. Funding in AP free schools is based on:
- funding from the EFA for full-time equivalent places. The fixed per-place funding will be paid for a number of places which will be subject to regular review. The detailed funding methodology may vary over time as changes are made to the school and high needs funding systems. Per-pupil top-up funding paid by the commissioner (local authority or other school or academy) – top-up funding agreed between the provider and commissioner and paid to the provider directly by the commissioner for each individual pupil.
  - any other funding received for commissioned services (e.g. outreach work in local schools).
- 6.76. AP free schools' continuing financial viability depends on both the ongoing support of local authorities and schools/academies, in terms of a commitment to commission placements and services, and their willingness to provide associated funding. It is therefore important that you are able to show evidence before you open that your commissioning authorities and/or institutions have committed to commissioning places at your school.
- 6.77. Developing your school's financial plan should be an on-going process with financial plans updated as plans for the school are progressed, further details of funding arrangements become available, staff are appointed, site plans are firmed-



up, the number of places needed becomes clearer and other costs are more confidently established.

- 6.78. Further updates should take account of the number of staff required to cater for these pupils. This may change over time and updates will ensure staffing structures are affordable and appropriate.
- 6.79. The assumptions boxes on the plan should be used to set out the basis for any estimates of place numbers and, where relevant, pupil characteristics, income from sources other than the EFA, and expenditure (including service contracts and salaries).
- 6.80. Alternative provision free schools also receive national 16-19 formula funding for each 16-19 place, plus an additional £6,000, paid by the local authority, for each high-needs pupil aged 16-19 that the local authority places in your school.
- 6.81. A [guide to AP free school revenue funding](#) on the GOV.UK website explains how your funding will be calculated and also contains details of how the post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.
- 6.82. Your contact may ask you to revise your plans or give further information if needed to show that the school will be viable. They will need to see that the school has complete and robust financial plans and governance arrangements, that the plans are consistent with up-to-date educational and staffing plans, and that the school will be viable and not go into deficit in any year.
- 6.83. The department will not enter into a funding agreement if it is not confident that the school has a viable financial plan.

## Other helpful sources of information

- 6.84. The [Academies Financial Handbook](#) sets out the funding arrangements and financial management requirements that your school must follow. You must refer to this handbook alongside your funding agreement for information about the financial systems and controls that your school is required to have in place.

## Links to further information

[View Table 5 Funding checklist](#)

- [HMRC website](#)
- [NSN budgeting tool](#)
- [Academies Financial Handbook](#)
- [Academies Accounts Direction](#)
- [Funding arrangements for free schools](#)



## 7. Site and buildings

- 7.1. As the approval letter makes clear, entry into pre-opening stage is an important step, but this should not be taken as final approval or as confirmation that DfE have agreed all aspects of the application. In particular, approval does not constitute endorsement of the proposed site. Proposer groups should not regard the opening date or location as agreed until they have written confirmation of both from DfE.
- 7.2. The final decision to go ahead with the proposal depends on the Secretary of State formally entering into a funding agreement with academy trust. The Secretary of State will consider signing the FA only if the trust is able to develop plans to the required standard during the pre-opening stage.
- 7.3. We want to ensure that when parents of prospective pupils or students apply for a place at a proposed new free school, they are confident that it will open on schedule. You will have your own preferred opening dates for your project. If you are marketing your school to parents on this basis, you are of course free to do so, but you must make clear that this is your own preferred opening date. We will work to try to open your school on your preferred date, but the opening date cannot be agreed until we have identified the site(s) and can determine the time needed for obtaining planning permission and completing necessary building works or refurbishment.
- 7.4. Once we have identified a suitable site and carried out that assessment, the department – after discussion with you – will write to you confirming the *agreed* opening date, as well as providing an assessment of whether the school is likely or not to open in permanent or temporary accommodation. Once you have this letter, you should make it clear in your marketing or public communications that you are working towards an opening date that has been agreed with the department.
- 7.5. The site for your free school is very important. It can also be the most time-consuming, complex and frustrating aspect of your project. However it is important not to get distracted by the site at the expense of the key tasks during pre-opening. Clarity of roles within your proposer group is crucial in relation to this. Division of tasks so that there is a person who leads on the site and works with the EFA will avoid people worrying about the site.
- 7.6. The earlier a site is secured – i.e. relevant planning permission obtained and building works agreed – the better. Having a secured site can be very useful when marketing your school to prospective parents, pupils and staff.
- 7.7. The speed at which a site is secured will depend upon your requirements, the availability of local sites that meet those requirements, and the rate of progress in

negotiations. Whilst it is important to secure a site that is appropriate for the school, we must also achieve value for money for the public purse.



7.8. The EFA will help you to secure a site and construct the buildings for your school. The EFA is the part of the DfE which provides expertise and technical support to ensure good value for money on capital investment. The EFA project manager and project director will work closely with you and your contact throughout the project. The roles and responsibilities of the EFA team are outlined below.

## EFA team

### Project Director (PD)

The PD will have a strategic overview of around a dozen projects. They will ensure that the PMs are delivering their individual projects, adhering to internal EFA process and will also assist with the development of ministerial submissions and provide guidance and expertise when required. The Project Manager and Technical Adviser report to this role.

### Project Manager (PM)

Will be your primary point of contact at the EFA. Your PM will coordinate the rest of the EFA team to ensure all site related activities occur. The PM may then step back post-

procurement and handover to the lead Technical Adviser who will manage the project throughout the construction period. Some PMs will continue to manage the project throughout construction where a project is more complex and the PM has the correct experience to manage it effectively. The Property, ICT and Central Technical Advisers and Legal Manager report to this role.

### **Project Technical Adviser**

Will take over the project management role once the procurement process is complete. They will manage the specialist staff required to provide expert services on your project i.e. quantity surveyors, CDM coordinator etc. The Property, ICT and Central Technical Advisers and Legal Manager also report to this role.

### **Property Adviser**

Will carry out site searches. Will negotiate during property acquisitions and coordinate site visits.

### **ICT Adviser**

Will discuss ICT requirements with proposers and agree a suitable solution. Will set an appropriate ICT budget, scope and specification. Provides support on procurement options available to the group.

### **Legal Manager**

Will manage the provision of legal support for the property acquisition including inputting into the site negotiations and instructing the external lawyers through to completion.

### **Central Technical Adviser**

Will conduct site assessments to determine whether the preferred site is viable as well as setting the works budget for the preferred site, inclusive of FFE. Will also select the procurement route most suitable for the project.

- 7.9. The EFA project director oversees a team of project managers to ensure that projects are progressing. They will provide support and guidance to the EFA project manager where required but will not attend regular meetings. Their level of involvement will vary according to the risk and complexity of your project. They will also ensure that the project manager is adhering to internal processes and will be a point of escalation if issues arise. The majority of EFA project directors will have a few years of experience on free school projects.

- 7.10. The EFA project director (PD) and project manager (PM) will work closely with both the proposer group and the FSG lead contact throughout the project.
- 7.11. Where there are significant site issues and concerns (and/or where there are few educational, governance or finance concerns), EFA PDs can become the primary point of contact between DfE and the proposer group, even though they are not formally responsible for providing general oversight, guidance and challenge. In this scenario, the PDs will share the information with the lead contact, but it is important for the academy trust to let the lead contact know about all key developments.

## Finding a site

- 7.12. Free schools can be located in a wide variety of premises. They may not look like 'traditional' school buildings, and will not normally require the construction of a completely new building. In most cases, existing premises are refurbished or remodelled, and we provide funding to ensure your new school is functional and complies with all relevant legislation.
- 7.13. After your proposal is approved, EFA will join your project kick-off meeting with your contact to discuss the suitability of the proposed premises and to consider any alternative site solutions. Before this meeting, EFA will have reviewed the suitability and availability of any sites you have proposed in your application, and identified the necessary next steps. Depending on the outcome of our review, we may also have:
- undertaken site searches for, and considered, alternative sites where relevant;
  - contacted the relevant local authority about planning designation; and
  - considered the availability of government buildings.
- 7.14. We realise you may already have your heart set on a particular site. Please be aware, however, that it may not be the most feasible one. Common reasons why we often find that to be the case include:
- it may be too small or too big for the number of pupils;
  - it may not actually be on the market, or available in the time needed to open your school;
  - it may be too expensive to buy, lease or maintain;
  - it may require too much work to be affordable;
  - it may not have - and we may not be able to get - the appropriate planning consent for a school.

7.15. We would encourage you to try and keep an open mind regarding sites you are willing to consider. Please remember that just because a site doesn't look like a school now it doesn't mean it can't become one.

## EFA responsibilities in finding a site

7.16. During the site search stage of the project, EFA will do the following:

- ask our property agents to conduct site searches and provide you with a shortlist of the best available sites;
- work with you to prioritise that list to a maximum of four in terms of suitability and viability;
- ask our technical advisers to visit and assess the preferred site, providing a high level view of the nature and cost of any construction works needed, planning consents required and likely running costs; and
- if that assessment shows the site is affordable and good value for money, our property adviser will start negotiations to acquire the site.

## How the trust can help

7.17. We welcome any information and local knowledge you have to help with the search.

7.18. We need you to attend all the necessary site meetings to review options and agree next steps.

7.19. Find out as much as you can about properties by all means - but you **must not** enter into negotiations. We have experts who will do that for you, but more importantly this is public money, not your money and we need ministerial approval to commit public funds.

7.20. Take heed of our advice about local developments and how they affect your site options.

## Securing a site

7.21. Securing a site can be complex and time-consuming. However, once we have found a suitable site for your school that can be delivered in the timescales available and that represents value for money, negotiations to acquire it will begin. The three main ways of doing that are:

- peppercorn rent lease;
- freehold purchase;
- commercial lease.

7.22. Click on the following link to find more information on the [options to acquire a site](#).

- 7.23. As with buying a new home, there will be sensitive negotiations around acquiring a site for your school. Site owners want to secure the best possible deal for themselves while it is our duty to secure best value for you and the tax-payer.
- 7.24. It is vital that you check with your EFA project manager before discussing or revealing details of the site you are seeking with anyone outside your group. These negotiations are very commercially sensitive and public disclosure can seriously undermine our negotiating position.
- 7.25. Subsequent planning applications can also be affected if information about sites is released at the wrong time. Securing [planning approval](#) is of course crucial to delivering your school buildings.
- 7.26. We will tell you when you can publicly confirm your sites (permanent, temporary or both) - see from paragraph 7.30 below on statutory consultation.

### **EFA responsibilities on securing a site**

- 7.27. The EFA property adviser will commence negotiations with the site owner or the agent representing them, and seek to agree Heads of Terms (headline terms of the deal that are not contractually binding).
- 7.28. We will, in parallel, estimate the total costs for the site and any building works and seek approval from ministers to complete the acquisition.
- 7.29. Our contracted lawyers will carry out checks on the tenure, ownership and restrictions of the property and complete the conveyancing. The time this takes will vary from property to property - it can take between six weeks and six months, depending on planning and other conditions on the property.

### **Interim site solutions**

- 7.30. In some cases free schools have opened on a temporary site before being relocated to their permanent buildings. Temporary solutions can come in many forms depending on what is needed and what is available, but the most common are:
- using a building on the permanent site while other buildings are in construction;
  - community buildings such as a church hall or community centre;
  - part of a neighbouring school;
  - portacabins on the permanent site;
  - a local office building.

- 7.31. We only usually consider temporary sites once we have secured or are about to secure a permanent site which can't be made ready in time for September opening.
- 7.32. We will follow the same steps as set out in the finding and [securing a site section](#).
- 7.33. We obviously don't want to spend any more money than necessary on temporary accommodation, so will try to provide an interim solution that requires minimal alteration.
- 7.34. Costs associated with temporary sites will be covered within the capital allocation (i.e. rental of temporary classrooms etc.). Your rental costs can be recovered from us but you will need to claim any VAT back from HMRC.

### **The site and your statutory consultation**

- 7.35. Section 10 of the Academies Act requires proposers of free schools to formally consult with those you think appropriate. This must be completed before the funding agreement can be signed.
- 7.36. Ideally you should do this once we have secured your permanent site, but in practice that may not always be possible.
- 7.37. If it isn't, you could identify a particular catchment area for the free school, e.g. a postcode, or a particular area of a city or town. At the same time you don't want to undermine any site negotiations, so we will agree with you what information you should provide.
- 7.38. If we then acquire your site during your consultation period, you should inform your consultees. You can also extend the consultation - but this is for you to decide.

### **The site and your funding agreement**

- 7.39. Unless in exceptional circumstances, for the department to enter into a funding agreement, Heads of Terms will need to have been agreed for the temporary and permanent site with a strong prospect of securing a permanent site.
- 7.40. As above, your funding agreement can only be concluded once a site has been secured. As part of that funding agreement, there will be a set of land clauses. These aim to protect our public investment in acquiring and developing the land, and to ensure you (the trust) continue to meet your legal obligations as set out in the funding agreement.
- 7.41. Please note that:
- the land clauses in the funding agreement must reflect the relevant model drafted by the department; and



- your contact will advise on the land clauses and on any bespoke legal arrangements that may apply.

## The capital funding

- 7.42. EFA will cover the capital costs of acquiring a site and refurbishing it for use as a school with the inclusion of ICT provision and standard fittings, furniture and equipment.
- 7.43. Although your application may have been approved - the capital budget for your school is not agreed until ministers approve the preferred site and building costs. In extreme cases a project may fall because all site options are prohibitively expensive.
- 7.44. We place a high priority on achieving value for money, hence, most free schools are refurbishments.
- 7.45. The capital costs for each free school vary considerably depending on the location, size, type and condition of the building.
- 7.46. All budget calculations are based on pupil numbers and the level of construction works required (e.g. new build, major refurbishment or minor refurbishment).

## EFA responsibilities on capital funding

- 7.47. EFA will set the budget for each scheme and submit it for ministerial approval. In most cases this will be done after Heads of Terms on the permanent site are agreed. The budget for each project will not be shared with the trust until it has been agreed by ministers.

## Procuring works and services

- 7.48. The procurement route is determined by the size, nature of the works, time available and value of the contract. We begin work based on your expected pupil numbers and associated basic area requirements of your school.
- 7.49. All building contract appointments must comply with [public procurement procedures for free schools](#). The most common procurement routes used are:
- EFA contractors' framework
  - SCAPE framework
  - LHC framework
  - Yorbuild
  - North West Construction Hub
  - GPS Modular
  - Local procurements for small-scale works



7.50. You will be expected to sign the contract for building works once the procurement has been completed and we are ready to progress with the building works.

7.51. Here you can find [information on the routes to procurement, the procurement of fittings, furniture and equipment and ICT requirements](#).

## **Building works**

7.52. We would ideally like the funding agreement to be signed before contracts for building works are signed. In some cases it might be necessary to sign contracts before then to make sure your school opens on time.

7.53. Although the building contract will be between the trust and the contractor, we will have strong input with deciding the best procurement route for your building works and give you advice and support throughout the works. We will:

- commission technical advisors (e.g. architects, quantity surveyors etc.);
- commission surveys of the site (as required);
- appoint legal advisors for the building works contract;
- develop, oversee and negotiate contracts for works; and
- work with the contractors involved in the site building and design process.

7.54. Opening the school you will need to:

- agree to the date proposed for Ofsted's pre-registration inspection visit to the site;
- keep staff, parents and local communities updated on progress;
- develop contingency plans just in case building works overrun;
- prepare for and attend the readiness to open meeting with the department;
- work with us to ensure the works are completed to the contract specification and formally handed over.

## **Ofsted pre-opening site inspection**

7.55. There are a number of formalities that need to be completed before the school can open. These include an Ofsted pre-opening site inspection, planning how to operate the school and the formal handover of the site. Further details are provided below.

7.56. In order for your school to become registered with the department and officially open the site needs to be inspected by Ofsted. This is explored in detail in Section 14: Ofsted inspections and registration as an independent school. The purpose of the site visit is to ensure the building is safe and complies with the Independent School Standards Regulations on premises.

7.57. In the majority of cases when Ofsted visit, the site will not be ready as building works will still be on-going. Inspectors will be aware of this but will still want a tour of the site, so that when they look at the plans and drawings they have a better understanding of how the school will fit and operate on the site.

## Planning how to operate the school

7.58. In many cases, the school may need to open in temporary accommodation whilst the permanent site is being developed or secured. Construction works may also continue up to the school's opening day or beyond. We will work with the contractor to tell you and your principal designate as soon as we can when you will have access to the site. This allows you to set a date for opening to inform parents and then plan for preparing, opening and operating the school. You should also develop contingency plans in case building works are delayed or there are other complications.

## Planning issues

7.59. The key reasons why new schools may need to seek planning permission are:

- change of use;
- new-build, extension and other external works;
- listed building consent.

7.60. Your EFA contact will work with you closely, taking responsibility for ensuring planning permission is applied for quickly, and dealing with any problems around planning as early as possible. Planning permission should be sought, with EFA contact in the lead, as early as possible in the process to avoid delay. Planning barriers should be proactively considered and a plan of action put in place to limit these barriers, with EFA in the lead, working with the local planning authority.

7.61. The National Planning Policy Framework provides powerful incentives for planners to avoid placing unnecessary burdens on school development. This is effectively a presumption in favour of the development of new schools, but not a guarantee.

7.62. Two new permitted development rights are in place which reduce the circumstances where planning consent is necessary, helping ensure schools open on time. Your EFA contact will be able to advise you if these changes may be of benefit to your project. The details are set out briefly below:

a. A new one-year temporary permitted development right (PDR)

A new school is able to operate for their first academic year without needing planning permission for change of use, no matter what previous use the building had (with

the exception of a very limited number of 'sui generis' sites which we are unlikely to want to use). Minor operational developments such as small extensions to existing buildings will also be allowed.

- b. A more extensive 'permanent' change of use PDR

This 'permanent' PDR allows buildings from wider classes of use to be changed into schools, without the need for planning approval. These use classes are offices (B1), hotels (C1), residential institutions (C2), secure residential institutions (C2A) and assembly and leisure (D2). This PDR will be subject to a more light-touch 'prior approvals' regime where the local planning authority (LPA) can only consider noise and traffic impacts and must respond to the school within eight weeks.

## **Formal hand-over of the site**

- 7.63. When building works on the site have been completed, there is a formal process by which the building contractor will hand over the site to the school. Until then the contractor has responsibility for the site. The formal process will include the building contractor taking your business or premises manager, or principal on a complete tour of the building, highlighting where all mechanical and electrical services are located and how they operate, handing over all warranties and certificates, e.g. fire certificates. As part of the tour, a 'snagging' list will be drawn-up with the contractor to highlight where there are still minor defects or where the refurbishment has not met the required specification. The contractor will be required to rectify these following formal handover of the building. Your EFA project director will be able to provide further information on the formal hand over process.
- 7.64. Once handed over it will be your responsibility in most situations to arrange for maintenance of plant and equipment. Failure to regularly maintain the equipment in accordance with the installation instructions can lead to warranties being invalid. Ask for early information on equipment and maintenance schedules so you can tender for the maintenance contract and have it in place at handover, if possible. You should prepare for this information to be provided to you at or after completion as is the case with most contractors.

## **Working with the department**

- 7.65. EFA will work with the trust and your contact in the department to find and secure a site and construct the buildings for your school.

## Checklist of activities

7.66. The activities listed below are intended to provide you with an overview of the activities, but each project is different and will have its own timetable. The timings set out below are the desirable milestones to meet in order to secure a site in good time for opening, but many free schools have opened successfully on a different timetable, including finding a site at a later point in the process. The timing of activities for your project will depend on when the site is secured.

## Links to further information

[View Table 6 Site and buildings: checklist of activities](#)

- [HMRC website](#)
- [NSN budgeting tool](#)
- [Academies Financial Handbook](#)
- [Funding arrangements for free schools](#)
- [Free School model funding agreement](#)
- [Public procurement procedures for free schools](#)
- [Independent School Standards Regulations on Premises](#)

## 8. Pupil recruitment, marketing and admissions

### Introduction

8.1. This chapter should provide you with tools to help you ensure you can recruit a viable cohort on opening and have a clear, fair and compliant admission or referral process. It is set out in several sections as follows:

- Recruitment and marketing;
- Admissions introduction (all types of school);
- Mainstream free school admission policies and processes, including co-ordination and applications;
- Special free school referral policies and processes;
- Alternative free school referral and admission policies and processes; and
- 16-19 free school admission policies and processes.

### Key messages

8.2. Those setting up a free school should read the whole of this chapter carefully but key messages are:

- Ensure you have a relentless focus on recruitment and have an effective marketing and recruitment strategy in place. Experience suggests this should place a premium on frequent face to face contact with parents, children and/or young people. Your group should keep the effectiveness of your plans under constant review by considering the numbers of applications received.
- Mainstream free schools are required to have admission policies which comply with the School Admissions Code. The admissions guidance and models on this website will help you.
- Special, alternative provision and 16-19 free schools should adopt admission/referral policies that comply with this guidance and are clear and can easily be understood by all.
- Proposers are required to use the admission templates where available. Mainstream schools should use the template here. Mainstream boarding schools, special free schools and alternative provision free schools should ask their departmental contacts for the appropriate templates. A 16-19 template will be available in due course.
- In your first year of opening, our normal expectation is that mainstream free schools either (a) operate your own admissions process, or (b) arrange for the local authority to process admissions on your behalf. Either way, this should be done outside the local authority's co-ordinated admissions process. **You must not arrange for your school to be included in the**

**local authority coordinated admissions process without seeking prior agreement from your lead contact first for the reasons set out below.**

- You should ensure that, as required by the Admissions Code, your local authority publishes information about the proposed free school on its website. You should also ensure your school's final admissions policy is included in the local authority's published admissions prospectus.
- You are responsible for consulting on the proposed admission arrangements as part of the consultation you will carry out under Section 10 of the Academies Act 2010;
- The documents you should submit to the department and the deadlines for submitting them are set out in 8.33 below.

## Recruitment and Marketing

8.3. Successful pupil recruitment is an essential element of the pre-opening period. We know there will be a lot of calls on your time, and many other pressing matters – whether it be recruiting a principal designate or finding a site – but attracting sufficient pupils to ensure your school is viable is essential. Pretty much everything else flows from pupil numbers: financial viability, educational planning, and staff recruitment.

### Pupil recruitment

- 8.4. The most common pitfall experienced by successful free school proposers is to assume that high levels of evidence of demand for your school when you were canvassing for support will automatically equate to large numbers of applications in the case of mainstream schools or 16-19 provision or referrals in the case of special or alternative provision schools. The second most common pitfall is to assume that when you offer places to all the parents who have applied, all those offers will be accepted. To make sure that you avoid these pitfalls, it is absolutely essential that you have an unrelenting focus on pupil recruitment.
- 8.5. You may have had very high levels of interest in your free school, but you need to make sure that this converts into applications or referrals. Your marketing activity should, if anything, step up now, and build on the publicity and interest you have already achieved. This will show those who have already expressed an interest that the school is moving to the next stage. It will help give them confidence in the school and encourage them to make an application or referral. It will also give you the chance of attracting new parents who may not have paid much attention so far but who would be interested now the school is becoming a reality.
- 8.6. **In mainstream and 16-19 provision**, you may find it useful to analyse the types of responses you have had to date and assess where and how best to concentrate your efforts because:

- some parents/applicants will have made a firm commitment, and you need to keep them engaged, even after you have offered them a place, to ensure they accept;
- some potential applicants will have expressed interest without committing to applying, and you need to convert that interest into applications; and
- some people will not have been particularly interested, but as you move into pre-opening, you can confidently begin to engage them as much as possible.

## **Recruiting sufficient students in order to provide a sustainable and viable offer**

- 8.7. In order to provide a broad and balanced curriculum, there is a presumption that primary provision should have a minimum of two forms of entry of 25/30 pupils, and secondary provision have a minimum of four forms of entry of 30 pupils. We do not expect your published admission number (PAN) to drop below this number, unless stated in your application. If you expect this to be the case then please contact your lead contact to discuss the rationale.
- 8.8. **In alternative provision schools**, having entered the pre-opening phase your marketing activity should increase, building on the publicity you will have achieved by being approved. This will show commissioners, parents and post 16 students who have already expressed an interest that the school is moving to the next stage. It will also give you the chance of securing new commissioners who may not have paid much attention so far but who would be interested now the school is becoming a reality.
- 8.9. You may find it useful to analyse the types of responses you have had to date and assess where and how best to concentrate your efforts because:
- some commissioners will have made a firm commitment, and you need to keep them engaged,
  - some commissioners will have expressed interest without providing written commitments for places, and you need to convert that interest into actual referrals;
  - some commissioners will not have been particularly interested, but as you move into pre-opening, you should build strong partnerships within the community, including parents, to engage them as much as possible;
  - some young people aged 16-19 may have expressed an interest and you need to keep them engaged.
- 8.10. For **special schools**, while local authorities will name your school on Education Health and Care Plans, it is crucial that you have the buy-in and support of parents and prospective students themselves. Without the support of families they are unlikely to ask for your school to be named on a statement/EHCP. This is

especially important if you to plan admitting pupils without EHCPs naming the school.

## Marketing – what works?

- 8.11. Each free school project is different, and so what marketing and pupil recruitment activity that works for one group, won't necessarily work for another. There are, however, some general principles and lessons learned by previous proposer groups that should help you get the most out of your planned activity. The key is to maintain momentum, so make sure, for example, that newsletters are issued regularly; emails are answered quickly; online information is up to date; and that you publicise key milestones, such as the appointment of a principal designate or securing your site.
- 8.12. Understand your audience: when preparing your application you will have looked at local context such as where there is a need for places and how existing local schools are performing. You should use this information now to target your efforts.
- 8.13. For post-16 institutions, you will be aware of the number of young people locally who are not in education, employment or training (NEET) and the skills gap identified by employers. You can use this information now to target your efforts. For example, you can work with the local careers office to target NEETs.
- 8.14. It is a good idea to have a dedicated spokesperson, so you have a consistent profile, especially as far as local media are concerned, so they always know who to go to.
- 8.15. Local radio is a very powerful tool – you can book paid advertising space (though you will need to book slots well in advance), but you can also get free publicity by suggesting creative ideas for programme content - for example offering a spokesperson for an on-air debate or phone-in programme.
- 8.16. When dealing with the media try and get a named contact. Find out who is the education correspondent for your local newspaper, or the relevant programme producer for local radio stations, and give them a call. Make sure they know who will be sending them information, and who in your group they can contact if they need to.
- 8.17. Engage with local schools if relevant (in the case of feeder schools) – offer to speak at assemblies or have a presence at school events such as parents' evenings and transition days.
- 8.18. If you are a faith school, make sure you make contact with and have the support of your religious body and, if relevant broader local religious organisations.



- 8.19. Produce regular newsletters: you can distribute printed copies locally, or via email to your contacts list. You can use an online email marketing company to send out mailshots, often at little or no cost.
- 8.20. If you haven't got a permanent site, you won't have a landline. Rather than use a mobile number as a contact point, which can create a sense of impermanence, there are programmes you can use to 'convert' your mobile number to a land line number - which you can then continue to use once the school is open.
- 8.21. Translate your leaflets and newsletters into languages which reflect the make-up of your local community.

### **Online**

- 8.22. It is absolutely essential that you have comprehensive information available on your website, and that the website is updated regularly. It will help to have a dedicated member of the trust to maintain the site to keep it fresh. It is best to set up an email account using the school's name, rather than an individual – it projects a more professional image. Make sure that all enquiries are followed up quickly, and ask correspondents if they are happy to add their email addresses to your contacts list for information and updates.
- 8.23. Consider setting up an online forum for parents, young-people and, in the case of special or alternative provision schools, potential commissioners and make it easy for them to raise any questions or concerns. Many areas now have local online community forums, so start a discussion thread with some information about your school. Again, it is important to respond quickly and follow up queries. Think also about setting up a blog with regular updates on your progress.
- 8.24. You can also maintain your profile locally and nationally, especially with the media, by creating a Twitter account for the school. You can tweet links to important announcements on your website, and issue timely reminders about meetings or key deadlines. If you want to engage young people, for example, if your school is a secondary school or post-16 free school – experience shows that the most effective online medium is Facebook.

### **Face-to-face**

- 8.25. Previous proposer groups tell us that face-to-face contact with parents and prospective commissioners has proved especially effective, and can build on any written/online information you have produced. It can be as simple as knocking on doors and canvassing opinion and support. Be prepared to put in time and effort to engage with the community as a whole and make your group known to people.
- 8.26. Events are a key feature. They provide an effective platform to showcase your free school, and can also provide an opportunity for parents and pupils to meet the

principal designate and teaching staff. Make sure you have application forms available at these events – take parents’ details and follow-up with an email or leaflets.

- 8.27. Previous groups have also found that holding events with a theme can attract more people and give them a fuller flavour of what your school would be like. Mock lessons, or enrichment days which demonstrate the school’s pedagogy, for example, creative writing sessions; fun science experiments; dancing and singing or creating a performance, have all proved popular.
- 8.28. Previous groups who offered vocational education have found it useful to provide taster days for young people which can involve local employers delivering some of the teaching. If students will be using different uniforms for specific courses (e.g. whites for catering and hospitality courses) it may be helpful to measure them for the uniform. Similarly, commitment could be obtained to buying relevant equipment such as a set of scissors and brushes for hairdressing courses.
- 8.29. After the announcement of GCSE results, and even AS results (as some students switch schools/colleges after Y12) it’s useful to have a stall in a public place to recruit students and to publicise this in advance.

## **Admissions/referrals**

### **How admissions make your vision a reality**

- 8.30. You have set out the vision for your school, which may be to improve standards in a particular area, and/or address a deficit of places – and your admission arrangements can help you make that a reality. For example, you may intend to prioritise places for children from disadvantaged families, and you can achieve this by giving priority in your arrangements to children eligible for the pupil premium. This can include children who are or have been registered as eligible for free school meals; or children of services personnel. Similarly, if your school will have a religious designation, you can award up to 50% of places ‘with reference to faith’. Your admissions policy will also inform your staffing plans, so you can ensure you recruit the staff you need to meet pupils’ needs.

## **Summary of the key tasks for all types of free school**

### **Establishing your first admissions policy**

- 8.31. Although we will offer you advice on developing the school’s first set of admission arrangements (mainstream or 16-19 free schools) , or your referral policy (alternative provision or special free schools) you should bear in mind that, it is the trust which is responsible for getting these arrangements right. You will therefore

need to understand the requirement placed upon you to have clear and fair admission or referral policies and:

- to comply with the [School Admissions Code](#) and the [Appeals Code \(mainstream free schools\)](#);
- to comply with the statutory requirements of the [Alternative Provision Guidance](#) and to have regard to non-statutory provisions of the guidance (alternative provision free schools);
- to comply with the mandatory requirement to admit all pupils with an education health and care plan naming the free school and to have regard to the SEN Code of Practice (all free schools);
- to comply with the funding agreement duty to adopt fair, objective and transparent admission arrangements (16-19 free schools).

8.32. Before entering into a funding agreement with the trust, DfE will provide advice on your admissions/referral policy, to help ensure that on opening, it is clear and fair and, in the case of a mainstream free school, that it complies with the School Admissions Code:

8.33. In order to do this we will need to receive:

- Your draft admission policy (mainstream and 16-19 free schools);
- Your draft statement of provision (special free schools);
- Your draft referral policy (AP free schools);
- Detailed maps, as part of the draft policy, for any catchment you may wish to apply (Mainstream and 16-19); and
- Any application/referral forms (Mainstream, 16-19 and AP)

8.34. The deadlines for submitting these documents to your departmental contact are set out below.

#### **Mainstream free school policies**

- 2017 openers: 31 January 2016
- 2018 openers: 31 December 2016

#### **16-19, AP and Special free school policies:**

- 2017 openers: 31 January 2016
- 2018 openers: 31 December 2016

8.35. The different admission/referral requirements for the various types of free schools are set out in detail below.

## Links to further information

[View Table 7 Admissions: checklist of activities](#)

- [School Admissions Code](#)
- [School Admission Appeals Code](#)
- [Free Schools Admissions Guidance](#)
- [Alternative provision statutory guidance](#)

## Mainstream Free School admissions

### Admissions: your responsibilities

8.36. Because your school will be an academy, the trust for your school is the admission authority. This means it is responsible for:

- at all times making sure your school's admission arrangements comply with the '[School Admissions Code](#)' and the '[School Admission Appeals Code](#)' including the Code requirement that the arrangements should be fair, clear and objective;
- before you open, consulting on the proposed admission arrangements as part of the consultation you will carry out under Section 10 of the Academies Act 2010;
- once you have your funding agreement in place determining (or finalising) the school's admission policy;
- after the school opens, consulting on and determining<sup>2</sup> new arrangements in accordance with 1.42-1.49 of the School Admissions Code if you subsequently want to change your admission arrangements;
- managing applications to the school, either directly (in the first year) or through the local authority co-ordinated process in subsequent years (see paragraphs 8.38 to 8.41 below);
- organising an independent admission appeals panel in compliance with the School Admission Appeals Code or contracting with an organisation unconnected with the school to run an appeals service on your behalf.

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<sup>2</sup> Determination is an admissions process the Trust undertakes by 28 February every year (28 Feb 2016 for the 2017 admissions policy), even if the admission policy does not change. The Trust (or a committee of the Trust) needs to consider the school's admission arrangements and decide to adopt them. This decision must be minuted. The arrangements must then be published on the school website by 15 March and also be sent to the LA by this date. In your first year, your arrangements should be determined and published immediately after the FA is signed and sealed.

- If your free school is post-16 only, it is not covered by the Code; however, its arrangements do need to be fair, clear and objective. Parents and prospective students still need a clear understanding of how and when places are offered (see advice on 16-19 free schools below). If your school is a secondary school with Years 12 and 13 as well as other year groups, then its admission arrangements for all year groups will have to meet the requirements of the School Admissions Code.

Every mainstream free school also needs to operate within the local Fair Access Protocol. The protocol is operated by the school's local authority, but must be agreed with the majority of local schools. It is the mechanism which operates to ensure children without a school place who are hard to place are allocated a school place quickly. Schools can be required to admit such children over and above their admission number, but places must be allocated equitably across schools in a local authority's area.

### Admissions: local authority responsibilities

8.37. Even though your academy trust is the admissions authority for your school, the local authority in which your school is situated still has a number of responsibilities relating to your admissions process. This means it is responsible for:

- operating a co-ordinated admissions process for any of your school's year groups from Reception up to and including Year 11 for which the school operates a published admissions number ('PAN'). In your school's case, this will normally be the Reception year for primary schools and Year 7 for secondary schools; and
- submitting a report to the Schools Adjudicator each year on the admission arrangements for all schools (including academies and free schools) in its area, and on the extent to which they comply with admissions legislation and the School Admissions Code.

### The admissions process, including co-ordination

8.38. In your first year of opening, our normal expectation is that you either (a) operate your own admissions process, or (b) arrange for the local authority to process admissions on your behalf. Either way, this should be done outside the local authority's co-ordinated admissions process. **You must not arrange for your school to be included in the local authority coordinated admissions process without seeking prior agreement from your lead contact first for the reasons set out below.**

8.39. After your first year of opening, your admissions must be handled through the local authority's co-ordinated admissions arrangements, like all other schools in the area. However, while your project is at the pre-opening stage, local authorities

cannot offer places at your school under the co-ordinated admissions process until the Secretary of State has entered into a funding agreement with the trust. This is because, in law, a local authority can only make a firm offer for a place at an open school.

- 8.40. We will not advise the Secretary of State to enter into a funding agreement for your school until we are confident that it will open successfully on its proposed date. We need to be sure, for instance, that the site has been secured and the building work can be completed in time, and that appropriate staffing, educational, governance and financial arrangements are in place.
- 8.41. It is, of course, also important to make sure parents applying for your school are not left without a place – or with a place at a school they did not choose – if for any reason the school’s opening is delayed. You can do this by asking parents to make an application for your school directly to you while they also apply for a place at another school through the local authority’s co-ordinated admissions process. In this way, if your funding agreement is not signed and sealed by the Secretary of State by national offer day, you can make conditional offers to parents for places at your school, and parents can accept a place at an existing school as an insurance place while retaining a conditional offer for your school. Many free school trusts have used this approach in the past. On the other hand, if your school’s funding agreement has been signed and sealed by the national offer day you will be able to make firm offers.
- 8.42. In some cases, moreover, there can be local hostility towards a new free school before it opens. By running your own admissions you can ensure that parents hear the precise messages you want them to hear about your school and why it is opening.
- 8.43. We also recommend that you discuss your approach to admissions with the local authority as part of building good relationships from the outset – as well as to ensure that the local authority admissions team know how to describe your school and who to talk to if prospective parents have questions.
- 8.44. A free school’s funding agreement allows it to operate outside the local authority’s co-ordinated admissions process for its first year only. You have the following options:

#### **Option 1: The school to handle the application process in-house:**

- Parents make a stand-alone application for a place at the free school. The school will receive applications directly from parents and manage the process of considering applications and making offers itself. This allows you to set your own application deadlines and the date on which you will send out offer letters. The school will not be part of the local authority’s co-ordinated scheme. You will want to make sure that application forms are

readily available to parents and that the process for submitting an application form is clear and straightforward.

- Remember, even if you manage the application process yourself, the local authority must still publish the school's admissions policy in its composite prospectus and online.
- Following this option gives an advantage to parents. It means they can apply for a place at your school whilst also applying for a place at other local schools via co-ordination. Also, if your funding agreement isn't signed by the time offers are normally made, you would be able to make conditional offers<sup>3</sup>, while parents could still hold an offer from an existing school. This affords them some security in that their child is assured of a school place, even if your free school runs into problems and doesn't open.

## **Option 2: The school's local authority to handle the application process for the school**

- There are two main options if the local authority manages the process for your school:

### **Option 2A**

- The local authority could handle the admission process as if the school were in co-ordination, but only make a conditional offer for the free school on national offer date alongside a firm offer for an open school, if the free school funding agreement were not already signed and sealed.
- Applications would be received at the normal time (31 October for secondary schools and 15 January for primary schools). Parents would choose the school as one of their preferences on the common application form (CAF) and submit it to their local authority. The local authority would send out an offer on national offer date, which would be a conditional offer alongside a firm offer for parents of an open school if no funding agreement is in place. Please note:
  - this option is unlikely to be open to many free schools opening in 2016, as their final admission policies are unlikely to be in place in time for them to be fully included in this process;
  - this option will not be open to proposed schools in any of the local authorities included in Pan-London<sup>4</sup> co-ordination which did not have their funding agreements in place prior to applications being received (31

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<sup>3</sup> 'conditional' upon the funding agreement being signed and sealed, so that the school is established.

<sup>4</sup> The process whereby the 33 London boroughs, the City of London Authority, Kent, Essex, Hertfordshire and Thurrock local authorities co-operate in a computerised allocation system.



October 2015 for secondary schools and 15 January 2016 for primary) because the process adopted by these local authorities does not permit a conditional offer to be made alongside a firm offer for another school;

- local authorities are under no duty to process admissions for proposed free schools before they have a funding agreement in place. Schools will, therefore, not only need to secure their home authority's agreement to this process, but also to ensure neighbouring local authorities are happy to forward applications from their area for the school to its home local authority.

## **Option 2B**

- The local authority could handle applications for the school outside of co-ordination.
- The school and local authority could either operate the process so that offers were issued on the national offer dates (1 March for secondary or 16 April for primary) or to a different deadline which they agree. If handling the process in this way, it is likely that the school and local authority will need to use a separate application form for the school. Parents will choose other schools under co-ordination but have an additional and separate choice for the proposed free school.

8.45. However you choose to manage your admissions process, the trust as an admissions authority, is responsible for ensuring its arrangements are administered fairly, clearly and objectively in accordance with the School Admissions Code and School Admission Appeals Code. Unless you are able to choose option 2A above, the trust will need to adopt an application form and set out the application process in the admission policy, including the closing date for applications, the (conditional) offer date, and where to submit the application. Be careful to ensure the application form complies with the School Admissions Code, in particular the provisions of paragraphs 1.9 and 2.4.

## **Composite prospectus**

8.46. Local authorities have a statutory duty to provide information about school choices in their local area. This information is provided in the composite prospectus, published each year by your local authority and on the Local Authority website. When a free school is approved by the Secretary of State, the DfE writes to the relevant local authority to let them know in which year the school is expected to open. From that point on, the local authority should take steps to ensure information about the free school is included in their prospectus and must include your school's admissions policy once it is finalised.

8.47. The local authority is required to publish its admissions prospectus by 12 September each year, but it is required to keep it under review as admission policies change (e.g. as a result of adjudicator determinations on admissions or



new schools opening). If you are intending to open your school in September 2017, you should easily be able to provide your local authority with the school's admission arrangements prior to this deadline. If your school is a 2016 opener the prospectus will already have been published before you start drafting your admission policy. Once the department has indicated that your policy appears to comply with the Admissions Code it should, nevertheless, be determined as final and submitted to the local authority. The local authority is required by the Admissions Code to provide information on schools opening during the year and to update its website to provide information on your school's admission policy. Consequently, no matter when this occurs, once your policy is finalised, the local authority must publish it.

- 8.48. Schools opening in 2017 will need to provide the local authority with information on how parents can apply to the school, the closing date for applications, and when offers will be made for inclusion in the prospectus. Contact information and your website address should also be included so that parents know where they are able to find additional information. Schools opening in 2016 should provide the same information so that the local authority can update its information for parents.<sup>5</sup>

### Your admission arrangements

- 8.49. Although we will offer you advice on developing the school's first set of admission arrangements, you should bear in mind that, as the admission authority for its school(s), it is the trust which is responsible for getting these arrangements right. It will be a requirement of your school's funding agreement that its admission arrangements abide by the School Admissions Code, so as you would expect, the Secretary of State will not enter into such an agreement where we have reason to believe that this will not be the case.
- 8.50. You will therefore need to understand the duties placed upon you within the School Admissions Code and the Appeals Code. You will need to ensure that you quickly get to grips with these codes and consistently act in accordance with them. We have developed comprehensive [guidance](#) to help you develop your first set of arrangements.

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<sup>5</sup> You are required to do this as soon as possible after your school's FA is signed in order to bring the school's admission policy into force and by 28 February each year thereafter. In February 2017 you would determine your school's 2018 policy. To determine a policy a trust, or committee of a trust, must consider the admission policy, take a decision to adopt it, minute that decision and then publish the policy on its website and send it to its LA. Once the FA is signed the policy should be published as soon as possible and thereafter by 15 March each year. When determining a policy a school can't change it from the previous year's policy (except for increasing PAN) unless it has first consulted for 6 weeks in accordance with paragraphs 1.42-1.49 of the School Admissions Code.

- 8.51. Your admission arrangements should make it clear to parents how and when to apply. Your criteria should be clear, fair and objective so it is obvious how decisions are made – this will also minimise the chance of potential challenges or complaints, for example to the Schools Adjudicator. In previous rounds, a significant number of admission policies and application forms submitted to the department have failed to comply with the Admissions Code. To ensure that this does not continue to occur, Schools must adopt the admissions template when drafting an admission policy<sup>6</sup>. This ensures the school’s first policy includes key statutory requirements.
- 8.52. The guidance on the free school admissions website provide advice on drawing up a set of code-complaint arrangements, and we also provide some example admission arrangements but there is no substitute for a thorough knowledge of the School Admissions Code and Appeals Code; both before the school opens and once it is operational.
- 8.53. Trusts must also ensure that they comply with the [School Admissions Code](#), particularly paragraphs 1.9(a) to 1.9(o) and 2.4, in drafting any application forms.

## Appeals

- 8.54. Parents whose children have not been offered a place at your free school have the right to appeal. Your admission arrangements should tell parents about their right to appeal. The template you are required to use includes such a provision.
- 8.55. It is the responsibility of the trust to set up an independent appeals panel in accordance with the School Admission Appeals Code but local authorities will operate an appeals service and you may want to consider buying into that service to run your appeals. There will also be a cost attached to the local authority service, but you will be buying in to an established process with experienced panel members. It could save you time and possibly money in the long run. There are also a number of experienced companies running appeals services for schools as well as diocesan and other faith groups doing so.
- 8.56. If you want to manage your school’s own appeals, you should be prepared to commit time, money and resources to it. You will need to ensure the appeals panel is completely independent of the school and trust. Whether or not you contract out the service, it is the trust’s responsibility to ensure that panel members and the

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<sup>6</sup> Boarding schools should ask their lead contacts to send a separate template.

clerk are properly trained in accordance with the requirements of the Appeals Code.

## **Consulting on your school's admission arrangements**

- 8.57. In the pre-opening period, you should include at least an outline of your proposed admission arrangements as part of your [Section 10 consultation](#). Once you have taken account of any responses to your consultation, we have signed and sealed the school's funding agreement, you have determined your school's arrangements and you have published the final arrangements on your website you cannot make any further changes to them, unless they are needed to make them comply with the School Admissions Code.
- 8.58. Once your school is open, you will need to consult on your school's arrangements at least every seven years, even if you don't want to make any changes. The requirements for consultation are set out in paragraphs 1.42 to 1.49 of the School Admissions Code.

## **Special free schools**

### **Admissions: your responsibilities**

- 8.59. Recruitment and admission to special free schools is via an Education Health and Care Plan ('EHCP') made by a local authority naming the school. The only exception to this is where the Secretary of State has agreed, in the funding agreement, that the school can also admit a minority of pupils with the type of special educational needs the school specialises in, but without an EHCP.
- 8.60. Local authorities have a statutory duty to, where necessary, identify, assess and arrange provision for children with SEN. Where a local authority has carried out a statutory assessment and decided to issue an Education Health and Care Plan, they will issue a draft plan to parents. Parents can request the local authority to name their preferred choice of school in their child's EHCP. However, the final decision on the school to be named rests with the local authority responsible for maintaining the plan.
- 8.61. A special free school must admit a child where the school is named in a child's Education Health and Care Plan, even if the child's SEN is not a type of SEN for which the school is designated. A special school is specially organised to make educational provision for pupils with SEN. They are designated for specific type(s) of SEN. The main designations of SEN are set out in the SEN Code of Practice. Once a school is open, approval from the Secretary of State would be required if it wished to change or extend its designation to other types of SEN. It should publish details of its provision and capacity online.

- 8.62. A special free school can also, if agreed beforehand within its funding agreement, propose admitting children without an EHCP. This will be restricted to pupils with SEN but without an EHCP. The process for admitting these pupils must be set out in an admissions policy which, apart from focusing solely on pupils with SEN, must otherwise comply with the School Admissions Code. You would also have to comply with all the admissions deadlines and processes within the Code and offer appeals to any of these pupils refused admission in accordance with the School Admission Appeals Code . If your school admits significant numbers of non-statemented pupils (50% of the intake or 20 or more pupils), the school must be part of the local authority's co-ordinated admissions process, after its first year of opening. You can agree with the LA to be part of co-ordination even if the school admits fewer pupils.
- 8.63. When admitting children without an EHCP you must first determine that they have the type of SEN for which your free school is designated, as it will only be permitted to admit non-statemented pupils with this type of SEN. You must set out in your school's arrangements how you define this need, and give clear details about what supporting evidence will be required (e.g. a letter/report from a doctor or educational psychologist or other specialist) and then make consistent decisions based on the evidence provided.
- You will need to set out your school's admissions policy, including an admissions number and the criteria to be used to prioritise places if your school is oversubscribed.
  - If your application includes boarding provision, you should set out a separate admission number and criteria for boarding places. The boarding admissions policy must be in accordance with the School Admissions Code, the School Admissions Appeals Code and admissions law as it applies to maintained schools. It must be clearly linked to the delivery of your education vision.
  - Guidance on setting your admissions policy for non-statemented pupils can be found here as well as in the Code.
  - Special free schools cannot be designated as having a religious character, there is therefore no need to make contact with and have the support of local religious bodies. While you may seek to establish a distinct religious ethos which is reflected within the vision and values of the school, you will not be able to recruit pupils on the basis of faith.
  - It is important to remember that as the admissions authority for your school, it is the trust's responsibility to get things right. This includes:
    - setting out the school's age-range, number of pupils with EHCPs provided for and type of SEN specialised in as part of the consultation you will carry out under Section 10 of the Academies Act 2010;
    - consulting on any proposed mainstream admission arrangements, on setting the school up, as part of your section 10 consultation;

- publishing the school's SEN 'statement of provision' (see 8.61 below) on the school's website;
- publishing any admission policy for non-statemented pupils on the school's website and forwarding them to the local authority for publication.
- A school has a duty to comply with an EHCP. If a school disagrees with being named on an EHCP it can appeal to the Secretary of State through the EFA.
- It should only do so if attempts have already been made to resolve disagreements at the local level. Complaints can only be considered under limited circumstances: if the local authority has acted unreasonably or has failed to carry out one of its duties under the Education Acts, including its SEN duties.
- Under the SEN framework, parents of children with SEN and young people with SEN can ask the local authority responsible for making and maintaining the EHCP for a school to be named in their EHCP.
- The local authority must take into account parental requests, and must consult with a school where they are intending to name it in an EHCP.
- The final decision on the school to be named rests with the local authority. If parents disagree with the school named in their child's EHCP they have a right of appeal to the First-tier Tribunal (Special Educational Needs and Disability). Decisions of the Tribunal are binding on all parties.

### **Published arrangements for special needs provision**

8.64. The trust should publish, on the school website details of the special needs provision offered by your school – its 'statement of provision' - as well as any admissions policy it operates for children with special needs but without an EHCP. Your departmental contact will be able to provide you with a model SEN statement of provision in order to assist you in drafting your school's policy.

8.65. What a statement of provision will contain:

- Numbers of children with an EHCP provided for (and separately, if agreed with the Secretary of State an admission policy for non-statemented pupils);
- Gender of provision: mixed or single-sex;
- Age range;
- Type of SEN offered, pupils' needs, designations etc.;
- If agreed with the Secretary of State, any residential provision, the number of places it provides, and the pupils for whom this is available (e.g. those pupils with an EHCP and particular needs, non-statemented boarders with SEN etc.);
- How parents can obtain a place at the school (i.e. through requesting an LA to name the school in their child's plan).

8.66. In addition, you should publish separately on the school website, any other narrative, which sets the scene in terms of the proposed free school's target cohort or policies, including methods of teaching, curricular/specialist offer, etc. This will include:

#### **1 The process for an EHCP being made**

- The process for drawing up education health and care plans is prescribed nationally. It would be useful to sign-post this on your school's website.
- Include details of financial arrangements between the local authority and free school, taking into account the £10,000 base funding level and what should be covered by the top-up funding for each child.
- Provide details of how the provision will cater for all pupils varying levels of Special Educational Needs, disabilities and English as an additional language (EAL) needs.
- Provide details of personnel who will be involved in the process and encourage the inclusion of an independent person and local authorities.

#### **2 Pupil registration and information sharing**

- Describe what information the school will request for each pupil, e.g. health, attainment to date etc.
- Identify the best pathway for the respective pupil.
- Provide details of how you will continue to communicate and share information with the local authority, parents, healthcare professionals and previous school(s) as appropriate.

#### **3 Admissions policy (if relevant)**

- If you plan to take children with special needs but without an EHCP (you will need to publish a policy which should be integrated with your statement of provision. Your admissions policy will set out a process for when there are more applications than places. You will find guidance on setting these arrangements in the admissions guidance. You will need to set an admissions number ('PAN') and oversubscription criteria in accordance with the Admissions Code.

#### **4 Objections / complaints procedure for children with an EHCP naming the school and non-statemented pupils**

- Explain how parents may object to the admission arrangements (i.e. those applying to non-statemented pupils) – see the School Admissions Code for further information;
- Explain how parents can appeal to an independent appeal panel for any refusals to admit non-statemented pupils ; and

- Set out how parents can appeal against Local Authority decisions not to name the school in their EHCP.

## **Consulting on your school's arrangements**

- 8.67. In the pre-opening period, we advise that you set out details of the size and type of the provision your school will offer and any proposed admission arrangements within your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final arrangements on your website and signed your funding agreement, you should not make any changes to the arrangements.
- 8.68. Once your school is open, you will need to consult on any admissions policy you have adopted for non-statemented pupils at least every seven years, even if you don't want to make any changes. You must also consult before making any changes. You will need to allow time for this as, once the school is open, you will have to consult in the academic year before the new arrangements would take effect. This means that there is nearly a two-year lead-in period before you admit children according to any changed arrangements. The consultation period is set out in paragraphs 1.42-1.49 of the School Admissions Code and must be for a minimum of six weeks between 1 October and 31 January. So, for example, you would need to consult by 31 January 2017 so the changes can be included for applications to be made for entry to your school in September 2018. Any arrangements must be adopted by the governing body by 28 February and published and notified to the local authority by 15 March in any year after opening.
- 8.69. If you wish to make any changes to the type of special needs the school specialises in or the size of the school, age-range etc. this will require a change to your school's funding agreement to be agreed with Education Funding Agency on behalf of the Secretary of State once the school is open.

## **Alternative provision free schools**

### **Referrals/admissions: your responsibilities**

- 8.70. Recruitment and admission to alternative provision is via referrals from commissioners (local authorities and schools).
- 8.71. Alternative provision free schools must be principally concerned with providing full-time or part-time education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not otherwise receive suitable education for any period. This means that the majority of pupils (over 50%) must be of compulsory school age (i.e. 5-16). Alternative provision free schools may also have some 16-19 year old young people, but they must number less than 50% of your students.

- 8.72. Children of compulsory school age can only be admitted to an alternative provision free school by being referred by local authorities, schools and academies using their existing referral powers or duties. It is not compulsory to adopt a policy whereby students or their parents can choose to apply for a post-16 place, but it is a freedom available to AP free schools. Young people aged 16-19 may then apply to the alternative provision free school themselves in the same way as they would for mainstream 16-19 provision. Schools should bear in mind that it is not compulsory for a student to attend a specific school or college post-16 and so any referral system for students over compulsory school age would also require an application from the student in order to ensure they were willing to attend.
- 8.73. It is not compulsory for an AP academy to provide post-16 education or to adopt a policy whereby students or their parents can choose to apply for a post 16 place, but it is a freedom available to AP free schools. The School Admissions Code does not apply to referrals or post-16 admissions at an AP free school. Alternative provision free schools can adopt Code-compliant post-16 arrangements if they wish, but the minimum requirement is that they follow our guidelines on admissions to 16-19 free schools.
- 8.74. As an academy trust, you are responsible for ensuring that the referral policy and any post-16 admissions policy complies with the funding agreement. That means it must be fair, transparent and objective; give priority to any pupils with statements of special educational needs or an Education Health and Care Plan naming the school; and give highest priority to looked after children.
- 8.75. Your school won't be able to comply with the School Admissions Code for referred pupils but has a number of options post-16. It may choose not to provide for post-16 students, it can adopt a Code-compliant admission policy or it can adopt an admission policy which follows the 16-19 model. Your referral/admission policy should:
- include your school's referral process for children of compulsory school age ensuring that it complies with referral powers and duties. Need is assessed by the commissioner and so it should not include an additional process for the school to consider the need for a referral but should include a process to tie-break to decide which student is admitted if there are more referrals than places;
  - include post-16 provision if you have it. You need to state whether applications from post-16 students will only be accepted if they have also been referred by commissioners or whether they can also apply independently of any referral. You will need to set out how you will admit pupils in a fair, objective and transparent way;
  - include a process for consulting on and finalising the new arrangements if you want to change your school's admission or referral arrangements once the school has opened;



- include a process for managing referrals to the school, ensuring systems are in place to manage and track referrals from the opening date;
- make sure that unsuccessful commissioners and others are aware that they can submit complaints about the referral process or complaints about the post-16 admission arrangements to the Education Funding Agency.
- You should also consult on your referral (and if relevant, admission) arrangements as part of the consultation you will carry out under Section 10 of the Academies Act 2010;
- Alternative provision free schools should be aware of the Fair Access Protocol. It is the mechanism for ensuring children who are hard to place are allocated a school place quickly during the school year. The requirements in relation to alternative provision are set out in the Alternative Provision Statutory Guidance;

### **Referrals: commissioners' responsibilities**

- 8.76. Statutory guidance sets out the Government's expectations of local authorities and maintained schools who commission alternative provision and pupil referral units. The Government expects those who are not legally required to have regard to the statutory guidance (for instance, academies) to still use it as a guide to good practice.
- 8.77. Local authorities are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.
- 8.78. Governing bodies of schools are responsible for arranging suitable full-time education from the sixth day of a fixed period exclusion. Schools may also direct pupils off-site for education, to help improve their behaviour.
- 8.79. More on the roles and responsibilities of alternative provision commissioners and alternative provision providers can be found in the Alternative Provision Statutory Guidance.

### **The referrals/admissions process**

- 8.80. Statutory guidance sets out that there should be clear criteria for referring and admitting pupils, including those who are dual registered. Pupils should be dual registered from the beginning of the first day of which the school has commissioned the alternative provision. For the purpose of the school census a pupil should be dual main registered at their school and dual subsidiary registered at the alternative provision.
- 8.81. As part of your school's published referral policy, you will need to decide how you will effectively manage referrals and engagement with your commissioners

throughout the academic year. If you also want to admit pupils, by application, to any post-16 provision, you will need also to adopt an admissions policy.

8.82. The referral policy and any admissions policy should be part of the same document. For your referral process, you will need to be clear and open about how it operates. It is important that you are clear about the type of cohort you wish to cater for so that potential commissioners will understand the type of provision you offer. For post-16 admissions (if any) you will need to set out how the school will admit pupils in a fair, objective and transparent way. Your published referral/admissions policy should make it clear to commissioners how and when to make referrals. Your criteria should be fair and objective so it is clear how decisions are made – this will also minimise the chance of potential challenges or complaints.

8.83. Your lead contact will be able to provide you with a model referral policy a commissioner's referral form. The referral/admissions policy document should include:

**1. A section where you provide the background on your provision including:**

- a. Type
- b. Gender
- c. Age range
- d. The pupils provided for - their needs etc.
- e. Whether commissioned places are full time or part time, short-term and/or long-term, and what you mean by these terms.
- f. A contact for those commissioning referrals; and

In addition, you may include any other narrative which sets the scene in terms of the proposed free school's target cohort.

**2. Referral/Admission Arrangements**

- i. Provide a description on the commissioning process, which could be set up with the respective commissioners (local authorities and schools).
- ii. The policy should describe the different routes for compulsory school age pupils and post 16 (if applicable).
- iii. Include details of financial arrangements between the commissioner and the alternative provision free school, taking into account the £10,000 base funding level and what should be covered by the top-up funding for each child.
- iv. Provide details of how the provision will cater for pupils with Special Educational Needs, disabilities and English as an Additional Language (EAL) needs.
- v. Provide details of personnel who will be involved in the referral process and encourage the inclusion of an independent person and a SENCO or behavioural person from the local authority (this will be decided by the trust).

- vi. Include a referral form which lists all the information required about the learner.

### **3. Oversubscription criteria**

- i. Oversubscription criteria must be applied when there are more referrals than places available. They should include a final tie-break, normally distance to the school or random allocation.
- ii. If the school admits applicants, post-16 there should be a post-16 admissions policy including an admission number, admission criteria and application form. You should also have a closing date for applications and set out a date by which you will make offers. You should also set out how appeals against refusals to admit are handled. If your school admits students post 16, remember that the student will have to apply to the school, though you can also require that there is a referral from a commissioner.

### **4. Pupil Registration and information sharing**

- i. Describe the registration process e.g. for fixed period exclusions or an off-site direction, the pupil will need to be dual registered. For permanent exclusions, the registration will be with the alternative provision free school.
- ii. Describe what information the alternative provision free school will need on each pupil.
- iii. Identify the best pathway for the respective pupil.
- iv. Include details of your school's induction process for new pupils.
- v. Provide details of how you will continue to communicate and share information with the commissioner, providing updates on progress and details of reintegration of pupils back into mainstream settings.

### **5. Objections / complaints procedure**

- i. Each policy should provide details of how complaints about non-admission will be handled and who will make the decision.
- ii. A panel of individuals independent of the alternative provision free school would be ideal in demonstrating fairness, but this will be for you to decide.
- iii. The policy should state that complaints about the published referral/admissions policy can be submitted to the Education Funding Agency.

### **Oversubscription criteria**

- 8.84. If your school has more referrals than places, it is oversubscribed, and you will need to have clear criteria in place to help you allocate places fairly.
- 8.85. Whilst your school is not required to abide by the [School Admissions Code](#), you may wish to refer to it to see the range of oversubscription criteria from which you could choose. Equally, [free schools guidance](#) will set out criteria you can use. Your oversubscription criteria should be fair and objective.

8.86. Post 16, where pupils apply for admission you should adopt an admission number and oversubscription criteria for admission, including any academic entry criteria and, if you wish, requirements for any applications to be supported by a referral from a commissioner. Your policy should set out separately the numbers of such pupils.

### **Consulting on your referral and admission arrangements**

8.87. In the pre-opening period, we advise that you include your referral and, if relevant, admissions policy as part of your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final policy on your website and signed your funding agreement, you should not make any changes to the arrangements during the rest of the school year.

8.88. If you admit students post 16 (i.e. through student application), your policy should be reviewed and published on an annual basis to take account of changing demographics in your area. We recommend that you consult local people on any changes and publish your policy each year in September, for the following September's admissions. Your policy for 2017 admissions should therefore be published in September 2016, or as early as possible if this is not achievable.

8.89. You should also keep your policy on referrals under regular review and respond to any demographic changes.

8.90. It is possible for people to submit complaints about your referral and admissions policy to the Education Funding Agency who will ensure that the policy is fair, clear and objective, in accordance with the funding agreement, so it is important to keep your policy under review for this reason, if no other.

## **16-19 free schools**

### **Admissions: your responsibilities**

8.91. As an academy trust, you are responsible for admissions to your free school. This means you are responsible for:

- making sure the free school's admission arrangements are clear, fair, open and transparent;
- managing applications to the institution. In most cases you will need to manage these directly although in some areas post 16 institutions co-operate to co-ordinate admissions ; and
- organising an independent admission appeals process.
- As 16- 19 free schools are not legally schools but educational institutions, your free school is not covered by the School Admissions Code. However, its arrangements do need to be fair, clear and objective.  
Parents/prospective students still need a clear understanding of how and

when places are offered, whether there are minimum entry requirements, whether there will be a test or an interview as part of the application process and what criteria will be used to decide how applications will be prioritised. Arrangements should therefore be as straightforward as possible and be clear how they are to be applied.

- Unlike mainstream schools there are no national coordinated deadlines for when applications to post-16 institutions need to be made. Institutions generally set their own deadlines based on how large and/or oversubscribed they are (and therefore how long they need to consider initial applications) and whether they need to build time in to hold interviews if they choose to interview. Our strong advice is that you should aim to make provisional offers to students in the spring term, so they are clear about any academic conditions you will place on their offer sufficiently in advance of sitting their exams in the summer. If you hold interviews, avoid holding them in the busy exam periods too. An outline timetable might be:
  - inviting applications from the autumn, with an initial application deadline no later than early spring;
  - sift applications and apply selection criteria during the spring term.;
  - make conditional or unconditional offers before Easter, so students are clear what requirements they will need to meet, if any;
  - confirm places once students have received their GCSE/AS results in August (or if you are offering unconditional places, or places based on predicted grades, you can confirm earlier); and
  - set this out in your admissions policy.

## **The admissions process**

8.92. As part of your admission arrangements, you will need to decide how and when your institution will accept applications and make offers. Your admission arrangements should make it clear to students and parents how and when to apply. Your criteria should be fair and objective so it is clear how decisions are made – this will also minimise the chance of potential challenges or complaints.

There are some key things all admission arrangements should include:

- an admission number for the institution, or admission numbers for courses – for each year of entry into the institution. This number sets the minimum number of pupils the free school will admit each year
- clear oversubscription criteria. A common mistake is to set complex or unclear criteria;
- how and when applications can be made;
- an application form;
- a statement on how applications from learners with learning difficulties or disabilities will be considered;

- details of a waiting list; and
- details of your independent appeals process.

8.93. It will be a requirement of your funding agreement that your admission arrangements are fair, open and transparent, so as you would expect, the Secretary of State will not enter into such an agreement where we have reason to believe that this will not be the case.

### **Oversubscription criteria**

8.94. If you have more applications than places, the free school is oversubscribed, and you will need to apply clear criteria to help you allocate places fairly. As a 16- 19 academy you have a great deal of flexibility about how you admit students. You can select by ability, on the basis of qualifications, tests or interviews, but if you choose to do this, you must be clear about your intentions from the start, and explain in your admissions policy the academic requirements etc. necessary to be admitted. You can set specific requirements for specific courses, and you can turn down applicants you have offered places to if they do not subsequently meet the academic requirements. Beware of setting your minimum criteria too high or making the application process too onerous for students: you do not want to have empty places in September. If you have more qualified applicants than places, you can sift them by applying your published admission criteria.

8.95. You are required to admit all students with an education health and care plan naming the free school. It is a requirement of the [School Admissions Code](#) that first priority within admission criteria is given to children who are either looked after by the local authority, or who have previously been looked after. While you do not have to abide by the Code, we would encourage you to prioritise the admission of students who are, or who have been, looked after.

8.96. You then need to list the rest of your free school's oversubscription criteria in order. You need to think carefully about these and make sure they strike the right balance between admitting the students who will thrive and benefit most from the provision you offer, and being overly complex, burdensome, or inadvertently disadvantaging a prospective student.

### **Offering places**

8.97. Once your application deadline has passed and you have applied the admission criteria you can choose to make either conditional or unconditional offers. Bear in mind that before your funding agreement is signed and sealed you should only make conditional offers, in case there is any delay in opening. You do not need to have signed your funding agreement to make conditional offers, but you should advise your prospective students that they may wish to have an 'insurance' place.

8.98. At the point the department is otherwise ready to enter into a funding agreement with you, you should expect your lead contact to want to know detailed information about the status of any applications made, offers made, and offers accepted. Precisely what he/she will want to know depends on where you are in your application process, but generally information about 'expressions of interest' will not suffice: he/she will expect to know how many formal applications have been made and, from March onwards, how many conditional offers have been made and how many offers have been accepted.

### **Finalising choices**

8.99. Unlike a school with a sixth form where students move seamlessly into Year 12, you need to create opportunities to engage with students after you have offered them a place. It is a great advantage to both you and them if you continue to get to know them and help them finalise their plans, such as which A-Levels/vocational subjects they want to study. This helps you plan timetables and teaching loads, and helps make sure students have a strong start at your institution. In particular, we suggest you host a 'getting ready' day for students that have accepted places in late June or early July, much like a secondary school would hold an induction for students moving from primary schools.

8.100. It is also important to have opportunities to meet individually with students between GCSE/AS results and the start of term, in case they or you think they might need to adjust their plans.

### **Waiting lists**

8.101. You should keep a clear, fair and transparent waiting list and be clear about how long you will keep it for. Our advice is that you should certainly keep a waiting list up until the first day of the academic year, and many post 16 institutions choose to maintain it for a longer period of time. Students on the list should be ranked in line with your published oversubscription criteria.

### **Appeals**

8.102. Students who have not been offered a place at your free school should have the right to appeal. Your admission arrangements must tell students about their right to appeal and the process, deadline and contact details for making an appeal.

8.103. Local authorities will operate an appeals service for school admissions, and you may want to consider buying into that service to run your appeals process. In doing so, however, you need to make sure they understand that as a 16- 19 academy you do not have to abide by the School Admissions Code or the School Admissions Appeals Code. There will also be a cost attached to the local authority service, but it could save you time and possibly money in your busy pre-opening period. You could consider running joint appeal panels with other institutions or

contract with other neighbouring local authorities, diocesan authorities or private providers.

- 8.104. If you want to manage your own appeals, you should be prepared to commit time, money and resources to it. You will need to set up an appeals panel which should be independent of the institution. It should comprise a clerk and we advise at least two other people. We strongly recommend you provide training for all panel members.

### **Administration and verification of information**

- 8.105. In operating your admission arrangements you can request proof that the information provided in the application form is valid. You can, for example, ask for a proof of address to confirm that a student lives where they say they do, but recognise that many students won't have access to the same types of proof of address that their parents would. They are unlikely to be named on utility bills! You must not ask for evidence that includes, for example, parents' financial or marital status, or first languages of the parents and family.

### **Consulting on your arrangements**

- 8.106. In the pre-opening period, we advise that you include your free schools proposed admission arrangements as part of your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final arrangements on your website and we have signed and sealed your funding agreement, you should not make any changes to the arrangements until the application process is over for the year. It should, however, be reviewed and published on an annual basis to take account of changing demographics in your area. We recommend that you consult local people on any changes and publish your policy each year in September, for the following September's admissions. Your policy for 2017 admissions should therefore be published in September 2016, or as early as possible if this is not achievable.
- 8.107. It is possible for people to submit complaints about your policy to the Education Funding Agency who will ensure that the policy is fair, clear and objective, in accordance with the funding agreement, so it is important to keep your policy under review for this reason.



## 9. Religious character

### Faith free schools

- 9.1. A school designated as having a religious character (commonly known as a faith school) can:
- give preference when advertising for and when appointing, promoting and dismissing teachers in accordance with the faith of the school;
  - admit up to 50% of pupils on the basis of faith if the school is oversubscribed; and
  - provide religious education and collective worship according to the tenets of the faith of the school. You will also need to organise the inspection of religious education and collective worship.
- 9.2. If you are planning to open a faith free school you will also need to apply to the department for a religious designation.
- 9.3. Your school's religious designation does not come into force until you have signed your funding agreement with the Secretary of State and the legal process for religious designation has been completed.
- 9.4. It is important to note that the freedoms set out at 9.1 above are not available to free schools that identify themselves as having a faith ethos as part of the process of registering as an independent school.

### Summary of key tasks

- 9.5. In order for your school to have a religious designation you will have to satisfy the Secretary of State that the conduct of the school or the provision of education is or will be in accordance with the tenets of one or more religions or religious denominations, **and** that **one or more** of the following applies:
- Some or all of the premises to be occupied by the school will be provided on trust in connection with (i) the provision of education, or (ii) in connection with the conduct of an educational institution in accordance with the tenets of one or more religions or religious denominations;
  - At least one trustee is a person appointed to represent the interests of one or more religions or religious denominations; and
  - The governing instrument of the school provides that the school shall be conducted, or some or all of the education shall be provided, in accordance with the tenets of one or more religions or religious denominations.

- 9.6. In advance of approving a religious designation application, the Secretary of State may consult the relevant religious authority, or any other religious body. The Secretary of State will need to be assured that your school will be conducted in accordance with the tenets of your faith.
- 9.7. In order to apply for religious designation, you need to fill in the [FSRDApp1](#) form and return it to your contact for processing as soon as possible.
- 9.8. As a faith free school proposer, we require that you consult with the relevant religious authority on your admission arrangements and for identifying who will inspect your religious education and collective worship provision.

### **What additional responsibilities come with being a faith free school?**

- 9.9. We expect faith free schools to appeal to a wide range of parents and pupils, including those of other faiths and no faith. You therefore need to ensure that your school policies are inclusive and your school is welcoming to pupils of other faiths and no faith. This includes ensuring that your school policies and curriculum would not deter pupils from other faiths and no faith from applying for a place at the school. We will expect you to provide evidence at application of successful work to secure expressions of interest from parents and pupils who are not of your faith.
- 9.10. Like all free schools, you must also adhere to the conditions set out in your funding agreement, including clauses relating to inclusivity.

### **What does a religious authority do and how do we find one?**

- 9.11. Religious authorities have two consultation roles. You must consult your religious authority when:
  - identifying a body to inspect your religious education and collective worship provision;
  - agreeing your admission arrangements. This means, for example, consulting them on how you will determine adherence to the faith in your admission arrangements.
- 9.12. For some faiths this may not be the same religious authority for both inspections and admissions.
- 9.13. Listed below are examples of religious authorities that may be consulted in relation to the inspection of RE and collective worship.

Faith designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	Jewish Studies Education Inspection Service
Methodist	Education Secretary to the Methodist Church
Muslim	Association of Muslim Schools UK
Sikh	Network of Sikh Organisations
Seventh-day Adventist	Education department of the British Union Conference of the Seventh-day Adventists

- 9.14. Examples of religious authorities that may be consulted in relation to admission arrangements are listed in Schedule 3 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) 2012.
- 9.15. Please note that if you to seek designation as a Church of England free school you must have the support of your local diocese. The diocese should then be the named religious authority for both admissions and inspections.
- 9.16. If your faith is not covered by any of the bodies listed above - for example, groups intending to seek designation as 'Christian' - you will need to identify an alternative body. Please get in touch with your departmental lead contact for advice.
- 9.17. You should also get in touch with your lead contact if your faith is covered by the list above, but your intention is to name an alternative religious body.
- 9.18. You should be clear about the role you intend the religious authority to play in the design and running of your school, beyond the consultation role required by law.

Can free schools recruit teachers before the school obtains religious designation?

- 9.19. Being a designated faith free school gives you limited exemptions from the Equality Act. This includes being able to give preference to recruiting teachers of the faith.
- 9.20. In order to be designated officially, you will need to have signed a funding agreement with the Secretary of State. If you wish to appoint teachers before this point (i.e. before you are designated), you will need to be able to demonstrate that adherence to a particular faith is a genuine occupational requirement (e.g. the principal designate, or an RE teacher). Where this is the case, you may be able to advertise, hold interviews and employ teaching staff prior to the designation of the free school. However, wherever possible you should refrain from entering into an employment contract until you have obtained religious designation.

## Inclusivity

- 9.21. All free schools, not just faith free schools, are required to be inclusive and welcoming to all pupils, no matter what their background, culture or belief.
- 9.22. For faith free schools this requirement has been reflected in admissions since the programme began, with these schools able to prioritise up to 50% of pupils by reference to faith when the school is over-subscribed.
- 9.23. The requirement is also reflected and enforced through the funding agreement, which requires (clause 1.19 of the current single model) that a free school's policies and practices (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in life of the academy, and do not disadvantage pupils or parents of any faith or no faith. The clause confirms that this requirement applies irrespective of the proportion of pupils of any faith or none currently attending or predicted to join the school.
- 9.24. To satisfy this requirement proposers and trustees will need to engage with and understand the needs and preferences of parents and pupils, including those who may, but have not yet decided, to apply to the school. Once your school opens, trustees and the senior leadership team will need to keep their policies under review – including but not limited to the curriculum, uniform and food – and be prepared to amend their position as and when circumstances change. This process of review is in line with trustees' responsibilities under the Public Sector Equality Duty introduced by the Equality Act 2010.
- 9.25. The funding agreement also confirms (clause 2.15 of the current single model) that new free schools must comply with school food standards legislation as if they were maintained schools. New food standards regulations were introduced in January 2015 and are designed primarily to ensure pupils have access to healthy food in schools. They also require schools to serve meat and dairy.
- 9.26. We are aware that some faith free schools proposers' preference will be to offer only vegetarian food, or otherwise limit its menu. While the standards and the requirement to serve meat and dairy apply to all new free schools, the Secretary of State would not expect a school to serve meat or dairy where there is no, or negligible, demand for it from parents or pupils. This would be likely to change if demand increased, so your trustees will need to keep their position under review.
- 9.27. The Secretary of State expects all free schools to allow pupils the option of bringing meat or dairy products into school as part of a packed lunch and to ensure that a pupil's choice of lunch does not result in their being forced to eat separately from their peers, or be otherwise disadvantaged. The Secretary of State will also expect your school to publicise clearly its food policy to existing and

prospective pupils, in particular any intention to restrict the offer, for example by not serving meat or dairy products.

## **Working with the department**

- 9.28. Please speak to your contact if you have any questions regarding your faith designation.
- 9.29. In order to apply for faith designation, you need to provide the department with all the information in the [FSRDAp1](#) form.
- 9.30. If the department requires further information in relation to your application for religious designation we will contact you and request it. We may also consult your religious authority.
- 9.31. Once your religious designation has been approved, the department will provide written confirmation. It will also appear on the designation orders which are published termly.
- 9.32. Please remember, your school will not be designated until you have agreed and signed a funding agreement.

## **Links to further information**

[View Table 8 Faith: checklist of activities.](#)

## 10. Statutory duty to consult

- 10.1. By law, your trust must meet its statutory obligation to consult under [Section 10 of the Academies Act 2010](#) about your free school proposal.
- 10.2. Section 10 of the Act requires the trust to consult with the people they think appropriate on whether to enter into the arrangement with the Secretary of State. The arrangement in question is the funding agreement that needs to be signed before your school can open.
- 10.3. The statutory consultation will inform stakeholders and the local community about the project. This process is very useful as trusts will be able to use and build on the feedback and suggestions they receive. It will also help to raise awareness of your project and your marketing activity could help to increase pupil numbers.
- 10.4. The duty to consult rests solely with the trust. The department does not direct or provide specific advice to trusts on how you should go about it. There are, however, some general themes you might want to think about which are set out in the following paragraphs.

### Summary of the key tasks

- 10.5. It is important to invest some time to plan how you will run your consultation to ensure this complies with your statutory duty. Your consultation must be thorough and transparent.
- 10.6. You also need to decide whether you will carry out the consultation yourself or bring in additional resources to do this on your behalf. Above all, you will need to agree when to carry out your consultation, how long it will take, who you will consult with, the policies and information about your school on which to consult, and how you want those you consult with to respond. You will need to be ready to consider any responses to the consultation and whether it is appropriate to make any changes to your plans, taking into account any concerns resulting from the consultation. You should report and present your findings and conclusions both to those that have responded to the local community and to the department.
- 10.7. The key question you should ask those you consult with is **whether your trust should enter into a funding agreement with the Secretary of State to open your free school**. To enable people to provide an informed response to this question, it is recommended that you provide a link to the appropriate [model funding agreement](#) which you will use for your particular school.
- 10.8. **Who needs to be consulted?** The Act states that you should consult 'such persons as the person thinks appropriate', which will include all groups or people upon whom you believe the opening your of school may have an impact.

Examples include nearby schools, the local authority, any surrounding local authorities, groups with an interest, the local population and faith groups.

- 10.9. **How long should the consultation be?** This is not specified, but six weeks should allow sufficient time for people to have a reasonable chance to become aware of the consultation and to respond.
- 10.10. **When should we consult?** It must be done before the funding agreement can be signed, but after some other elements are in place, or sufficiently advanced, to enable those whom you consult to have sufficient understanding of the school that you are proposing. Examples include admission arrangements, SEN and other policies, and the site for the school or at least a general location.
- 10.11. **How should we consult?** Many trusts set up a website specifically for the consultation, but you must take account of those people without access to a computer. It is important that you give as many people as possible an opportunity to respond. You may therefore use a variety of channels, such as mailshots, leaflets, open meetings, media announcements or a combination of all of these. You may also want to consider translating the consultation materials if the school being proposed is in an area with a diverse population.
- 10.12. **How do we deal with responses?** There is no point in consulting if you do not consider consultees' responses. You need to build in time to consider responses and whether it is appropriate to make any changes or additions to the plans for the school.
- 10.13. **How do we report on the outcome?** You will need to consider how you will publish the outcome of your consultation (e.g. by providing the website address where the results will be published). Once the responses to the consultation have been analysed you will need to consider how the findings will be presented both to the department and other interested parties. The most effective way is to produce a report of the key findings which provides quantitative and qualitative information, details of methods, timings, who you consulted, the questions you asked and what steps, if any, have been taken as a result of the responses.

## How we will work with you

- 10.14. When the time comes to decide whether or not to enter into a funding agreement with your trust, the thoroughness and transparency of the consultation will form a key part of that decision.
- 10.15. The Secretary of State is also required by law, under Section 9 of the Academies Act 2010 to complete an assessment of the impact the opening of the free school will have on maintained schools, academies, institutions within the further education sector and alternative provision in the area in which the institution is

proposed to be, or is, situated. This will incorporate any related evidence from your consultation. Trusts do not need to do this, your contact is responsible for carrying out the impact assessment at the appropriate time.

## Other helpful sources of information

10.16. The New Schools Network has produced some [helpful guidance](#) on how to carry out a Section 10 consultation which includes exemplar documents used by free school groups that have done this successfully.

## Links to further information

[View Table 9 Statutory consultation: checklist of activities.](#)

- [Section 10 of the 2010 Academies Act](#)
- [Model funding agreement](#)
- [NSN pre-opening information](#)



# 11. Equality duties

## Free schools' duties under the Equality Act 2010

- 11.1. The key aim of the free schools programme is to secure educational improvements through opening new, high-quality schools and by doing so promoting equality of opportunity for all children.
- 11.2. The Equality Act 2010 provides a single, consolidated source of discrimination law. The Act makes it unlawful for your trust to discriminate against, harass or victimise a pupil or potential pupil:
- In relation to admissions
  - In the way it provides education for pupils
  - In the way it provides pupils access to any benefit, facility or service
  - By excluding a pupil or subjecting them to any other detriment
- 11.3. When your free school opens it will be a public authority, [Section 149 of the Equality Act 2010](#) requires all public authorities when exercising their functions and making decisions to have due regard to the three aims of the Public Sector Equality Duty (PSED). The PSED has three key aims:
- To eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited under the Act
  - To advance equality of opportunity between those who share a relevant protected characteristic and those who do not
  - To foster good relations between those who share a relevant protected characteristic and those who do not
- 11.4. Meeting your obligations under the Equality Act are a continuing obligation on your trust, and must be considered throughout the whole pre-opening process and once the school is open.
- 11.7. The Secretary of State has a statutory duty to consider the potential equality impact (positive and negative) of her decisions, before deciding whether or not to enter into a funding agreement with you.

## Summary of the key tasks

- 11.8. Throughout the pre-opening process you must consider how the decisions you make will affect people with different protected characteristics.
- 11.9. The protected characteristics that you need to consider are:
- age

- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

11.10. You also need to note that discrimination on the grounds of marriage and civil partnership is unlawful.

## How we will work with you

11.11. When making all your key decisions in pre-opening you must ensure you comply with the equality duty. Your contact at the department will be looking for evidence that the equality duty is being considered throughout the whole pre-opening process.

11.12. At meetings you should aim to keep your contact informed about how your equality duties are being met.

11.13. To show that consideration has been given to the relevant protected characteristics in the school plans and policies, some examples of the information the contact will need are:

- details of your marketing plan: to show how you will engage with local communities to meet your duties to promote community cohesion.
- your staff recruitment policy: to show how you will ensure that all candidates will be treated in a fair and transparent way during the recruitment process.
- your SEN policy: to show what provision will be available for the pupils at the school and what other specialist provision will be available.

11.14. Your contact will keep a record of all pertinent information. This will help the Secretary of State to assess the impact on people with reference to different protected characteristics. It will also show if there are any issues around equality which could prevent the trust or the Secretary of State from fulfilling their obligations under equality legislation.

## School food

11.15. From September 2014, all government-funded schools (including academies and free schools) must offer free school meals to every infant pupil. The Department is expecting all infant pupils to be offered a hot and nutritious free meal.

- 11.16. The Children's Food Trust (CFT) and the Lead Association for Catering in Education (LACA) run a free support service for schools that need help providing universal infant free school meals (UIFSM). The support service can be contacted on 0800 680 0080, by email at [info@childrensfoodtrust.org.uk](mailto:info@childrensfoodtrust.org.uk).
- 11.17. Schools are encouraged to promote healthy eating and provide healthy, tasty and nutritious food and drink. The School Food Standards regulations apply to local authority maintained schools, academies that opened prior to September 2010 and academies and free schools entering into a funding agreement from June 2014. Departmental advice is available on Gov.uk. A summary of the standards and a practical guide are available from the School Food Plan website.

## Links to further information

The department has produced guidance to help schools understand how the Equality Act affects them and how to fulfil their duties under the act.

[View Table 10 Equalities duty: checklist of activities.](#)

- [Section 149 of the Equality Act 2010](#)
- [DfE Advice on Equalities Act 2010](#)

## 12. Staffing, education plans and policies

12.1. During the pre-opening stage you will need to turn the detailed staffing and education plans in your application into reality to ensure that everything is in place to open successfully – from recruiting high-quality staff to having detailed staffing, education policies and schemes of work in place.

12.2. You will need to have some policies in place early for consultation and pupil recruitment. Others will be needed ahead of the readiness to open meeting (ROM) with the department, and the Ofsted pre-registration inspection. You should also consider what you will need ahead of your first full inspection, which will normally take place during year three of opening.

12.3. We have provided an overview setting out the main staffing, education plans and policies you will need to produce ahead of opening in a suggested priority order.

### Summary of key tasks

#### Appointing principal designate (PD)

12.4. Appointing an excellent principal designate is probably the most important thing you will do as a trust during pre-opening. Getting the right person is of critical importance to the success of your school. The principal designate will be involved in appointing other staff and writing the detailed education brief, education plans/policies and schemes of work you will need ahead of opening.

12.5. Principal designate appointments can be made either through open national recruitment or as a direct appointment (without advertising). Given the importance of the appointment, you must fully involve your DfE education adviser in any open national recruitment of the principal designate.

12.6. In exceptional circumstances (e.g. where an experienced multi-academy sponsor is behind the project), we may agree that an education adviser does not need to be involved. Your contact will discuss this with you.

12.7. Direct appointments can be made where appropriate, but as a free school trust you will need to be able to show how the appointment was transparent and fair.

12.8. Once you have identified a suitable candidate, the department may suggest that they undergo a benchmarking exercise. This will involve the candidate being interviewed by the education adviser for the project and having their performance assessed against relevant leadership standards. The results can then be used to inform the design of a development programme, which the trust can then take forward with the PD.

- 12.9. If the candidate is not an experienced head or only has experience as a head in a different phase or type of school, the department will normally insist on a benchmarking exercise being undertaken by a DfE education adviser, who will advise the trust on the suitability of an inexperienced candidate for the principal designate role.
- 12.10. Additionally, you may choose to spend the money you would have spent on advertising the post to put your preferred direct appointment candidate through an assessment to make an informed judgement about their suitability. Most large educational recruitment firms and universities run assessments for school leaders.
- 12.11. The New Schools Network has produced a suite of resources to help you recruit your principal designate. This includes detailed guidance based on the experience of successful free schools, sample application packs and recruitment materials, and assessment exercises you can use when interviewing candidates.

## **Finalising staffing structure and recruitment**

- 12.12. You will also need to finalise your staffing structure for all staff and recruit those needed in your first year. Alongside your principal designate, you will need to consider other key posts, including senior leaders, who must be carefully budgeted for. As well as teaching posts, it is important to think carefully about who will take on the finance role to develop the more detailed budget for year one and for pre-opening, regularly considering staffing plans against financial plans and pupils recruited. Only by doing so will you be able to demonstrate that your proposed staffing structure is affordable, both pre- and post-opening. Additionally, it is important to remember that your staffing structure and recruitment plans should not be confirmed until you have a firm idea of how many pupils you have recruited.
- 12.13. Most free schools advertise for staff in both national and local press. Some have found holding their own recruitment fairs a good way of attracting staff. Others have used agencies or organisations with talent pools. Many of the major education recruitment agencies have access to pools of staff. Your education adviser may also be able to advise you on what you could do to attract good staff.
- 12.14. The New Schools Network has negotiated a discount on advertisements made for staff appointments with the Times Education Supplement. More details can be found [on this flyer](#).
- 12.15. Remember that all serving headteachers and teaching staff will be bound by contractual resignation dates and you will need to factor this into your recruitment plans. For example, a serving headteacher will have to have accepted a post and resigned by the end of September for a January start, the end of January to take up an appointment in May, and the end of April for a September start. In addition,

as it may take a few attempts to recruit a suitable PD, it is sensible to consider when to begin the recruitment process very carefully.

12.16. Although many free schools are keen to appoint newly qualified teachers (NQTs), it will be important, particularly for subject specialists in secondary schools, to consider where subject specific support might come from if there are no other specialists in the school in the first and even second year of opening. There might be a similar need for caution when recruiting senior and/or middle leaders. Having little relevant leadership experience can significantly limit leadership capacity at a time when it is needed to establish and implement school improvement systems.

### **Free school freedoms for appointing staff**

12.17. The trust as the employer is responsible for appointing all staff. Groups working with education providers may pass this responsibility on to them but the trusts may still want to be involved in the recruitment process, as they will be the legal employer of all staff. Free schools, like academies, have some freedoms in appointing staff that other schools do not:

- You are not bound by the national pay and conditions document and you can set your own pay and conditions. However, many trusts have asked us about national pay scales for comparative purposes. These are set out in the Teachers Pay and Conditions Document, available on the website.
- You are not required to employ staff with Qualified Teacher Status (QTS), with the exception of the SEN co-ordinator and the designated lead for children in care.
- Your principal designate is not required to hold the National Professional Qualification for Headship (NPQH).

### **Free schools' statutory responsibilities**

12.18. There are some statutory requirements on free schools with regard to staffing that you should be aware of:

- As stated above, the SEN co-ordinator (SENCO) and designated lead for children in care must hold QTS.
- As an employer, the trust has a statutory duty to offer all its staff membership of either the Teachers' Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS). Pension contributions must start with employment, so the trust should ensure that pension provisions are in place for staff taking up post prior to the free school opening (i.e. during pre-opening).
- If the school is to be a designated faith school and you wish to recruit teaching staff on the basis of faith, you will need to seek designation as a

school with a religious character; you can find more information on how to do that in the faith section of this guidance.

- 12.19. Serving headteachers and teaching staff are bound by contractual resignation dates, and appointments made before a funding agreement is in place should be **conditional** on the trust entering into the funding agreement and the school opening.
- 12.20. We recognise that the free school trust may be asked by a potential principal designate for additional security where a funding agreement has yet to be signed and they are being asked to hand in their resignation and accept the job at the free school. In such cases the department will underwrite the salary costs plus on costs, should the free school not open, or opening be deferred by a year. The salary would be underwritten for up to two consecutive terms from the point at which the decision is taken not to proceed. Click on the following link to find a [letter](#) which you can share with your principal designate to this effect.
- 12.21. The Transfer of Undertaking (Protection of Employment) regulations – commonly known as TUPE – protect employees whose activities are being transferred from their employer to another organisation. Usually we would not expect TUPE to apply to free schools, which are additional schools that create new education provision quite distinct from any existing or outgoing provision. The exception to this rule is where existing provision (e.g. existing alternative provision or independent schools) convert to become free schools. Click on the following link for further information on [TUPE](#).

## Developing education policies

- 12.22. As a trust you have statutory duties in terms of the policies that need to be in place before opening. The department has published a [guide for schools](#) (including free schools) about these duties.
- 12.23. You will also be required to submit some policies before your [Ofsted pre-registration inspection](#) and an inspector may ask to see others on the day. There will be other detailed plans and policies you will need to have in place for your first Ofsted inspection (normally in year three of opening). In the checklist of tasks, we have set out what needs to be done as a minimum, and by when, in the run up to opening. The checklist is not exhaustive but will give you an idea of what may be required, and when.
- 12.24. We have also developed outline [education policies](#) that give guidance on the structure and content of many of the main policies you will be developing. Many free schools and academies have also found the overarching structure of the [education brief](#) helpful, as this brings together all of the school's strategic and detailed education plans and policies.

- 12.25. Exemplar education plans and policies are also widely available. Exemplar policies are available on the [pre-opening section of the New Schools Network website](#). You can also find them on local authority websites and from project management companies (where you are using one). You should tailor these to take account of the vision and curriculum plans for your free school.
- 12.26. Education plans and policies are not routinely signed off by the department's education advisers. We may ask to see some, but this will depend on our level of engagement with your project. Education advisers will usually review the education brief, the assessment policy and safeguarding policy.

## Safeguarding

- 12.27. Schools and their staff form part of the wider safeguarding system for children. Safeguarding and promoting the welfare of children is everyone's responsibility. School staff are particularly important, as they are in a position to identify concerns early and provide help for children to prevent concerns escalating.
- 12.28. It is vitally important that as an academy trust you fully understand your responsibilities for safeguarding the children in your care. You should consult the department's [Keeping children safe in education](#) (KCSIE) and [Working together to safeguard children](#) guidance documents. All governing bodies must have regard to this guidance – that means they should comply with it unless there is good reason not to. When the school opens we would expect it to be meeting the requirements as set out in KCSIE.
- 12.29. You can also find more information about what Ofsted will expect to see in place when you are inspected in their guidance [Inspecting safeguarding in early years education and skills](#). This includes specific references to the Single Central Record (SCR). Page 12 of this guidance states "Inspectors should check the single central record early in the inspection in the expectation that it will be complete and meet statutory requirements". Page 20 of this guidance also provides additional context on the SCR: "There are serious implications if a school fails to provide a complete and up to date SCR when requested. The school can be closed immediately if the SCR is not produced – and staff can be sent home if it is incomplete."

## How we will work with you

- 12.30. Contacts will be asking you to report on recruitment of staff (in the context of pupil recruitment and financial plans) and in developing your education plans and policies – some of which will be needed at specific points, including ahead of the Ofsted pre-registration inspection and at your readiness to open meeting (ROM).



## Education advisers

12.31. An education adviser from the department will be allocated to your project and will work with you through your contact. Education advisers (EAs) are external contractors and highly experienced education professionals who have worked in senior education roles, typically as heads of outstanding schools and/or as Ofsted HMIs or inspectors.

12.32. Your EA will normally be accessible through your contact.

12.33. EAs are contracted by the department to provide expert educational advice. You will need to have your own educational expertise in place to support you as a trust and the education adviser does not provide that support. As a minimum EAs will usually:

- attend and contribute to the kick-off meeting;
- be involved in the process of appointing the principal designate;
- be involved in the process of appointing the chair of governors (unless already appointed) and help develop the governance plan;
- comment on the build-up of the senior staffing structure;
- comment on the quality of the education brief and education policies; and
- attend and contribute to the readiness to open meeting.

12.34. There is a differentiated approach to the department's support across different free school projects. The EA will normally devote between two and eight days to your project. The factors we will take into account in determining the level of EA support include the experience within your group and the complexity of your vision. For example, if your educational expertise is limited, or the group has not set up a new school before, we may provide additional support.

12.35. The level of EA support may also change during the pre-opening period. For example, if a project has significant difficulty recruiting a principal designate, the level of support may increase.

12.36. After opening, your EA will normally continue to provide professional advice, support and challenge to ensure that your school is delivering a high standard of education to your pupils. Your EA will normally undertake first, fourth and sixth term visits to your school, reporting to the department on your progress against the Ofsted inspection framework and assessing your preparations towards your first full Ofsted inspection. You should ensure you check the Ofsted website regularly to keep up to date with any changes to the inspection framework.

## Links to further information

The [New Schools Network](#) pre-opening site provides [guidance on recruitment, recruitment materials and exemplar applicant assessment exercises](#) which you may find helpful.

## 13. Funding agreement

- 13.1. The funding agreement is the legally binding contract between the trust and the Secretary of State, which sets out all the terms and conditions upon which a free school is funded. Signing the funding agreement is a significant step towards opening your free school.
- 13.2. Entering into a funding agreement is an important decision for both parties so requires careful consideration. For the Secretary of State, signing a funding agreement represents a commitment to fund your school. Your regional schools commissioner (RSC) will need to be sure that your trust is ready to enter the agreement and is likely to establish and maintain a popular and successful school.
- 13.3. The contract sets out what the trust needs to do. These include, for example, a requirement for admissions to be consistent with the school admissions code and relevant admissions law. The Trust must meet this (and other) requirements to receive funding. It also sets out the circumstances in which a funding agreement can be terminated.
- 13.4. The funding agreement checklist at the end of this section sets out the key tasks you will need to complete in order to begin the process of agreeing the funding agreement for your school.

### Why does DfE use model funding agreements?

- 13.5. The department produces model funding agreements for all types of academy, including free schools, studio schools and UTCs. There are different models available to reflect the requirements of different types of free school on the gov.uk website. Using model funding agreements helps the department ensure consistency across all free schools.
- 13.6. The terms of the model funding agreement have been developed since the beginning of the free schools programme. The Secretary of State has agreed these terms and is not willing to negotiate different terms for individual projects. The only acceptable variations between different funding agreements are those clauses which reflect the specific circumstances of that school, e.g. land arrangements, planned capacity of the school, faith/non-faith provision and arrangements for free schools with predecessor schools. The model funding agreement makes clear where these variations will be made and your contact will tailor them accordingly before sending the document to you.

## When should we begin the process for entering into funding agreement?

- 13.7. The timing for entering into a funding agreement will vary depending on the project. Your contact will decide the appropriate time for your project. There is no right or wrong time to sign a funding agreement and it is, in theory, possible to sign one right up to the moment the school opens.
- 13.8. However, the Secretary of State will consider signing a funding agreement only if you are able to develop your plans to the required standard during the pre-opening stage. For mainstream (primary, secondary and all-through) schools, the ideal is to enter into a funding agreement before the relevant national admissions offer day in the year in which the school is due to open, thereby giving parents receiving offers the confidence that the school will open that year. However, the Secretary of State will not enter into a funding agreement until she is confident – on the basis of advice from the relevant regional schools commissioner (RSC) – that the school will be a good, viable, sustainable and successful school, able to open on its proposed date and sufficiently secure about its permanent site. It is moreover open to the Secretary of State to cancel or defer a project at any point during the pre-opening stage – even after your funding agreement has been signed – if your plans are not to the required standard.
- 13.9. Your lead contact may want to arrange a formal checkpoint meeting to ensure that everything is in place to enable the Secretary of State to sign the funding agreement.
- 13.10. Before either party can begin the process of negotiating the funding agreement, there are certain statutory duties that must first be fulfilled by both parties.

## Statutory duties

- 13.11. The trust must consult under Section 10 of the Academies Act 2010 and have due regard to Section 149 of the Equality Act 2010 – see [Section 10 on Statutory Consultation](#) for full details.
- 13.12. The trust must consult under Section 10 of the Academies Act 2010 and have due regard to the outcome of the consultation.
- 13.13. Section 9 of the Academies Act 2010 to complete an assessment of the impact the opening of the free school will have on other state-funded educational institutions in the area, and is required under Section 149 of the Equality Act 2010 to consider the impact on equalities of the opening of the free school before the funding agreement can be signed. These processes will be undertaken by your contact.

13.14. In addition to the completion of statutory duties, the Secretary of State will want to be satisfied that the school will be popular and successful upon opening. In making her decision, the Secretary of State will consider:

- Whether the school will deliver a good or outstanding education, according to the Ofsted criteria. Have enough high quality teachers been appointed or are they likely to be appointed by the time the school opens? Is the school's leadership strong? Are all the school's policies in place?
- Whether the school has recruited enough pupils to be financially viable and will it be full within two to three years of opening? Are the admission arrangements for the school compliant with the School Admissions Code?
- Whether the board of trustees will be capable and effective. Does the proposed board include trustees with appropriate educational, financial and business experience/expertise? Are there arrangements in place to manage conflicts of interest?
- Whether the school will open on an appropriate, value for money site (or sites if a temporary solution is needed). At the very least, Heads of Terms will need to have been agreed for a temporary site with a reasonable prospect of securing a permanent site before the school opens.
- Whether the school is financially viable. The recruitment of pupils and an appropriate staffing structure are crucial for ensuring financial plans are affordable. Can the school cope with reasonable levels of change to its income and expenditure?

## How do we enter into a funding agreement – what is the process and who does what?

### The department

### Trust

The department sends trust a signature ready version of the relevant model FA – tailored to school's specific circumstances.

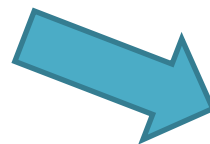


Trust consults lawyers (as necessary on school – specific clauses. All other clause are **non-negotiable**).

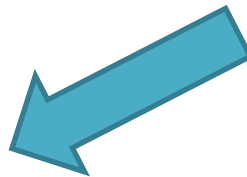
The department provides advice to the Secretary of State on whether to enter into FA. The department provides advice to the Secretary of State on whether to enter into



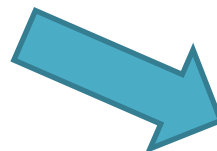
Trust informs the department when they are ready when to sign FA.



The department communicates outcome to trust.



Trust prints and signs three hard copies (each copy should have a copy of each Annex attached to it) and sends a copy to the department.



If the FA is approved, the department arranges for it to be signed and sealed and sends hard copy back to the



NB We strongly recommend that trusts wait to receive the signature-ready version of their funding agreement from their contact before engaging their lawyers in the process.

13.15. Previously, we have received drafts of funding agreements from trusts with suggested amendments to the model. This is no longer the case: the Secretary of State will not negotiate terms for individual projects.

13.16. To ensure the funding agreement is executed correctly, trusts must arrange for two trustees to sign the two copies (or one trustee and a witness). In addition, trusts should leave the documents undated when they send it to their contact – the DfE will date the document at the point it is signed and sealed.

### **How long does this process take?**

13.17. The timings for this process will vary, depending on individual projects. However, historically, the stage that most often holds up the process is agreeing the final version of the funding agreement. It is for that reason that we ask trusts to focus only on the school-specific clauses (as highlighted by your contact).

13.18. In order to speed up the process, we advise trusts to discuss with contacts, at an early stage in the pre-opening phase, their preferred timings for signing the funding agreement, e.g. in line with the local authority admissions process. Whilst we cannot guarantee that this will always happen, agreeing a timescale helps to focus both the trust and the contact on ensuring they have completed the necessary tasks in advance.

What are the arrangements for multi-academy trusts?

13.19. Multi-academy trusts require different funding agreements to single academy trusts. While a single academy trust will have one funding agreement for its single free school, multi-academy trusts require a master funding agreement to cover all schools within the trust and supplemental funding agreements for each individual school. Model funding agreements (single and supplemental) are available for mainstream, special, 16-19, university technical college, studio school and alternative provision free school on the gov.uk website. The master funding agreement contains general clauses (e.g. freedom to set the duration of the school day and year) whereas the supplemental agreement covers those clauses which are specific to the individual school.

13.20. If you are an existing single or multi-academy trust looking to open a new free school, the multi academy trust models (master and supplementals) will apply to you. Your contact will be able to advise on which model will need to be used.

### **Working with the department**

13.21. See process flowchart on previous page on how to enter into a funding agreement.

## 14. Ofsted inspections and registration as an independent school

- 14.1. Your free school will have more freedoms and flexibilities than other state-funded schools but, once open, it will be held accountable in exactly the same way and subject to the same Ofsted inspection regime.
- 14.2. Your free school must undergo an Ofsted pre-registration inspection and be registered on EduBase before it can legally open. The only exception to this is where an existing independent school is converting to become a free school. These schools will not require a pre-registration inspection.
- 14.3. The only situation where this may not be the case is where there is a 'material change' to the existing school. A material change could consist of changing the premises, capacity, age range of the school etc. As a rule, converting independent provision will not require a pre-registration inspection prior to becoming a free school but do talk to your contact if you think your situation could be described as a 'material change'.
- 14.4. 16-19 free schools are not legally independent schools but it has been agreed with Ofsted that they will undergo the equivalent of a pre-registration inspection to ensure parity of accountability for all free schools.

### Why you need an Ofsted pre-registration inspection and what the inspection looks at

- 14.5. In order to be added to the department's register of schools and legally be allowed to open, the Secretary of State must decide whether or not your free school is likely to meet the relevant Independent Schools Standards outlined below once open. The Ofsted pre-registration inspection informs that decision.
  - Part 2 Spiritual, moral, social, and cultural development of pupils
  - Part 3: Welfare, health and safety of pupils
  - Part 4: Suitability of the proprietor and staff
  - Part 5: Premises and accommodation
  - Part 6: Provision of information for parents, carers and others
  - Part 7: Procedures for handling complaints
  - Part 8: Leadership and management
- 14.6. NB - Part 1 of the regulations ('quality of education') does not apply to free schools and academies. Your education plans and policies will be considered during your [readiness to open meeting](#) with the department.



- 14.7. The inspection is not like a full inspection which you will be subject to once open, it merely seeks to establish if the school is fit to open based on the standards as outlined above.
- 14.8. You can link to the full [Independent School Standards](#), and to the [amendments](#) that took effect on 5 January 2015.

### Timing of pre-registration inspections

- 14.9. You will be informed by your contact when your inspection will fall. Your Ofsted inspector will then contact you directly to confirm the date of inspection. You will be given notice of when your inspection will take place and you will be expected to make yourselves available.
- 14.10. Schools which have made the most progress towards opening will be prioritised for early inspection, while projects that would benefit from more time before their inspection will be scheduled later. It may seem advantageous to have the inspection as late as possible to give yourselves the greatest possible time to prepare; however, having an early inspection gives you longer to put right any issues identified by Ofsted before your opening day. A school cannot legally open unless it has been added to the independent schools register.

### What you need to do ahead of the inspection

- 14.11. First, you'll need to fill in a copy of the [registration of independent schools form](#).
- 14.12. This form should be completed and accompanied by the following documents:
- A plan showing the layout of the premises and accommodation of all buildings.
  - A copy of the school's written policies on:
    - preventing bullying. Changes to the Independent School Standards in 2013 mean that it is no longer prescribed that bullying policies must take into account the DfE guidance 'Safe to Learn: Embedding anti-bullying work in schools'. However, you may still find it useful to consider the DfE advice for headteachers, staff and governing bodies.
    - safeguarding and promoting the welfare of children who are pupils at the school. This should be compliant with the relevant health and safety law. Again this no longer needs to have regard to DfE guidance: 'Safeguarding Children and Safer Recruitment in Education', but you may find it useful.
    - safeguarding and promoting the health and safety of pupils on activities outside the school which has regard to DfE guidance 'Departmental Advice on Health and Safety for schools'
    - promoting good behaviour amongst pupils setting out the sanctions to be adopted in the event of pupil misbehaviour.

- A copy of the school complaints procedures, as outlined in Part 7 of The Education (Independent School Standards) (England) Regulations 2010.
- Evidence that the school has appropriate procedures in place for undertaking Disclosure and Barring Service (DBS) checks of staff and recording the results (formerly known as CRB checks). All schools should have a single central register to record this information and it is the trust's responsibility to keep it up to date. The department's due diligence process means DBS checks have already been, or are being undertaken, on trust members and trustees. Before registration can take place, as a minimum, DBS checks must be completed and clear for all members of the trust (which must include those whose names are on the trust's articles registered at Companies House). That said, we would expect DBS checks on all trustees to be well underway if not complete ahead of registration.

14.13. The registration of independent schools form and these documents should be sent in one batch to your contact absolutely no later than two weeks ahead of your inspection. This is to ensure Ofsted inspectors receive all documents sufficiently in advance of the inspection. Your contact will advise on the deadline and send documentation onto Ofsted. **If you do not submit the necessary documentation in time your inspection may be delayed.**

### What happens once the forms have been sent to Ofsted

14.14. Once Ofsted receives all the relevant documents, they will consider them and report their views to the department. These will be taken into account in determining whether your school can be registered. However, before offering final views Ofsted will need to visit the school in order to advise the department on whether the school is likely to meet the prescribed standards for registration once open.

### Compliance with the Regulatory Reform (Fire Safety) Order

14.15. You will need to be able to demonstrate that your school is meeting the requirements of the [Regulatory Reform \(Fire Safety\) Order 2005](#). Trusts should ensure that they comply with the fire safety order and registration will not be agreed until confirmation of satisfactory fire precautions is received.

14.16. Trusts should inform the local Fire and Rescue Service ahead of opening but the fire service may decide not to immediately inspect the premises. Trusts should be aware that the fire service is not under any obligation to provide this service before the school opens, though many are still happy to do so. Ofsted will consider alternative evidence such as written confirmation from the Fire and Rescue Service that they have approved your fire risk assessment in principle;

- documentation/certificate issued by an independent fire safety advisor;

- confirmation that you have a fire risk assessment and are complying with the Regulatory Reform (Fire Safety) Order 2005.
- A Completion Certificate confirming construction in accordance with Building Control Regulations and compliance with the fire safety standards.

## The day of the inspection

- 14.17. The inspector will usually spend half a day with each school and they will need to be met and escorted by either the principal designate and/or the lead proposer. They may also need access to some office space in order to work. While in most cases it is the principal designate who talks to the inspector, it does not have to be. As long as someone else in the group can talk through the policies and plans, the principal designate does not have to be there. Ofsted will not rearrange the date of the inspection because the principal designate is unavailable.
- 14.18. In order to make a judgement about each of the standards, the inspector may ask to see a [number of policies](#) on the day in addition to those submitted with the registration form. If for any reason a document is not available, whoever is meeting the inspector needs to be able to discuss the plans for its development. Similarly, if the work on the site is not completed, you will need to be prepared to talk to the inspector about how the building will develop. If site works are still underway and it is possible for the inspector to be shown around (hard hat on!) that would be desirable but, again, not necessary. The building work does not need to be completed ahead of the inspection but the inspector will need to see evidence that all the requirements of part 5 of the standards, relating to the premises and accommodation of the school, are being considered and will be met by the time the school opens.

## After the inspection

- 14.19. After the inspection, the inspector will produce an advice note and a checklist. The advice note is for the Secretary of State but the checklist will be sent to you by your contact.
- 14.20. In the event that the Ofsted checklist indicates that there are issues that must be addressed - known as 'conditions of registration' - the free school trust must take action to resolve these before the school can open. Your contact will be in touch to make sure that the conditions have been met and that you have evidence to demonstrate this.
- 14.21. In the event that Ofsted recommends that your school should not be registered your contact will work with you to urgently address the issues and will arrange for the school to have a re-inspection, if necessary. After the re-inspection the inspector will produce a second advice note and checklist.

- 14.22. It is the department, not Ofsted that decides when your conditions have been met. Only then can you be registered onto EduBase. If you are not added to this, you cannot legally open!
- 14.23. From 2015 Ofsted will publish the advice note and checklist. In every year of free schools opening so far there has been a Freedom of Information request to the department to publish these documents, and subsequently published them. If you're interested in seeing what an advice note and checklist looks like, you can view [previously published advice notes](#). You should also be careful in how you communicate the outcome of your inspection to your local community. These inspections are about whether or not the school is fit to open rather than any judgement of quality. For example, it would be incorrect and misleading to say that Ofsted have visited and said you are 'outstanding'.

## EduBase Registration

- 14.24. EduBase is the department's database of all educational establishments across England and Wales. Being entered on EduBase gets your free school its DfE number and unique reference number, which are used in a variety of circumstances to identify the school formally.
- 14.25. The first thing that needs to happen is for you to complete your EduBase form (your contact will provide this) and submit a copy to [Edubase.FreeSchools@education.gsi.gov.uk](mailto:Edubase.FreeSchools@education.gsi.gov.uk). This form is different from the one available on the independent schools part of the gov.uk website, because the process involved is slightly different. The Edubase form can be submitted for processing at any time during the pre-opening period, but you should aim to ensure that it is submitted by the end of phase 3 at the latest. You will need a landline telephone number to put on this form (others are not accepted on the EduBase system). If you do not have one for the school, use another but remember to change it to the school's number as soon as you have Secure Access login details.
- 14.26. Once the form has been processed your school will initially be registered as 'pending approval', which means that although your school will have an EduBase profile, it will not be searchable to the public. After your school has completed the initial Edubase registration, you will then be issued with your DfE number and unique reference number.
- 14.27. Please note that your school will not be publically searchable i.e. your school's status will not be changed to 'proposed to open' (the final stage of the EduBase registration process) until you have a funding agreement in place, any pre-opening specific ROM actions are addressed, and you have successfully completed your Ofsted pre-registration inspection and been assessed as likely to meet all the relevant Independent School Standards.

- 14.28. Please note that your school will not be searchable to the public unless the department is satisfied you have met all these requirements.
- 14.29. Once your contact has confirmed that your school's status has changed on EduBase, you will need to contact Secure Access in order to gain login details for EduBase via [SA Service Request form](#). Secure Access is the department's portal for systems such as *COLLECT*, *School to School*, *Key to Success*, *EFA managed Information Exchange* and since June 2015 Edubase.
- 14.30. It is important that someone at the school takes responsibility for keeping your EduBase record up to date – the department will not do it for you.

## Inspections once open

- 14.31. Once open, mainstream, alternative provision and special free schools are inspected under the same arrangements that apply to maintained schools, and 16-19 free schools are inspected under the same arrangements that apply to other post-16 providers. The first full inspection of a free school normally takes place during the second year of opening (for schools with boarding provision, this will be the first year). Full inspections are conducted under Ofsted's Common Inspection Framework for education, skills and early years. Ofsted publishes a School Inspection Handbook (covering section 5 inspections) and a Further Education & Skills Inspection Handbook, which provide more detailed information about the inspection process and criteria. Further information about inspection is available on [Ofsted's website](#).
- 14.32. Ahead of schools' first Ofsted inspection, the department's education advisers will carry out monitoring visits to open free schools in their first third and fourth terms.
- 14.33. The objectives of the EA visits are to ensure that schools are satisfactorily addressing risks identified at ROMs (first-term visits only); that they are providing a high standard of education, are likely to enjoy a good or better first Ofsted inspection and to assure the department that there are no other issues or concerns that need to be addressed.
- 14.34. Monitoring will use the new Common Inspection Framework (CIF). EAs will make contact towards the end of September to make arrangements for visits. The department may ask EAs to conduct follow-up monitoring visits should schools' require additional support in their first year.
- 14.35. Visits are supportive but are also designed to provide challenge in order to highlight areas schools should focus on ahead of their first Ofsted inspection. In addition to monitoring visits, many open free schools have found it useful to buy in support to undertake a trial run inspection ahead of the real thing to identify any outstanding issues. Many providers offer this service and employ ex-HMI to deliver it.

14.36. These external assurance exercises will help validate schools' own self-evaluations and inform school improvement plans ahead of their first Ofsted inspection.

## Lessons learnt – open free school experiences of Ofsted inspections

14.37. In 2013, the first free schools were inspected by Ofsted. In February 2014, the New Schools Network (NSN) analysed the reports of all free schools inspected, to date. They have drawn out the key issues where inspectors found further development was needed:

14.38. **Governance** – in some schools, Ofsted found that governors lacked a clear understanding of the school's strengths and weaknesses, and did not provide enough challenge to senior leaders.

14.39. **Target setting and use of assessment** – some schools were not using assessment data to inform the way that they set targets or planned teaching. This was sometimes linked to a lack of previous pupil data or to the quality of the systems which the school was using to collect data about its pupils.

14.40. **Middle leadership** – in some schools, middle leadership was underdeveloped and was not yet having enough of an impact on the school. This was usually due to the short period of time that middle leaders had been in post, the small size of the staff body in the early years of the school or an overreliance on senior leaders.

14.41. Based on this analysis, New Schools Network (NSN) has produced guidance on the lessons learnt from free schools' experience so far. They have also compiled all of the inspection reports published on free schools and published resources from a day of training held on Ofsted inspection for free schools, which includes materials from Ofsted HMIs who contributed to this.

14.42. Moreover, initial analysis within the Department for Education has highlighted the following additional themes from open free schools:

- PD recruitment – experience shows that recruiting a high-quality PD is crucial to securing a good or better Ofsted result.
- Staff retention – schools with high staff turnover (particularly PDs) tend to fare worse in their Ofsted inspections.
- Quality of teaching – schools where the quality of teaching is inconsistent tend to fare worse in Ofsted inspections (there may be a link to high numbers of inexperienced staff members).
- Behaviour and attendance – in those schools which fare better in Ofsted inspections, their behaviour policy tends to be more consistently and effectively implemented.

- Pupil expectations – in schools which fare better in Ofsted inspections, high expectations are clearer for pupils and staff.
- Moderation – in schools which fare better in Ofsted inspections, they moderate their data (e.g. assessment data) externally to validate their judgements.

## Working with the department

- 14.43. The pre-registration inspection process is applicable to all free schools except independent converters, and it is up to you to follow the process as set out above. You will have some interaction with the department about the inspection through your contact.
- 14.44. Your contact will advise you when your inspection will take place during the summer prior to opening.
- 14.45. You will need to send the completed registration form and all of the relevant documentation to your contact at least two weeks before your inspection. If you don't, you risk your inspection being delayed.
- 14.46. Following the inspection, usually within three weeks, your contact will send you the checklist sent to the department by Ofsted. Should there be any issues which need to be resolved, they will be clearly indicated on the checklist.
- 14.47. If, following your inspection, the school is recommended by Ofsted not to be registered, your contact will arrange for you to have a re-inspection and will work with you to address the issues which have been highlighted.
- 14.48. You will need to provide evidence to your contact that you have met any conditions specified by Ofsted. Once the contact is satisfied that any conditions have been met, and a funding agreement has been entered into, you can be registered on EduBase and are legally allowed to open.

## Links to further information

[View Table 13 Ofsted inspections and school registration: checklist of activities.](#)

- [Independent School Standards](#)
- [Amendment to independent school standards](#)
- [Advice on bullying for headteachers, staff and governing bodies](#)
- [Safeguarding Children and Safer Recruitment in Education](#)
- [Health and Safety of Pupils on Educational Visits](#)
- [Ofsted advice notes](#)
- [Ofsted website](#)



## 15. Preparing to open

15.1. Readiness to open meetings (ROMs) will take place before the end of June ahead of opening in September and are formal meetings between the department and the trust to:

- consider the progress the project has made through the pre-opening phase;
- tackle any remaining obstacles and risks to opening; and
- consider any further actions that need to be taken to ensure opening and a successful first year of operation.

15.2. Education will be the key focus of the ROM. The department will use the meeting to make a judgement on how confident it is that the proposer group will open a successful school.

15.3. Attendees from the proposer group should be:

- Chair of Governors (we suggest both the Local Governing Chair and the Chair of the board from the multi academy trust should attend where appropriate);
- Principal Designate (Head of school and or the Executive Head may also attend where appropriate);
- any other person who can provide information useful to the meeting, e.g. Chair of Finance Committee, Business Manager;
- for UTCs and studio schools a university or employer could also be invited.
- Only those who hold a governance or leadership role should attend, with a maximum of five external attendees overall.

## Summary of the key tasks

15.4. In most instances the ROM will take place in the department and be chaired by a senior DfE official. Given the focus on education at the ROM, a DfE education adviser will also attend.

15.5. The Principal Designate will be required to complete a risk report and return it to the contact at least two weeks prior to the ROM. The report will:

- outline any risks or issues and the actions needed to address those issues;
- identify areas that require further discussion



## Working with the department

- 15.6. Your contact will discuss the format and aims of the ROM with you in advance of the meeting. There will also be an opportunity to consider the content of the risk report to be completed by the PD.
- 15.7. Your contact will inform you of the venue of the ROM and will agree an appropriate date.
- 15.8. The ROM will be chaired by a senior DfE official and will also be attended by your education adviser, contact and, where appropriate, representative(s) from EFA.
- 15.9. They will ask questions about progress, risks and issues in key areas of the project and agree actions for each area where appropriate.

## Links to further information

[View Table 14 Readiness to open: checklist of activities.](#)

## 16. Once your school is open

### The final stage of the pre-opening period

- 16.1. The final stage of the pre-opening process is to prepare for opening, which includes the hand-over of your free school project from the department's free schools group (FSG) to the EFA, which is responsible for all open academies, including free schools.
- 16.2. You will be introduced to your EFA link officer at your ROM and it will be from this time onwards that the hand-over arrangements begin. Your contact will ensure that your EFA representative is fully briefed on your project so they know what challenges you may experience in your early days of opening. Once your project is handed over to the EFA it is important that you communicate with your EFA contact and not your original contact.
- 16.3. Your EFA link officer will arrange an initial meeting with you early in the autumn term of opening to provide an opportunity to visit your free school and develop an understanding of the school's vision. The expectation is that once your school is open, you have the freedom, autonomy and responsibility to run it. You should call on the EFA only if issues arise on which you need specific advice or guidance. Details of how to contact the EFA can be found below.

### What does the EFA do?

- 16.4. The role of the EFA is to calculate and pay revenue and capital funding, as well as seek assurance over the use of public funds from academies of all types, including free schools, university technical colleges, and studio schools.
- 16.5. The EFA expects free schools to make the most effective use of their financial freedoms to raise educational standards, operating full accountability for how they spend tax-payers' money. Schools are asked to complete certain tasks so the EFA may provide assurance that this is the case and that free schools are meeting the terms of their funding agreements.
- 16.6. The EFA supports a free school's compliance with its funding agreement by responding to any requests that you may make of the Secretary of State as required by the funding agreement. This may include things such as: approval to enter into a lease; to dispose of land; or to make significant changes to provision, for instance by adding a sixth form.

## How will the EFA work with you?

16.7. The EFA has published a Customer charter that sets out what all free schools and academies can expect in terms of service delivery standards. The paragraphs below are a summary of the EFA's role and service in relation to free schools.

16.8. You can get information and support from the EFA in these ways:

- The website 'About the EFA' is the gateway site for all EFA customers and has specific areas for academies and free schools.
- The Academies Financial Handbook, information about school funding reform, schools forum regulations, the Priority Schools Building Programme and the School Admissions Code are a few of the useful documents available on the website.
- Every fortnight the EFA publishes an e-bulletin that contains information for academies and free schools. It highlights key developments and changes in policies and procedures, events and things to look out for. It is often used to remind you of returns that are due.

16.9. If you cannot find the information you need on the website, you can email queries to the Enquiry Service at: [academyquestions@efa.education.gov.uk](mailto:academyquestions@efa.education.gov.uk). The EFA aims to answer questions within 48 hours and if they can't do that, will tell you and keep you informed of progress.

16.10. Free schools will in addition have a named point of contact or link officer for you to deal with. This will be for the first year of operation. You will meet the EFA link officer at the ROM.

## Key tasks in the early days of opening

- a. Meet with your EFA representative.
- b. Update EFA on pupil recruitment numbers and any early issues.
- c. Prepare for a DfE education adviser visit in your first term of opening.
- d. Ensure that the academy trust has approved an annual budget for the first year of operation and submitted this to the EFA in accordance with the published timetable.
- e. Ensure that the academy trust has implemented the requirements of the 'Academies Financial Handbook'.

## Links to further information

[View Table 15 Handover to EFA: checklist of activities.](#)

- [EFA website](#)
- [Academies Financial Handbook](#)
- [EFA Customer Charter](#)
- [About the EFA](#)
- [Funding reform](#)
- [Schools forum](#)
- [Priority Schools Building Programme](#)
- [EFA e-bulletins](#)

## 17. Freedom of Information (Fol)

### Freedom of Information explained

- 17.1. The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways:
- public authorities are obliged to publish certain information about their activities; and
  - members of the public are entitled to request information from public authorities.
- 17.2. The Act covers **any recorded** information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.
- 17.3. The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a subject access request under the Data Protection Act 1998.
- 17.4. Free schools are likely to be the subject of Freedom of Information requests asking for written information about the school. Whilst the Freedom of Information Act (2000) does not apply to free schools until the school is actually open, Freedom of Information requests received after this point can still request information generated during the pre-opening phase. It is therefore worth thinking now about the type of information that you hold.

### Summary of the key tasks

- 17.5. The department cannot advise free schools on how to answer a Freedom of Information request. However, if you receive a request and are unsure how to deal with it, you should ask your EFA Academy Liaison Officer, in the first instance, as they may be able to help you understand what is being asked of you and can point you in the direction of useful resources.
- 17.6. From time to time, we are made aware of “round robin” Freedom of Information requests that are being sent to every open free school. If you think you have received such a request it would be helpful to let the department know.

## Other helpful sources of information

- 17.7. It may be helpful, when considering how best to answer an FoI request, to look at the [Information Commissioner's Office website](#). This provides advice on understanding the request, and on any exemptions that you may use when dealing with the request.

## 18. Who does what – roles and responsibilities?

### The academy trust

18.1. You (the trust) are solely responsible for leading and managing the establishment of your free school. You are responsible for using any funding effectively and acquiring and engaging the necessary expertise and support.

18.2. Typically, trusts will carry out the following tasks:

- provide vision, drive, and innovative solutions to guide the development of the free school;
- agree the project support arrangements you will need and manage the project development grant;
- develop the curriculum, specialist provision and organisational plans;
- agree the Memorandum and Articles of Association with the department;
- play a leading role in the composition of the free school trust board and appointment of trustees; ensuring there are no conflict of interests and appointments are made on the essential skills and expertise they can bring to the school;
- apply for DBS checks and ensure all members and trustees obtain valid DBS certification;
- continue to market and promote your school through pre-opening;
- carry out the statutory duty under Section 10 of the Academies Act 2010 to consult on your school;
- develop the staff plan and recruit the principal designate and other key staff;
- develop the school policies including admissions, special educational needs (SEN), behaviour, etc. and ensure these are in line with statutory requirements;
- develop robust, accurate and realistic financial plans; agree the terms set out in the funding agreement and understand the associated legal responsibilities and implications;
- recruit pupils to your school; and
- keep the department (via your contact) informed of the progress of the project through meetings.

### The Department for Education

18.3. You will be allocated a contact from the department's free schools group, who will have three key roles:

- to challenge you, pushing you to complete certain tasks and questioning your approach to particular issues so that you satisfy the Department's expectation that all free schools should receive a good or better rating following their first Ofsted inspection and that they should be financially and educationally viable from day one;
- to ensure that the Department's legal duties are correctly executed on behalf of the Secretary of State; and
- to ensure that ministers and regional schools commissioners are kept up to date on how the free school is progressing through the pre-opening stage.

18.4. Your contact will arrange to meet you via an initial kick-off meeting. A capital project director and project manager from the EFA (see below) will also be present to discuss your site and buildings requirements, and how the EFA will support you with your school building project. They are likely to have done some work on your site requirements before they meet you.

18.5. At that kick-off meeting, your contact will give you feedback on the assessment of your application and cover any specific conditions that will need to be met in order for your project to progress successfully through pre-opening. They will also discuss your immediate priorities and answer any questions you have.

18.6. In advance of this meeting you should think about the progress you have made since your application was submitted. In particular, you will be asked to update your contact on the plans you have for:

- developing your admission arrangements;
- commissioning DBS checks on members and directors;
- spending your project development grant appropriately;
- recruiting a Principal Designate;
- submitting your Memorandum and Articles of Association for approval;
- submitting your governance plan and appointing your chair of governors.

18.7. Your contact may also arrange a series of meetings with you to discuss risks and issues at key points in the process, and will advise ministers and regional schools commissioners on progress.

## **Regional Schools Commissioners**

18.8. As the number of academies and free schools continues to grow, we have considered how the system should respond, in particular to ensure that decisions about the academy school system (including free schools) should be taken closer to the areas concerned, and that education leaders should have a stronger influence on those decisions. The best people to do this are outstanding leaders



and heads in each region. Local heads know their areas best and know what is right for academies and free schools locally.

18.9. In September 2014, the Department therefore appointed eight Regional Schools Commissioners (RSCs) across eight regions of the country (see table below). The RSCs report to the national Schools Commissioner.

RSC	Region (office location)
Janet Renou	North (Darlington)
Vicky Beer	Lancashire and West Yorkshire (Manchester)
Jenny Bexon-Smith	East Midlands and Humber (Sheffield)
Pank Patel	West Midlands (Coventry)
Dr Tim Coulson	East of England and North East London (Cambridge)
Martin Post	South Central and North West London (Hemel Hempstead)
Sir David Carter	South West (Bristol)
Dominic Herrington	South East and South London (Croydon)

18.10. Each RSC is advised by a headteacher board of six to eight elected, appointed or co-opted members. Members are academy headteachers and professional leaders. They are key to the development of a self-improving school system.

18.11. RSCs take decisions regarding academies and free schools in their regions in the name of the Secretary of State. All decisions are taken in line with the legislation and our published criteria. Further information on RSCs can be found [here](#).

18.12. RSCs' general responsibilities include:

- taking action when an academy, free school, university technical college (UTC) or studio school is underperforming;
- taking decisions on the development of new academies;
- making recommendations to ministers about free school applications and opening;
- encouraging organisations to become academy sponsors, approving sponsor applications and helping to build the capacity and capability of existing sponsors within their area; and
- approving changes to open academies, for example: changes to age ranges, mergers between academies; and changes to multi-academy trust arrangements.

18.13. Since 1 July 2015, RSCs have also taken on responsibility for addressing under-performance in local authority maintained schools through sponsored academy arrangements.

18.14. RSCs' key responsibilities in relation to free schools (including "LA presumption schools"), UTCs and studio schools are:

- advising on which free school applications (including mainstream, 16 to 19, special and alternative provision) to approve;
- advising on whether to cancel, defer or enter into funding agreements with free school projects in pre-opening; and
- tackling educational underperformance in open free schools, UTCs and studio schools.

## Education adviser (EA)

18.15. Your project will be allocated an education adviser (EA), who is contracted by the department to provide expert educational advice. As a minimum they will usually:

- provide assurance about the quality of the educational offer;
- review and sign off the education brief;
- comment on the suitability and affordability of the staffing structure (especially the senior team);
- support the appointment of the principal designate;
- sign off the pupil assessment and baselining policy;
- advise on the safeguarding policy; and
- attend and contribute to key meetings, especially the kick-off meeting and the readiness to open meeting.

18.16. There is more detail on the EA role in [Section 12: Education plans, policies and staffing](#).

## EFA capital support

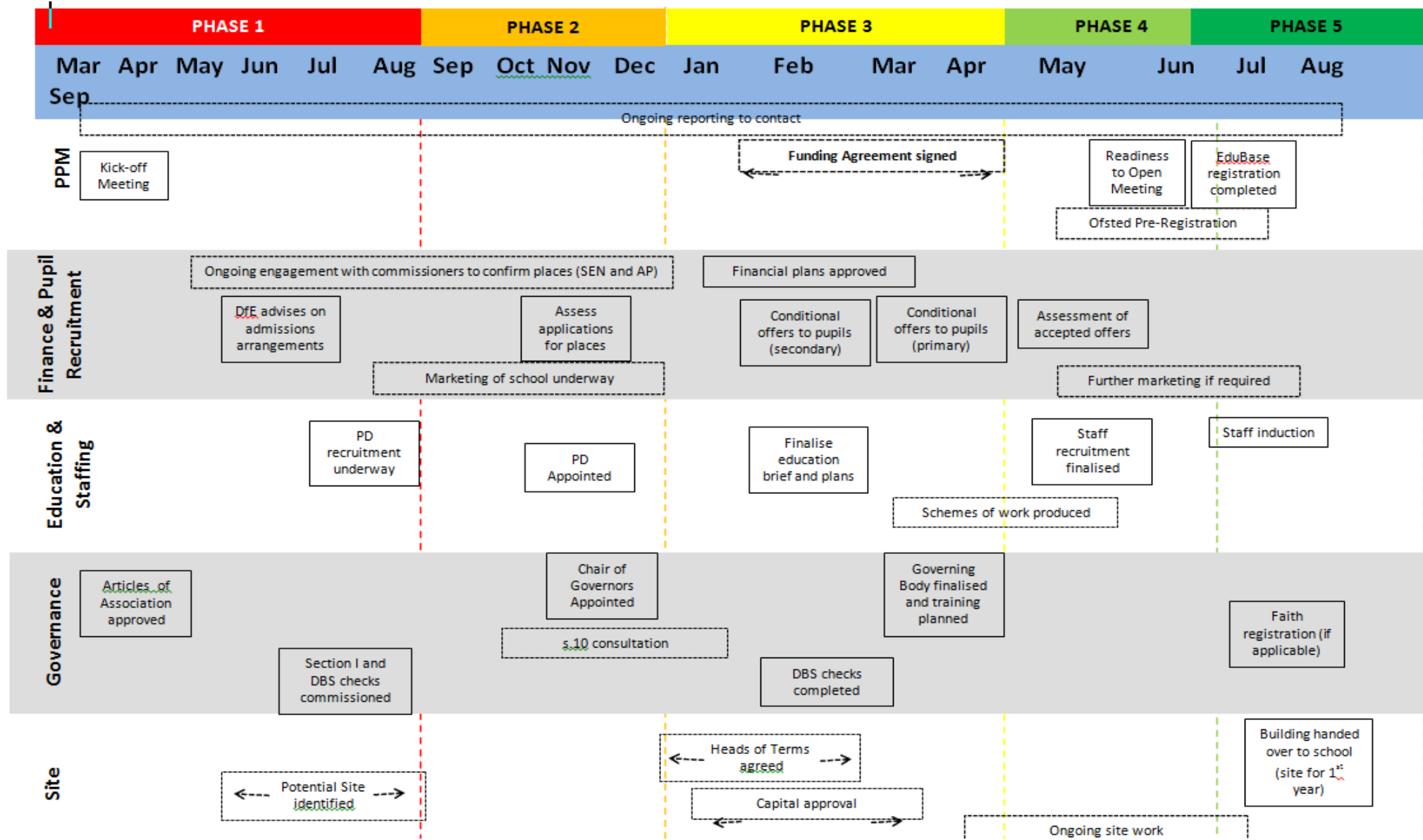
18.17. Expertise and technical support will be provided to help you to both secure a site and construct the buildings for your school. Key contacts for your project will be:

- EFA project manager – the main contact for the capital project and who will coordinate further technical support when required and progress the project up to and including the procurement of the site and building(s).

- EFA project director – to oversee your project manager to ensure that your project is progressing to programme. They will provide support and guidance to the EFA project manager where required.
- EFA project technical adviser – who will oversee the capital project when procurement has been completed and will coordinate any specialist support requirements (e.g. surveyors).
- EFA ICT adviser – to discuss your ICT requirements and agree suitable solutions value for money.

18.18. More detail on the EFA capital role is included in the [site and buildings](#) section of this guidance.

# Example Free School Pre-opening Timeline



## Project task checklist

**Table 1 Managing your project: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Review the capacity within your group to ensure there is sufficient expertise with the right skills sets (financial, educational and other appropriate skills), the capability, and time commitment to successfully deliver your school project. Submit governance plan to contact.	trust	Phase 1
Ensure you have a robust project plan in place with key project milestones and sufficient resources allocated to manage all the tasks in pre-opening, including expertise to manage your project plan.	trust	
Ensure you have a marketing plan in place to ensure marketing is a continuous priority process throughout pre-opening.	trust	
Kick-off meeting with trust.	contact	
PD recruitment – draw up timeline and set interview dates. If benchmarking is necessary liaise with EA to ensure they feed in and can scrutinise.	trust	

**Table 2 Procurement and additional support: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Plan pre-opening expenditure, agree approach to procurement and set up arrangements to manage the budget.	trust	Phase 1
Decide where the trust will need to buy in services and support and plan the appropriate procurement to ensure suppliers/goods are in place as and when required.	trust	

**Table 3 Governance: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
To have established a company limited by guarantee (the trust) using the department's model Memorandum and Articles of Association. Set governing body size.	trust	Pre-application - to be discussed at kick-off meeting
Pen portraits on new trustees. Procedures in place to identify and manage conflicts of interest.	trust	Phase 1
To have in place plans for the structure of your governing body and plans for how you will source, recruit and train your trustees.	trust	Phase 1
To have recruited the chair and be on track to recruit remaining trustees and support staff. Workable plans in place for recruiting the remainder, and any training.	trust	Phase 3
Trustee recruitment complete and work completed/underway on key protocols and documents for term one.	trust/chair of trustees	Phase 4

**Table 4 Due diligence: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Ensure you inform the department of all new members and trustees and have sent in all completed Section I forms to the Due Diligence Unit.	trust	Whenever a new member or trustee is appointed
Ensure that all enhanced DBS checks have been commissioned for the trust.	trust	Phase 1
Ensure that all members and trustees have emailed a scan of their DBS certificate along with declaration statement to the Due Diligence Unit.	trust	Phase 2

**Table 5 Funding checklist**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Issue project development grant agreement.	contact	Phase 1
Plan pre-opening expenditure, open bank account (if this doesn't already exist), agree approach to procurement and set up arrangements to manage the budget and comply with the terms of the grant agreement.	trust	
Sign and return project development grant agreement.	trust	
Submit plans for expenditure of PDG throughout pre-opening to your contact as defined in your grant agreement.	trust	
Continue to develop school finance plan as project develops and review staffing structure.	trust	
Submit plans for expenditure of PDG throughout pre-opening to your contact as defined in your grant agreement	trust	Phase 2

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Continue to develop school finance plan as project develops and review staffing structure.	trust	
Submit plans for expenditure of PDG throughout pre-opening to your contact as defined in your grant agreement	trust	Phase 3
Submit revised financial plan which takes account of pupil numbers and a revised staffing structure for the school on opening.	trust	
Assess financial plan and planned governance arrangements for the school.	contact	
Submit plans for expenditure of PDG throughout pre-opening to your contact as defined in your grant agreement	trust	Phase 4
Issue indicative funding letter based on approved financial plan and agreed estimate of pupil numbers.	EFA (revenue)	Phase 4

**Table 6 Site and buildings: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Arrange site kick-off meeting.	contact	Phase 1
Search for a site.	EFA	Phase 1
Confirm technical feasibility of site, including planning.	EFA	Phase 2
Procure construction works and ICT.	EFA	Phase 3
Build or refurbish school.	EFA/trust	Phase 3
Building works complete and site handed over.	EFA	Phase 5



**Table 7 Admissions: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Submit admission arrangements to contact. These should include the timeline and process for accepting applications and making offers.	trust	Phase 1
Trust to work with contact and admissions team to agree admission arrangements for the free school.	trust/contact	Phase 1
Submit marketing plan for discussion.	trust/contact	Phase 1
Free schools should include their draft admissions policy (or at least an outline of the area they are going to serve, the number of pupils they are going to admit and any specific type of criteria – such as ‘siblings’ – they are thinking of including in their final policy)in their S10 consultation. This allows interested parties to comment on the arrangements.	trust	To link into S10 consultation timeline - Phase 2
Monitor pupil recruitment - providing frequent updates, with supporting evidence, to your contact - and consider how this relates to the financial and educational viability of the free school.	trust/contact	On-going
Make offers to pupils in line with published admission arrangements.	trust	1st week of March - secondary national offer day Mid-April - primary national offer day

Although free schools are able to set their own dates for offering places, many will do so around the same time as national offer day. Free schools need to ensure they follow their published admission arrangements when accepting applications, allocating places and making offers. When offering places, free schools without a signed funding agreement must make it clear that the offer is conditional on the funding agreement being signed.	trust	
Ensure an independent appeals panel is in place to hear any appeals from unsuccessful applicants following the offer of places. Appeals should be heard after firm offers/refusals are made.	trust	Before the offer of places

**Table 8 Faith: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Identify a religious authority for admissions.	trust	Phase 1
Identify a religious authority for inspections.	trust	
Submit FSRDApp1 form to the department.	trust	Phase 1

**Table 9 Statutory consultation: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Have clear plans in place for carrying out your consultation	trust	Phase 1
Launch your consultation in line with section 10 of the Academies Act 2010.	trust	Phase 2

Include evidence from the section 10 consultation in the assessment of the impact that opening the free school will have on other state-funded educational institutions in the local area.	contact	Phase 2
Consider the responses to your consultation and whether you need to make any changes or additions to the plans for your school	trust	Phase 2
Provide a report of the consultation, including key findings, to the department.	trust	Phase 3

**Table 10 Equalities duty: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Review your on-going commitment to your equalities duty for all your plans and policies through-out pre-opening.	trust	On-going

**Table 11 Staffing, education plans and policies: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Discuss your proposed staffing structure with the department.	trust	Phase 1
Consider how you will meet your statutory duties in relation to the Equalities Act through recruitment material for staff.	trust	
Begin the recruitment process for your principal designate.	trust	
Include the recruitment of staff and the development of your educational plans and policies in your project plan.	trust	

Recruitment of essential senior staff begins.	trust	Phase 2
Begin drafting all the staff policies required for recruitment of staff.	trust	
Single Central Register (SCR) set up	trust	
Staffing structure finalised and financially viable given likely number of pupils.	trust	Phase 3
Key appointments made and minimum staff appointed, Disclosure and Barring Service checks (was CRB), contracts and pension arrangements underway.	trust	
Have in place all education plans and policies that are required for your Ofsted pre-registration inspection (not applicable to registered independent schools which are converting).	trust	
Produce curriculum plan.	principal designate or education expert	
Produce three-year development plan/education brief (the overarching plan to which all other policies and plans relate).	principal designate or education expert	
Schemes of work developed that cover at least the first year of opening.	principal designate other teaching staff in post if applicable	Phase 4
Pupil level assessment and accreditation plans in place.	principal designate	
All <a href="#">policies the trust has a statutory duty to produce</a> are in place.	trust	
Plans for pupil induction in place.	principal designate	
Begin staff induction and training.	trust	

**Table 12 Funding agreement: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Complete your statutory consultation and submit report to your contact.	trust	Phase 2
Meet your requirements, as a public authority, under section 149 of the Equality Act 2010.	trust	
Have appointed sufficient, and appropriate, staff to start in September of opening (including PD).	trust	
Secure enough pupils (with conditional offers) to meet your PAN.	trust	
Submit your financial plans to your contact for approval.	trust	
Secure your permanent site for your school (i.e. Heads of Terms in place).	trust	
Produce the necessary policies for the Ofsted pre-registration inspection.	trust	

**Table 13 Ofsted inspections and school registration: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Inform the trust when their inspection will take place.	Ofsted	Phase 3
Submit the completed Ofsted registration form and all required documentation to Ofsted.	trust	
Submit the completed EduBase form to the department.	trust	

[If inspection concluded and checklist issued by Ofsted] Send the Ofsted pre-registration inspection checklist to the trust.	contact	Phase 5
[If inspection concluded and checklist issued by Ofsted] Address any conditions of registration identified by Ofsted as per the checklist	trust	

**Table 14 Readiness to open: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Agree date/venue of ROM	contact/ trust	At least one month prior to the ROM (Phase 4)
Discussion/briefing on ROM	contact/ trust	
Completion of PD Risk Report	principal designate	At least two weeks prior to the ROM (Phase 4)
ROM meeting	principal designate, lead proposer, chair of trustees, contact and EFA.	Phase 4
ROM risk register and key actions document	contact	Two weeks after ROM (Phase 4)

**Table 15 Handover to EFA: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Complete actions generated from the ROM	trust	Phase 4

Activities to complete	Who has responsibility	Recommended timescales to complete
Meet with your EFA representative	trust/EFA	Phase 4
Ensure your free school is prepared for an education adviser visit during the first term	trust	First Term
Ensure that the requirements of the Academies Financial Handbook are in place when the school opens, including formation of a finance committee, the appointment of external auditors, responsible officer and accounting officer	trust	By opening
Approval and submission to EFA of the trust's annual budget forecast for the first year of opening	trust	Early autumn (year of opening)
Completion and submission to EFA of academies' financial management and governance self-assessment	trust	First term



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