



Department
for Education

The academy/free school presumption

**Departmental advice for local authorities
and new school proposers**

May 2013

Contents

Summary	4
About this departmental advice	4
Effective date	4
What legislation does this advice relate to?	4
Who is this advice for?	4
Key points	5
Academy/free school presumption process	6
Overview	6
Local authority consultation	6
Impact assessment	6
Seeking proposals	6
Funding arrangements	7
Notifying the department – school specification	7
Notifying the department – proposals	8
Sponsor approval	8
Completing the assessment	8
Funding agreement	9
Sponsor consultation	10
Communication	10
Other useful information	10
Further sources of information	11
Targeted Basic Need Programme	11
Associated resources (external links)	11
You may also be interested in (internal links)	11

Summary

About this departmental advice

1. This advice is non-statutory. It is part of the department's guidance to local authorities (LAs) on the establishment of new schools. It sets out for LAs and new school proposers the department's expectations of how the academy/free school presumption process should operate in practice and the characteristics and qualities that new school proposers must demonstrate. This advice applies to all new schools established under the academy/free school presumption, including those that are proposed to be funded from the Targeted Basic Need Programme.

2. The Education Act 2011 changed the arrangements for establishing new schools and introduced section 6A (the academy/free school presumption) to the Education and Inspections Act 2006. Where a LA thinks there is a need for a new school in its area it must seek proposals to establish an academy/free school. Section 6A came into effect:

- on 1 February 2012 for new schools other than pupil referral units; and
- on 1 September 2012 for new pupil referral units.

Effective date

3. This advice applies from 16 May 2013. The requirements set out in this advice supersede those of the previous version. This advice applies to any proposed new schools where LAs seek academy/free school proposals on or after the date of its publication, and all new schools for which LAs have applied for funding from the Targeted Basic Need Programme.

What legislation does this advice relate to?

- 4.
- The Education Act 2011 (EA 2011).
 - The Education and Inspections Act 2006 (EIA 2006).
 - The Academies Act 2010 (AA 2010).

Who is this advice for?

5. This advice is for:
- Local authorities; and
 - New school proposers.

Key points

6. The presumption arrangements require LAs to seek proposals to establish an academy/free school where they have identified the need for a new school in their area. The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening costs.
7. All new academy/free school proposals require the Secretary of State's approval. It is the Secretary of State who will enter into a funding agreement with the proposer.
8. LAs must notify the Secretary of State of their plans to seek proposals for a new school as soon as the need for a new school has been agreed.
9. Once formal proposals are received, the Secretary of State must be provided with details of all proposers. The Secretary of State will then notify the LA if he has any concerns about a proposer's capability or capacity to deliver the proposal and particularly where he is minded not to enter into a funding agreement with a particular proposer.
10. The LA should assess all proposals received (see advice in paragraphs 23-25). The outcome of the LA's assessment should be sent to the Secretary of State. In deciding the proposer with whom he would be prepared to enter into a funding agreement, the Secretary of State will consider the LA assessment very carefully. The preference indicated by the LA will be a key factor in that consideration. However, he will reserve the right to put in place a proposer of his own choice, particularly where there is further evidence available to him about the suitability of a proposer – or the availability of a better proposer. The intention is to ensure that the school is always established by the best proposer possible.

Academy/free school presumption process

Overview

11. Where a LA thinks a new school needs to be established in their area, section 6A of EIA 2006 places the LA under a duty to seek proposals to establish an academy/free school and to specify a date by which proposals must be submitted to the LA. In considering the need for a new school, LAs should factor in any free school projects that the department has approved and are due to open.

12. For the Targeted Basic Need Programme, LAs will need confirmation of their provisional funding allocations for new provision as early as possible. For that reason the department will be working to the timescales provided in the table at Annex A to ensure that it is possible to provide that confirmation by early December. LAs must adhere to these timescales for each element of the process. If you have any queries about the timetable please contact: academy.presumption@education.gsi.gov.uk

Local authority consultation

13. It will be for LAs to decide how to consult on the proposed new school and with whom (e.g. other schools, academies, the wider community, diocese and any others affected by the proposals). They should be clear from their school place planning about the type (e.g. mainstream, special educational needs, PRU), age range, gender and capacity of the academy/free school they wish to see established, and the expected cost.

Impact assessment

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

Seeking proposals

15. The LA should take all necessary steps to ensure that the widest possible range of groups or organisations that might be interested in establishing the new school are aware of the opportunity to do so, including any local 'outstanding' schools or other potential proposers that might be interested in applying to run the school. LAs can access the

department's list of approved sponsors [here](#). The department will also play a role in generating interest from high quality proposers – by posting details of new academy/free school proposals on its own website, encouraging key stakeholders to do the same and by sign-posting proposals to existing sponsors or potential sponsors who we are aware are keen to operate in that region.

Funding arrangements

16. As under the previous new school competition arrangements, the LA is responsible for providing the site for the new school, and meeting all associated capital costs (unless they are successful in bidding for funding from the Targeted Basic Need Programme).

17. Local authorities are also required to make provision in their growth funds to support increases in pupil numbers relating to basic need. This relates to the per-pupil revenue funding in addition to all funding for pre-opening development costs and post-opening funding required to address diseconomies of scale until a school reaches full capacity. This is because the new academy or free school will be funded on a recoupment basis. School funding arrangements allow LAs to retain funding centrally to cover these costs. This is detailed in full in the 2013-14 School Finance Regulations which were published in December 2012. Further information can be obtained [here](#).

18. Local authorities are expected to work with selected proposers to agree a reasonable and mutually acceptable funding allocation for the LA to cover pre- and post-opening costs. The department will provide a one-off payment of £25,000 to the successful proposer for the legal costs associated with establishing a new academy/free school. Upon opening, the school will be funded by the EFA on the same basis as other academies and free schools in the same LA area.

Notifying the department – school specification

19. The LA must notify the department as soon as the need for a new school has been agreed, forwarding to the department:

- a copy of the new school specification, including confirmation:
 - o that the LA has identified the required capital to establish the new school, the amount and its source (e.g. the Targeted Basic Need Programme);
 - o that the LA will meet all pre- and post-opening costs associated with establishing the new school (Paragraphs 16-18);
 - o that the LA will provide the site for the new school (this is also a condition of the Targeted Basic Need Programme);

- o of the address of the site for the new school, or all sites where a school will operate from split sites;
- o of site ownership or tenure arrangements and how these will operate for the new school. For schools that are intended to be funded from the Targeted Basic Need Programme it is important that the required land will be available to deliver the additional pupil places by September 2015 at the latest;
- their impact assessment (Paragraph 14);
- a link to the LA's website page where the relevant information will be available to interested parties.

20. A condition of any funding from the Targeted Basic Need Programme will be that the new school specification published under the academy/free school presumption process will be that for which the department has agreed funding.

Notifying the department – proposals

21. Once the specified date for submitting the academy/free school proposals to the LA has passed, the LA must provide details of all proposers that have submitted formal proposals, to the Secretary of State for initial consideration.

Sponsor approval

22. The Secretary of State will only consider entering into a funding agreement with an approved sponsor. (The department's approved sponsor list can be accessed [here](#). Consequently, new proposers will need to be assessed by the department through the normal sponsor approval route. Information on the department's sponsor approval process can be found [here](#)). We recommend that LAs make it clear when publishing their proposals that proposers who are not known to the department will have to go through this process and should contact the department at the outset, and certainly before submitting a formal proposal to the LA.

Completing the assessment

23. The LA should complete an assessment of proposals and provide the Secretary of State at the earliest opportunity with this and their scoring of the proposals, alongside a written notification setting out the steps the authority has taken to seek proposals for an academy/free school.

24. The assessment should be based on the following criteria:

- the capacity and quality of the proposer. The Secretary of State assesses on the basis of the criteria [here](#). The LA should bear in mind that when considering a LA's

assessment, the department will focus on these criteria, particularly those around strategic vision, educational capacity and performance, financial planning and operational capacity and governance. For existing sponsors, the department will focus on the credibility and track record of the proposer, their capacity to take on new projects and the local infrastructure that will support the proposal;

- the capability and capacity of the proposer to deliver this project on time, to secure best value for money, and to maintain financial viability. The proposer's financial plans should be consistent with the rest of their application, for example, in terms of staffing, pupil numbers and the education plan. They should be based on realistic assumptions about income and expenditure, and demonstrate that allowance has been made for unforeseen contingencies; and
- the extent to which proposals demonstrate the proposers' capability to promote high standards, and to innovate to drive system change. For example, demonstrating a focussed and coherent education plan that sets out the key innovations of the school, including the proposed curriculum; the approach to teaching and any particular ethos; how these will combine to achieve improved performance; how the anticipated needs of pupils with differing abilities will be met; and the proposer's aspirations for pupil achievement and measures of success. The proposal should give strong, credible evidence that the new school will raise the overall standard of education available in the local area, adding very high-quality places to the system.

25. The LA may state its preferred proposer or ranking of proposers, which the Secretary of State will take into consideration when deciding whether or not to enter into a funding agreement with any of the proposers.

Funding agreement

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

27. As soon as a suitable proposer is agreed "in principle" by the Secretary of State, the department will notify the LA, the successful proposer and the local MP. Once they have been notified of the successful proposer, the LA can then inform other applicants that they have not been successful. It will then be for the successful proposer to work

towards agreeing a funding agreement and establishing the new academy/free school with support from the LA and the department, as required. Where Targeted Basic Need funding has been agreed, the school should be delivered to the original approved specification, and adhere to this model for at least two years after opening, unless there are extraordinary circumstances that would lead to a reconsideration of requirements.

Sponsor consultation

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

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

Communication

30. All documentation should be submitted electronically to the department for education at: academy.presumption@education.gsi.gov.uk.

31. The department will publish on its website at: <http://www.education.gov.uk/schools/leadership/schoolorganisation> details of those LAs that are seeking to establish new schools, including links to their websites. The department will also inform the Independent Academies Association and New Schools Network, to alert potential proposers to the need for a new school.

Other useful information

32. Local authorities must continue to plan for and secure sufficient schools and places for their area in line with their duties under section 14 of the Education Act 1996.

33. Once LAs have published their new school specification they may not withdraw from the academy/free school presumption process.

34. “Academy” is the legal term which also includes free schools of all types, university technical colleges and some studio schools, including 16-19 and alternative provision (pupil referral unit) academies. This document uses “academy/free school” as the collective term for these types of educational institutions.

35. “Proposer” and “sponsor” in this document refer to the body or group that is proposing the new school.

Further sources of information

Targeted Basic Need Programme

<http://www.education.gov.uk/aboutdfe/executiveagencies/efa/schoolscapital/a00222248/targeted-basic-need-programme>

Associated resources (external links)

- Education Act 2011 <http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>
- Education and Inspections Act 2006
<http://www.legislation.gov.uk/ukpga/2006/40/contents>
- Academies Act 2010 <http://www.legislation.gov.uk/ukpga/2010/32/contents>
- New Schools Network <http://www.newschoolsnetwork.org/>
- Independent Academies Association <http://www.iaa.uk.net>

You may also be interested in (internal links)

New School Proposals – information and links seeking proposers to establish a new academy or Free School

<http://www.education.gov.uk/schools/leadership/schoolorganisation/b00210493/new-school-proposals>

Free Schools

<http://www.education.gov.uk/schools/leadership/typesofschools/freeschools>

Sponsored Academies

<http://www.education.gov.uk/schools/leadership/typesofschools/academies>

University Technical Colleges and Studio Schools

<http://www.education.gov.uk/schools/leadership/typesofschools/technical>

Pupil Referral Units

<http://www.education.gov.uk/aboutdfe/statutory/g00211923/alternative-provision>

ANNEX A

Timetable for proposals under the Targeted Basic Need Programme

DfE informs LAs of provisional targeted basic need funding allocations	By June 2013
LA should publish specification inviting proposals to establish new academy/free school (NB the LA will need to notify the DfE of all proposals by 16 September so should set its own deadlines accordingly)	By 15 July 2013
LAs should alert the DfE to any expressions of interest they have received from potential proposers*	By 2 August 2013
DfE will provide feedback on expressions of interest	By 16 August 2013
LA should inform DfE of all proposals received	By 16 September
LA should submit assessment of proposals to DfE indicating any preference(s)	By 11 October 2013
DfE confirm sponsor and funding allocations for new academy	By 6 December 2013

***This will enable the DfE to let LAs know where the Secretary of State is minded not enter into a Funding Agreement with a particular proposer.**



Department
for Education

© Crown copyright 2013

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at: www.education.gov.uk/contactus.

This document is available online at: <http://www.education.gov.uk/schools/leadership/schoolorganisation/f00209212/establishing-new-school>