



Department
for Education

Local authority- commissioned special free schools

**Guidance for local authorities interested
in commissioning a special free school**

October 2016

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About this guidance

This guidance sets out for local authorities and new school proposers how the process for local authorities to identify and advertise any new special free school they would like to commission will work in practice. **This does not replace the ‘presumption’ route and does not replace the local authority’s sufficiency duty.**

Overview

1. The [Children and Families Act 2014](#) gives local authorities a number of statutory responsibilities relating to special educational needs (SEN), which are set out in the [SEND Code of Practice](#) and which include a role in securing suitable educational provision for children and young people with SEN who live in their area.
2. Currently 236,800 pupils (2.8% of the overall school population) have been assessed by local authorities as having more complex SEN, requiring statutory statements of SEN or Education, Health and Care (EHC) plans (January 2016 [School Census](#)). Local authorities must make and fund provision to meet the special educational needs set out in statements and EHC plans, funded using their high needs budget. Although there is a general presumption in law that pupils will be educated in mainstream schools, special educational needs may be met in a wide range of settings, including early years settings; mainstream schools and Academies; resourced provision and special units attached to mainstream schools; special schools and Academies; independent and non-maintained special schools; FE colleges; and specialist post-16 institutions.
3. This route enables local authorities that would find a new special school useful to:
 - specify the type of special free school that they want
 - publicise it with their RSC’s agreement, and subject to affordability,
 - assess applications and make recommendations on potential proposer groups
4. DfE has a separate capital fund of £215m to allocate to local authorities to supplement their basic need funding and help them to grow and enhance provision for children with EHC plans. Information about this will be published in winter 2016/17.

Key points

5. This route enables local authorities to seek proposals to establish a special free school where they have identified that it would be **beneficial** for SEN provision in their area and wider region and where their Regional Schools Commissioner (RSC) agrees to publicise the opportunity as part of the free schools programme. If

a strong proposal that **both the LA and the Secretary of State** wish to approve is received, and an affordable site is secured that fits within the constraints of available DfE capital, the special free school will be established through the central free school process, and build/refurbishment costs and pre and post-opening start-up grants will be provided by the Department. New special schools commissioned through this process are part of DfE's central free school process and will be delivered and funded as such.

6. Local authorities need to complete an expression of interest (EOI) form describing the school they want to commission to their RSC. For consistency, LAs must use the EOI provided. The RSC will consider these EOIs and decide which bids will then be publicised. **We expect to create a small number of schools through this process, in areas where there is clear benefit to SEN provision, and the school is financially sustainable.** Local authorities interested in taking this up must:

- **email their RSC during October** to say they are interested, giving any initial details available (eg. designation, site details, size of school) for the RSCs and Education Funding Agency (EFA) to consider.
- **send the completed EOI form** to freeschool.special@education.gov.uk by **midday on 11 November**, copying in the RSC for that region. If the bid crosses RSC regions, local authorities should copy in all relevant RSCs.

Region	RSC	How to contact
East Midlands and Humber	Jenny Bexon-Smith	emh.rsc@education.gov.uk
East of England and NE London	Tim Coulson	rsc.eastnelondon@education.gov.uk
Lancashire and West Yorkshire	Vicky Beer	lwy.rsc@education.gov.uk
North	Jan Renou	rsc.north@education.gov.uk
South Central and NW London	Martin Post	rsc.scnwl@education.gov.uk
South East and S London	Dominic Herrington	rsc.sesl@education.gov.uk
South West	Rebecca Clark	rsc.sw@education.gov.uk
West Midlands	Christine Quinn	rsc.wm@education.gov.uk

7. The chosen specifications for the new schools will be published by local authorities (with a link on gov.uk to all specifications) this winter along with the site details that have been agreed with EFA. They will summarise the information in the EOI, include any further details agreed with RSCs, and must be published in a consistent format (the Department will provide a short template). There will be a single national deadline in the spring for applications to arrive.
8. 'Proposer' in this document refers to the body or group that is proposing the new school. The competitions resulting from this process will be open to **all types of proposer groups**, whether or not they are an existing provider or an approved sponsor. Our presumption is that proposers who already run one or more schools (whether maintained or academy) will **propose that the new school forms part of a multi-academy trust with the existing schools**.
9. Local authorities will assess proposers' applications and recommend their preferred proposer(s) to the Secretary of State. **Applications will only be approved if both the LA and the Secretary of State are in agreement that the proposal is of the required standard and the Secretary of State considers the capital costs are good value for money and affordable within available capital budgets. The new school also depends on an affordable site being identified and secured.**
10. If a local authority's commission is not successful (either because the RSC does not agree to advertise the opportunity, or because no suitable proposer is identified, or because the capital options are not affordable), LAs will still be expected to provide suitable educational provision for their SEN pupils from within their existing funding. To do this they continue to have recourse to basic need funding; their allocation from the £215m capital fund mentioned at paragraph 4; and 'presumption' competitions for free schools.

Expressions of Interest

11. This process is only open to expressions of interest for special schools (not alternative provision or mainstream), with the special school age range depending on the proposal from 3-19 (no 19-25 provision). The EOI needs to demonstrate the school will be financially sustainable and that the local authority (and neighbouring authorities if appropriate) will commit to commissioning places. EOIs for very small schools or for schools that would have more places than LAs want to commission are unlikely to be successful. This process is intended to create open competitions: it is not designed for co-located special schools where there is only one feasible proposer, ie. the school where the new school would be located.
12. This process is to identify where local authorities feel a new special school would be **beneficial** to the landscape of provision in the area. That is different from cases

where a school is **needed**: under section 6A of the Education and Inspections Act 2006 local authorities have a **duty to run a presumption competition if they have identified a need for a new special school**. If an authority needs a new special school it **must** run a presumption competition. If an authority simply believes that a new special school will benefit their area – ie. the places could be provided by other means such as school expansions or out-of-county provision - this route can be used.

13. The EOI form and information within it will be reviewed by the relevant RSC(s). RSCs will prioritise EOIs which:

- **benefit provision in a wide area**, eg. more than one local authority (joint EOIs will need to nominate a lead local authority). If no neighbouring local authorities are close to the proposed location, and/or it does not benefit the overall landscape of SEN provision in the region to collaborate with other local authorities or submit a joint bid, then this will be taken into account.
- consider **inclusion** and are beneficial to mainstream schools.
- support local authorities to manage current and/or anticipated **pressures on special school places or on the overall budget** so that parents have the choice they want.
- have a **site** available, ideally on a peppercorn lease, as this will give the school a greater chance of successfully opening on time.

14. These factors mean it is very unlikely that more than one school will be approved in any one authority and overall we expect to create a small number of schools via this process. RSCs will compare EOIs side by side within their region and with their neighbouring RSCs to decide (on behalf of the Secretary of State) whether to publicise the opportunity as part of the free schools programme. The information provided on the EOI form will form the basis of the information local authorities will need to publish for proposers.

15. The department recognises that local authorities will need to send in their EOI forms before they know future years' funding allocations. One purpose of this route is to help local authorities manage their cost pressures, for instance by reducing transport costs, but there may be financial or other circumstances where a local authority needs to withdraw their commission, eg. if a housing project is cancelled. If the local authority decides this before proposals are received the LA must inform the RSC. If proposals have already been submitted LAs need the RSC's approval to halt the process.

16. The school needs to be sustainable in the long term within the local authority's budget.

17. It is important to note that once the expression of interest form is submitted to the department, the **information provided, including personal information, may be subject to publication or disclosure** in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. Financial data and sensitive information will be redacted accordingly.

Conversations with other local authorities

18. Local authorities **must** check whether their neighbouring local authorities also want to commit to placing pupils at the school. Where it is feasible for the school to serve more than one local authority, joint bids are encouraged. Where it is not feasible or other LAs do not wish to commission places, LAs can put in solo bids. Beyond that, it will be for local authorities to decide how to consult on the proposed new school and with whom (for example, potential providers, other special schools, SEN specialists and advisers, the wider community, and any others affected by the proposals). Local authorities should be clear about the type, age range, type of SEN provision, facilities required and capacity of the special school they wish to see established as well as the expected cost. This clarity is particularly important as potential proposers will be submitting bids on the basis of the information set out by the local authority.

Impact and equalities assessment

19. As part of the planning process for new schools, local authorities must also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils from an equalities perspective. This is to enable the Secretary of State to meet her duties under [section 9 of the Academies Act 2010](#) and under [section 149 of the Equalities Act 2010](#). Most local authorities will do this as part of their planning, so in practice it will just be a matter of providing the Secretary of State with a copy of their assessment. Local authorities do not have to have done this before sending the RSC the EOI but must provide it **before publication** if their EOI is approved. In the unlikely event that the Secretary of State has concerns about the level of analysis, she reserves the right to ask the local authority to undertake further work on its impact and/or equalities assessment.

Information for proposer groups

20. Once the Secretary of State has decided which expressions of interest should be taken forward, local authorities will need to publish the information for proposer groups on their website. We will publish a template for this in due course following discussion with local authorities, but essentially it will summarise the EOI information. RSCs will need to be satisfied with this information before agreeing to

allow the LA to publicise it. A date in the winter will be set for all specifications to be published, and a deadline in the spring will be set for all applications from proposers to be received.

Seeking proposals

21. The local authority should ensure that the widest possible range of prospective proposers are aware of the opportunity and have enough time to develop proposals. The department will also play a role in generating interest – by posting on its own website, encouraging key stakeholders to do the same and by sign-posting to potential proposers we know are keen to operate in that region.
22. The competition is open to all types of proposer groups, whether or not they are an existing provider or an approved sponsor. If a maintained school or group of maintained schools applies we assume they will want to **become a MAT in order to run the new school**: if this is the intention, the application will need to set out how governance will work, but the school(s) do not need to have converted to academy status before applying. Guidelines on conversion and sponsorship are at [Becoming an academy sponsor](#) on gov.uk.
23. **It is important for local authorities to give an equal chance to all proposer groups. Local authorities cannot give information to one group that they do not make available to all applicants.**
24. The local authority cannot apply through this process to run the school itself as a co-sponsor due to the conflict of interest arising by the local authority recommending its preferred provider. The proposer group can choose to nominate local authority trustees, but this must be the choice of the proposer group **not** the local authority. In this case, there must be below 20% of local authority trustees on the board and among the Members.

Notifying the department - proposals

25. Proposer groups will send their completed applications to the local authority and to freeschool.special@education.gov.uk by a single national deadline in spring 2017. Proposers can seek advice and support with their application from [New Schools Network](#). New Schools Network is an independent charity that receives a grant from DfE to provide free advice and guidance to free school applicants.
26. Once the deadline for submitting the proposals has passed, the local authority must provide the Secretary of State with details of the steps the authority has taken to seek proposals for the free school, and any proposals submitted to them.

27. It is important to note that once the proposals are submitted to the department, the information provided, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. Financial data and sensitive information will be redacted accordingly. Local authorities may wish to remind applicants of this.

Assessing proposals

28. Local authorities will assess proposers' written applications. If the authority also wants to interview a shortlist they should discuss this with their RSC and tell their RSC who they would want to put on the interview panel, for approval and for the RSC to add individuals if they wish. Authorities and RSCs would also need to agree interview dates. We will provide model criteria in due course that will be closely based on the assessment criteria for free schools, adapted to make clear that proposals must adhere to the information specified by local authorities. Local authorities will need to use these criteria when assessing proposals.

Final decision on most suitable proposer and public announcement

29. The final decision on all new free school proposals lies with the Secretary of State. In making her decision the Secretary of State will take the local authority's assessment into account, along with any additional factors of which she is aware. Only proposers who are acceptable to the local authority and Secretary of State will be approved. **If no proposers are acceptable to both the local authority and the Secretary of State, the process will not continue any further.** Local authorities must await the Secretary of State's decision before making any public announcements on the outcome of the process.

30. If capital availability is more limited than the total cost of the published EOIs, then only the strongest proposals in the best value-for-money sites will be approved.

31. Once the local authority has been notified of the successful proposer, it is their responsibility to inform other applicants that they have not been successful and to provide them with any feedback as necessary.

Funding arrangements

32. **The school(s) need to be sustainable within the authority's or authorities' high needs block funding.** For 2017-18 we are not making any changes to the place funding, so local authorities will not have to bear the cost of that element of funding from their high needs block allocation. But they will need to meet the costs of top-up funding for individual pupils with high needs placed in the special free

school, as they would for pupils with high needs in other schools. We will consult on any future changes to these arrangements. **Local authorities should in any case think about the costs of these new places as they would take account of the costs of additional places at other, existing schools.**

33. A small revenue grant will be provided to cover the school's start-up costs, as for central free schools. This is currently £220/300K before opening, £170K post-opening for leadership, and a small per-pupil amount to help with other costs.
34. Proposer groups will need to complete a template financial plan as part of their application and planning, inserting relevant information supplied in the local authority specification and demonstrating that their education plan and staffing structure will be affordable within the funding available from the Education Funding Agency. It is important that this is consistent with the rest of their plans. This financial plan will develop throughout the pre-opening phase if the application is successful.

Sites

35. Where a successful proposal that both the local authority and Secretary of State wish to pursue is received from a proposer group, capital costs for building or refurbishment, as well as pre-opening and post-opening revenue grants will be provided by the department to help establish the new school, in the same way as schools set up through the standard central free school process. This means that **we will prioritise sites that can be secured on a peppercorn basis**, only buying sites if there is no peppercorn option available. 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.
36. A number of free school projects have been successfully delivered by local authorities since the beginning of the programme. In recognition of this – and the key role local authorities play in local SEN provisions – we are seeking to expand the number of local authorities involved in delivering free schools through this new route. Once the site is secured and the budget set we will require local authorities that are interested in this to submit a short business case setting out details of their capacity, capability and experience in successfully delivering capital projects and to confirm that they are willing to cover any costs above the agreed budget. The local authority project manager would have complete control in delivering the project, with an EFA representative acting as a point of regular contact, reference and escalation as required.
37. A number of factors will affect whether and when a school opens, not least the availability of **a suitable and affordable permanent site for the school**. Typically, projects take around two to three years to open and because of

this we don't always have certainty about the opening date from the offset. Projects that are able to open in a shorter timescale usually have a site already secured that requires relatively little work and no planning approval – we also have more certainty about the opening date of these. If authorities are able to identify such a site (likely from their existing estate) then this will enable us to progress delivery of the school as quickly as possible. Although free schools have opened in temporary accommodation in the past, this can only happen under certain defined and agreed circumstances – and we have found in the past that some special school trusts prefer not to open special schools in temporary accommodation due to the particular needs of their pupils.

38. This is **not** a mechanism to let the local authority close an existing special school and re-open it as a special free school in a new building.

Funding agreements

39. 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 a free school. 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 make an informed decision, the department may ask proposers to provide additional information about themselves and to consent to checks being carried out.
40. As soon as a suitable proposer is agreed 'in principle' by the Secretary of State, the department will notify the local authority, the successful proposer and the local MP. The proposer group for the new school will then enter the standard free school pre-opening process. They will receive a pre-opening grant, and will be allocated a lead contact and an education adviser. These officials will work with proposers clarifying, where necessary, what needs to be in place in order to open the school and will ensure the project remains faithful to the aims of the free school programme. More information for proposer groups about the pre-opening process can be found in the department's [Free School - Pre-opening proposer group guidance](#) on gov.uk. The Secretary of State will consider signing a funding agreement with the proposer once she is content that the school is prepared to open.
41. The successful proposer is under a duty, as required by [Section 10 of the Academies Act 2010](#), to consult such persons as it thinks appropriate on whether it should enter into a funding agreement for the new school with the Secretary of State.

Communication

42. All documentation submitted to the department in connection with this process should be sent to: freeschool.special@education.gov.uk.

43. In addition to publishing specifications on Gov.uk, along with website details and links of those local authorities seeking to establish new special free schools, the department will publicise the new route nationally, through media and will use its external contacts to alert potential proposers to the need for the new schools. The department will also inform SSAT (The Schools, Students and Teachers Network), FASNA (Freedom and Autonomy for Schools – National Association) and NSN (New Schools Network).

Further sources of information

- [Academies Act 2010](#)
- [New Schools Network](#)
- [Freedom and Autonomy for Schools National Association](#)
- [SSAT \(The Schools Network\)](#)

You may also be interested in

- [Free Schools](#)
- [Sponsored Academies](#)



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