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> [Set up a free school](#) > [Free schools: pre-opening guide](#)



[Department  
for Education](#)

Guidance

# Free schools: pre-opening guide

Updated 22 September 2022

**Applies to England**

## Contents

[The stages toward opening a free school](#)

[Main risks during pre-opening](#)

[Governance](#)

[Leadership](#)

[Delivering assurance](#)

[Due diligence](#)

[Statutory duty to consult](#)

[Funding and finance](#)

[Procurement and additional support](#)

[Site and buildings](#)

[Pupil recruitment and marketing](#)

[Admissions](#)

[Religious character](#)

[Equality duties](#)

[Staffing, education plans and policies](#)

[Funding agreement](#)

[Inspections and registration as an independent school](#)

[The readiness-to-open meeting](#)

[Once your school is open](#)

[Freedom of Information](#)

[Checklists](#)

 [Print this page](#)

Opening a free school is challenging, but also really rewarding. This guidance is designed to support you as you turn your plans for a school into reality. It sets out the legal requirements and tasks (see [Annex A](#)) you will need to undertake to make sure your school opens successfully.

Through the free schools programme, the Department for Education (DfE) has delivered hundreds of new schools and provided thousands of good school places across the country.

As of September 2022, there are 653 open free schools, which include mainstream, special, alternative provision (AP), maths and presumption free schools. There are additionally 46 university technical colleges (UTCs) and 21 studio schools. These will provide more than 390,000 places when at capacity, over 355,000 of which will be in free schools.

All children, whatever their background or location, should benefit from attending a school that provides a high-quality and inclusive education within the resilient structure of a strong multi-academy trust. Free schools have an important role to play in levelling up opportunity, and your plans for your school should therefore demonstrate how you deliver a high standard of education for all pupils.

## The stages toward opening a free school

Before signing a funding agreement with the academy trust to open your free school, the Secretary of State will need to be satisfied on two counts. First, that there is a suitable site for the school that provides good value for money. And second, that the school will provide a good standard of education, with a viable and sustainable number of pupils from its first day of operation. DfE will advise, challenge and support you throughout the pre-opening phase to make sure your school meets these requirements.

For some projects, progressing to the pre-opening phase is subject to precise and strict conditions, which are set out in the pre-opening approval letter. Further conditions may also be set during the pre-opening phase. These conditions may specify the need to address a specific risk if the project is to proceed successfully. Failure to meet any of these conditions would make it unlikely the Secretary of State would be willing to enter into a funding agreement with your academy trust.

Equally, if you run an existing school, or have another application in pre-opening and a DfE official or external expert raises concerns about it or it is subject to a notice to improve (Ntl) from the Education and Skills Funding Agency (ESFA) or a regional director, DfE may need to reconsider the approval of this project, as a result of which it could be deferred or cancelled. The same would apply if Ofsted judges that a school you currently run as either requiring improvement or inadequate, or if there is a significant decline in the performance of one or more of your existing schools.

These stages set out the main points of contact with DfE:

### Pre-opening

1. A DfE delivery officer is allocated to work with you as you move towards opening the school.
2. The free schools, further education and skills (FSFES) capital team finds and develops a site for the school.
3. The academy trust develops plans and meets legal requirements.

4. An external expert is appointed to provide professional advice and opinion to your delivery officer as you develop and finalise your education and staffing plans.
5. The Secretary of State signs the funding agreement.

## Open

The delivery officer is your main contact, but you will work with ESFA on financial matters, as well as the FSFES team, if required.

## How the guidance applies to different types of free school

This guidance applies to the following types of free school project in the pre-opening phase:

- mainstream (including primary, secondary, all-through and 16 to 19)
- special
- alternative provision

There are some differences between the specific tasks you will need to complete for certain pre-opening processes, depending on what type of school you are opening – for example, developing admission arrangements. Where this applies, it will be clearly indicated in this guidance.

If you are applying to open a primary or all-through free school, there is an assumption that the proposed school will include a nursery. Throughout the guidance, sub-headings will clearly indicate the specific processes you must follow to successfully open your nursery.

This guidance also applies to presumption free school projects (those where the local authority has identified the need for a school and run a competition to select an academy trust to run the school) in the pre-opening phase. However, there are some differences between the pre-opening processes for presumption free schools and central route free schools (those approved as part of an application wave) because local authorities play a greater role in the delivery of presumption free schools. If you are opening a presumption free school, you should also refer to the pre-opening section of the [free school presumption](#) guidance, as this provides details of the differences in the pre-opening process.

DfE will work closely with the local authorities in which special free school projects are based and will invite council representatives to attend checkpoint meetings for these projects at specified milestones. This reflects the fact that local authorities are responsible for commissioning places at special free schools when they open.

For maths schools, much of the general pre-opening guidance for free schools is relevant and you should refer to it, but there are some matters specific to maths schools, such as outreach, for which you should contact the maths schools policy team via your usual contact or by emailing [Maths.SCHOOLS@education.gov.uk](mailto:Maths.SCHOOLS@education.gov.uk).

## Roles and responsibilities

All academy trusts will be assigned a DfE delivery officer. Your delivery officer will help, advise and challenge you to make certain your school will operate successfully

once it is open, providing places in good new schools with strong leadership where these are most needed from the start.

You will have regular interactions with your delivery officer, including a number of formal meetings at specified milestones. These formal meetings between academy trusts and DfE will normally be scheduled as follows:

1. A kick-off meeting.
2. A checkpoint meeting to determine the provisional opening date once the site has been confirmed.
3. A checkpoint meeting, normally in the December or January before the provisional opening date, with a focus on pupil recruitment and other issues that need to be resolved before the Secretary of State will consider entering into a funding agreement.
4. A readiness-to-open meeting (ROM), about 3 months before opening, to confirm that the school will open successfully.

At all these meetings, DfE will assess your project's overall progress, identify any important risks that might prevent the school from opening on time and operating successfully once open, and assess the costs incurred to date and expected future spend. We may set up additional meetings, depending on progress, and will expect there to be senior representation from the academy trust at each one.

You will also be allocated a contact from the FSFES team to secure your site and the buildings for your school. This is covered in more detail in the [site and buildings](#) section.

## Project management

[Annex A](#) includes a project task checklist that outlines the core tasks that need to be undertaken during pre-opening. Completing these tasks at the right time is essential to make sure that your school can open successfully.

It is critical that you put in place robust planning and project management arrangements, because the timetable for opening a free school is very demanding. Your delivery officer will request a copy of your project plan ahead of the kick-off meeting.

DfE recommends that you designate a specific person to be responsible for managing your project, bringing together the various strands of activity, tracking progress and managing risks. You may use the project development grant (PDG) – see the [funding and finance](#) section – to buy in project management support. More information about the procurement of additional project management support is provided in the section on [procurement and additional support](#).

## Determining the opening date

One of the important milestones in the pre-opening phase will be to agree your provisional opening date. You will have your own preferred opening date for your project, but you must agree with DfE what opening date you should use to market your school to parents. In most cases, agreement of your provisional opening date will happen only once a site has been confirmed (see [site and buildings](#)), and DfE has assessed the time needed to obtain planning permission and complete necessary building works or refurbishment.

When agreeing a provisional opening date, DfE will also consider whether the need

for the school identified at assessment stage remains and, if so, the date by which the new places it will provide will be needed. For these reasons, you may need to be flexible about precisely where the school is located, as well as about the year of opening.

Once we have identified and confirmed a suitable site and carried out that assessment, after discussion with you, we will normally arrange a meeting to discuss confirmation of the provisional opening date before issuing the formal letter. We will open a school in temporary accommodation only in a limited number of specific circumstances, details of which are provided in the [site and buildings](#) section.

Until a suitable site has been secured, we would expect you to maintain momentum by continuing to develop plans in parallel for issues such as:

- admission arrangements
- curriculum
- governance, including reviewing memoranda and articles of association

However, we would not normally expect you to undertake the following, which require confirmation of a site and provisional opening date, without prior agreement:

- recruiting the principal designate and other staff
- carrying out the statutory duty under Section 10 of the Academies Act 2010 to consult on the proposal for your school
- agreeing the terms set out in the funding agreement and understanding the associated legal responsibilities and implications
- inviting applications to your school

## How Create: Schools will help

[Create: Schools](#) is contracted by DfE to generate interest in free school application waves (mainstream, special and alternative provision), supporting applicant groups throughout the application and assessment process, and, in partnership with DfE managing and facilitating 2 events each year for pipeline and open free schools.

## Main risks during pre-opening

Our experience from opening more than 600 free schools suggests that most projects share a set of important risks that will need to be monitored and managed during pre-opening. Your delivery officer will want to understand how you plan to manage each of these important risks. You should inform them immediately if any of the risks materialises during your time in pre-opening, so they can help resolve them and enable you to open a good, viable school on time.

These are the most significant risks:

### Leadership

- a high-quality principal designate is not recruited in the first or subsequent rounds of recruitment, so not appointed early enough to support and influence the development of the school's policies and education brief

## Staffing

- sufficient suitable staff have not been recruited 6 months before opening – for example, by the March before a September opening date – so they can start when the school opens
- you wish to recruit staff before DfE has agreed to enter into a funding agreement.

## Governance

- a suitably skilled chair of academy trustees is not appointed 10 months before opening – for example, by the end of October for a September opening.
- you run an existing school or have another project in pre-opening and:
  - are issued with an Ntl
  - a DfE official or external expert raises a concern about it – for example, financial problems that fall short of an Ntl but are still an issue, such as a forecast deficit
  - Ofsted judges one or more of your existing schools as either requiring improvement or inadequate
  - there is a significant decline in the performance of one or more of your existing schools
- You are not able to submit a complete governance plan 10 months before opening – for example, by November for a September opening

## Pupil recruitment

- marketing and recruitment plan targets have not been met, indicating that the school may not be viable on opening
- application numbers on the application deadline date indicate the school will not be viable – for example, application numbers are below DfE's minimum viable numbers, which are 2 forms of entry with 30 pupils each for primary schools and 4 forms of entry with 30 pupils each for secondary schools, or below the viable number to deliver your curriculum, whichever is the higher.
- accepted offer numbers by national offer day indicate the school will not be viable.
- In the case of an AP or special school, the number of referrals received from commissioners is low, making it financially unviable – that is, below DfE's minimum viable number

## Local factors

- the local authority is or becomes unsupportive of the project
- the local community or schools raise significant opposition to your project during or following consultation
- opposition to the project attracts media attention
- your project is linked to a new housing development and issues have arisen with the development that may result in delays

## Finance

- you are likely to run out of PDG

- a potential conflict of interest is identified with regard to spending the PDG (see the guidance in the [procurement and additional support](#) section)
- you are unable to submit a viable financial plan ahead of the ROM meeting or at other important points as requested

## Education

- you fail to agree an education plan the external expert considers is appropriate

## Admissions

- you wish to adopt unconventional admission arrangements
- you wish be part of your local authority's co-ordinated admissions

The risks outlined here are not exhaustive. These are the most common, but each project will have its own risks and you should discuss any concerns with your delivery officer.

## Governance

The [competency framework for governance](#) outlines the 6 most important features of effective governance that you should consider when formulating your governance arrangements. They are:

- strategic leadership that sets vision, ethos and strategy
- accountability that drives up educational standards and financial performance
- people with the right skills, experience, qualities and capacity
- structures that reinforce clearly defined roles and responsibilities
- compliance with statutory and contractual requirements
- evaluation to monitor and improve the quality and impact of governance

## Guidance for governance arrangements

An academy trust's governance arrangements are laid out in its articles of association. DfE provides [model articles of association](#) for academy trusts to use. Church trusts should use the [church academies model documents](#). You will need to submit to your delivery officer your academy trust's articles of association, using the relevant model articles, along with the completed confirmation of model articles checklist (see [Annex B](#)).

The [governance handbook](#) sets out DfE's vision and priorities for effective governance by:

- outlining the core role and functions of the governing board
- summarising and providing a first point of reference for the duties placed on a board, and signposting to more detailed information, guidance and resources
- providing information on the support available to a board

You should be aware that:



- every free school is run by an academy trust – a charitable company limited by guarantee
- the board of academy trustees should be constituted to have all the necessary skills needed for effective governance but be no bigger than necessary to achieve this
- there must be a minimum of 3 members: DfE's strong preference is for academy trusts to have at least 5 members, and for at least a majority of members to be independent of the board
- no more than 19.9% of your members and 19.9% of your academy trustees should be associated with the local authority
- no members and no more than one third of academy trustees must be employees of the trust. DfE's strong preference is that no employees other than the chief executive (CEO) should serve as academy trustees
- whether you are an established academy trust or a new academy trust, DfE expects you to adopt the latest model articles of association before signing a funding agreement
- DfE's [competency framework for governance and clerking competency framework](#) sets out the skills, knowledge and behaviours needed for effective governance and governance professional support (clerking)

## Role of academy trusts' members and trustees

All academy trusts, as charitable companies, have both academy trustees and members whose role is described in detail in DfE's [governance structures and roles](#) and the [governance handbook](#). It is summarised in this section.

### Members

Academy trusts are founded by members who have a general duty to exercise their powers to further the academy trust's charitable purpose. The first members are the signatories to the memorandum of association drawn up when the academy trust is first established. These first members agree the academy trust's first articles of association, which set out the academy trust's charitable purpose.

Members should not be involved in the day-to-day management of the trust, but should make sure that they are sufficiently informed about the trust to be able to exercise their powers effectively.

Members have an important role in academy trust governance, based on a number of powers set out in DfE's model articles of association and in company law. These include the power to:

- appoint and remove academy trustees
- direct academy trustees to act, in certain circumstances
- make changes to the articles (although permission from the Secretary of State or the Charity Commission will be required in some cases)

A member's role is similar to that of a shareholder in a company limited by shares. Academy trusts must be established with at least 3 members, although DfE's strong preference is, wherever possible, for academy trusts to have at least 5 members. Having more members increases the range of perspectives represented and reduces the risk of power being concentrated. It also makes sure that the academy trust has enough members to take decisions via special resolution (that is, where 75% of members agree) without requiring unanimity. This minimises the circumstances in which a split membership prevents decisions being taken by ordinary resolution (that is, where at least 51% of the members are in favour).



Employees of the academy trust must not be members, and no more than 19.9% of members can be local authority associated persons (LAAPs) (see the [governance handbook](#) for further explanation).

As the responsibility to conduct the academy trust's business lies with the academy trustees, it is important that members do not overstep their powers or undermine the trust board's discretion when exercising their responsibilities. DfE expects the majority of, if not all, members to be independent of the board of academy trustees. This also enables members to exercise their powers objectively and reduces the risk of unchecked 'groupthink' by the board.

### **Trustees**

The academy trust board is the decision-making body and is accountable and responsible for all the academies in the trust. The board should focus strongly on the 3 core functions of governance set out in the governance handbook: setting the strategic priorities for the academy trust, holding the senior leader to account, and making sure that money is spent properly and effectively.

The academy trustees must comply with the academy trust's charitable objects and with company and charity law. It should provide members with sufficient information to assure them that the board is exercising effective governance. The board of academy trustees signs off the annual accounts and is responsible for adherence to the academy trust's funding agreement with the Secretary of State. It is the academy trustees who are therefore responsible for the academy trust's accountability to Parliament and to the Secretary of State as the principal regulator of academies as exempt charities.

The role of trustee requires commitment as well as the right experience and skills. DfE has developed a [competency framework for governance](#) that sets out the competencies needed for effective governance.

Academy trusts need to put in place arrangements to make sure that members and academy trustees avoid conflicts of interest wherever possible. Academy trusts need to be transparent, through a published register of interests, about all potential conflicts of interest and must manage them appropriately, in line with the [academy trust handbook](#) and [Charity Commission guidance](#).

### **Parent trustees/governors**

The academy trust board must include 2 elected parent trustees. Alternatively, the board may decide that the parental perspective should be at local level and there must be 2 elected parents on each [local governing body \(LGB\)](#) within the academy trust. The process for electing and appointing parent trustees and parent local governors will be set out in the academy trust's articles of association.

### **Employees on the board of trustees**

No more than one-third of the board may be employees of the academy. DfE's strong preference is that no employee other than the principal or CEO should serve as an academy trustee, to retain clear lines of accountability through the academy trust's single senior executive leader. No more than 19.9% of trustees can be LAAPs.

## **Committees**

An important consideration will be how to make the most effective use of committees, including, if you are a trust with more than one school, LGBs. Academy trusts must establish an audit and risk committee appointed by the trust board. The

committee must include directing the academy trust's programme of internal scrutiny.

Bigger academy trusts (with an annual income of over £50 million) must have a dedicated audit and risk committee. Other academy trusts must either have a dedicated audit and risk committee or can combine it with another committee. In addition, trust boards are expected to have a finance committee to which the trust board delegates financial scrutiny and oversight. Other areas of business covered by committees may include curriculum and attainment.

Academy trustees can formally delegate decision-making powers to a committee, in accordance with the academy trust's articles, allowing it to make decisions on behalf of the board of academy trustees. Other committees may focus on specific issues and make recommendations to the academy trustees. Non-academy trustees can be co-opted onto committees and can vote on that committee, although – except in the case of LGBs – the majority of committee members must be academy trustees.

Committees can be a helpful way of bringing additional expertise to support the academy trustees. Your decision about whether to establish a committee should be based solely on the needs of your trust and the skills of your academy trustees. It is important to remember that the board of academy trustees retains overall accountability, regardless of what powers it delegates to any committee.

As an alternative to a standing committee, you could consider setting up a working group to offer advice to the academy 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, which avoids unnecessary demands on people's time. You cannot delegate decision-making powers to a working group.

## **Local governing bodies (LGBs)**

Academy trusts with multiple academies may establish a type of committee known as an LGB. In some academy trusts, an LGB may be known locally as an 'academy committee' or 'local advisory committee'. An academy trust may decide to set up one or more LGBs and, through a scheme of delegation, will decide the responsibilities delegated to them. This can vary from a high level of delegation to a wholly advisory LGB. However, regardless of the responsibilities delegated to an LGB, the academy trust board remains the accountable body. LGBs can be set up at academy level or across a group of academies. The [governance structures and roles](#) guidance sets out more information.

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.

If a trust is establishing a free school to be overseen by an LGB, DfE will expect the board to be as rigorous in selecting its local governors and setting its operating arrangements as you would be in establishing a board of academy trustees for a single free school.

## **Governance professional (clerk) to the trustees**

You are required to appoint a governance professional (clerk), who has the expertise to advise and provide governance support to the academy trust board. In an academy trust, the governance professional must not be the academy trustee, principal or CEO of the trust. They will receive direction from and are accountable to the board.

The governance professional will provide high-level administrative support and independent advice to assist the academy trust board and its committee's in carrying out its business in an efficient and professional manner. This role will involve supporting academy trust board and committee meetings, and providing advice and guidance on the board's statutory and strategic functions to enable it to be compliant with the legal process.

The governance professional is also responsible for making sure that each meeting of the board of academy trustees is formally recorded and there are clear minutes on the matters discussed and the actions approved.

The governance professional will also help the board understand its role, functions and legal duties, and support the chair to enable and facilitate strategic debate and decision-making. More information on the range of skills, knowledge and expected behaviours of the governance professional can be found in the [clerking competency framework](#).

Consider these questions related to the governance professional:

- what type of governance support does the academy trust board and its committees require now and in the future?
- what are the skills and experience you require of the postholder?
- how will they be employed?
- how will they work with the chair and academy trust leaders in undertaking the work of the board?
- how will the chair oversee the performance of the governance professional in their role?
- how committed are the board to supporting the professional development of their governance professional?
- what professional development will the governance professional require to make sure that their knowledge and practice is kept up to date?

As explained in the [academy trust handbook](#), the standards of behaviour expected of anyone who holds public office, including those who work in education, are set out in the [7 principles of public life](#). Those principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

## Summary of the main tasks

The main tasks of an academy trust are summarised in this section.

### **Establishing your academy trust correctly**

The academy trust will be the signatory to the funding agreement and the legal owner of various assets. Setting up your academy trust allows you to open a company bank account, into which DfE will pay your PDG (see [funding and finance](#)). You need to have set up your academy trust before submitting your free school application.

### **Adopting articles of association**

The articles of association describe your academy trust's constitution and establish the framework of your governance arrangements. [DfE's model articles](#) have been designed to follow best practice in corporate, charitable and school governance. That is why our expectation is that you will adopt our model articles to establish your academy trust. Academy trusts moving from having one school to having a number of schools will also be expected to use DfE's model master and supplemental funding agreements when the time comes to sign the funding agreement for their new free school. Established academy trusts must move to DfE's latest model master funding

agreement for their new free schools and any future free schools or academies, if they are not already using the [latest model](#).

If your group is an existing academy trust and has its own articles of association, DfE would expect you to adopt the latest model articles if these are not the ones currently being used. If your group is a new trust, you should also adopt the latest model. Your delivery officer will discuss with you any particular governance issues you will need to consider. The model articles are flexible enough to accommodate most governance models adopted by free school proposers. Your delivery officer will need to be satisfied that your articles of association are in line with our latest model and have not been changed, before they recommend that the Secretary of State enters into a funding agreement to open your free school.

### **Formulating a governance plan**

Your delivery officer will ask to see a governance plan to examine your governance structures, roles and responsibilities, and details of internal controls, and to look at pen portraits of academy trustees and any skills gaps and vacancies. The plan should be submitted with a completed [checklist \(see Annex C\)](#) signed by the lead proposer or chair of academy trustees, which offers the assurance that your plan contains the level of detail DfE requires.

Your delivery officer will ask you throughout the pre-opening phase how academy trustees are managing the transition from pre- to post-opening. You should talk to them if you are experiencing difficulties developing the governance plan or if you think you will fail to submit a final version 10 months before opening (for example, by November for a September opening or by March for a January opening). It is possible that your delivery officer will ask you to submit your plan before this time.

You should review the following points when formulating your governance plan.

### **Members**

Consider these questions related to members:

- are there at least 3 members (DfE strongly recommends at least 5)?
- do they meet the guidelines about employees and LAAPs?
- is there sufficient separation between members and academy trustees to enable members to exercise their powers objectively?
- does the plan demonstrate a clear understanding of the role of the member (and what lies outside their role)?
- if a sponsor member is listed, are they a DfE-approved sponsor? (Corporate members are considered on a case-by-case basis – check with your delivery officer)

### **Academy trustees**

Consider these questions relating to academy trustees:

- is the academy trust board an adequate size to oversee the strategic business of the trust?
- will the majority of members be independent of the board, and if there is cross-over, do you have strategies in place for making sure there is independent challenge?
- do the arrangements reflect the memorandum and articles?
- is there a chair of the academy trust board in place and do they have the right experience, skills and knowledge?
- are the other academy trustees suitably skilled – for example, do you have Ofsted reports and academic results for other schools with which academy trustees have been involved?

- has a skills audit been carried out to identify skills gaps in the existing academy trustees, and will this be used as a basis for trustee training and recruitment?
- if any academy trustees, including the CEO, are also employees of the trust, do those employees comprise no more than one-third of the total number of trustees? (This is to retain clear lines of accountability through the trust's single senior executive leader (SEL) – more information about this can be found in the [governance handbook](#))
- How many of the academy trustees or members are LAAPs? (Remember to include parent trustees/governors within this number)
- What arrangements are in place to recruit parent trustees or governors?

### **Board and committee structure**

The number of academy trustees you need should be determined by the requirements of your free school. The board of academy trustees should only be as big as it needs to be to make sure that it has the full range of skills to be effective. Any specialist knowledge can be provided as and when it is required by committees or other experts, such as the governance professional to the academy trustees or the academy trust's legal advisers.

While there are no legal limits to the size of your board, you should expect your delivery officer to challenge you if the number of academy trustees set out in your articles is greater than 12. DfE will want to be assured that any larger body is justified, according to the likely demands of running your free school. Your delivery officer may suggest you ask some individuals to stand down if it is not clear that they will bring essential skills to the board of academy trustees, or if they judge the size of the group to be unwieldy.

In establishing an LGB, you should ask yourself the same questions about size, skills and structures as you would when setting up a board of academy trustees for an academy trust with only one school. You should also consider what, if any, responsibilities should be delegated from the academy trust board to the LGB, avoiding duplication or overlap between the role of LGBs and the board in holding executive leaders to account. These should be set out in a clear scheme of delegation (the document that confirms any delegation of spending and other decision-making powers from the board to committees or employees) published on your website. While you may delegate responsibilities to an LGB, the academy trust board remains accountable for what is delegated. Individuals appointed to an LGB are not academy trustees unless they sit on the academy trust board.

### **Recruiting the right people as trustees**

You need to make sure that the people you recruit as academy trustees understand the requirements of the role and have the commitment, experience and skills to be effective. DfE has published a [competency framework for governance](#), setting out the competencies needed for effective governance, and you should consider this when appointing academy trustees. Your delivery officer will want to be clear about the skills and experience each trustee brings and what role they will fulfil.

The attributes [outlined in the framework](#) will be particularly important for the person you recruit as the chair of the trust board. The chair's relationships with the principal and the trust members are important to achieve effective accountability between the academy trustees and the academy trust, and between the academy trust's members and the board of academy trustees. The DfE 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 appointing a chair and how to help them settle into their role on appointment.

The academy trustees of a free school need to be assured that its financial systems, transactions and risks are being adequately assessed and addressed. Academy trustees are also responsible for establishing internal controls that recognise public

expectations about governance, financial management and financial probity, and expectations about the stewardship of public funds by ESFA's accounting officer (AO) and Parliament. More information on how a free school can check that their financial and other controls are operating effectively can be found in the [academy trust handbook](#).

Your delivery officer will want to see evidence of the steps you have taken to make sure that the trust board includes individuals from a range of different backgrounds, so that a diverse range of perspectives are represented. Having some people on the board who come from outside the faith or ethnic group of the majority of pupils can help make sure that the board has sufficient internal challenge to the decisions it makes and how it carries out its strategic functions. In addition, a board must make sure that its members understand the full diversity of the school's cultural and religious context and that of the community it serves.

Parent trustees are elected by other parents or carers, not the trust, but they are expected to act in the best interests of the trust in the same way as all other academy trustees. They take on the same responsibilities as every other trustee, so it is vital that you do what you can to ascertain that candidates understand the role and have the necessary skills and commitment. The term of office is 4 years.

### **Finding trustees**

DfE currently funds [Inspiring Governance](#) to support boards in finding suitable academy trustees. Inspiring Governance is a free, online self-matching service for individuals who are interested in volunteering as a governor on LGBs of academy trusts.

In recruiting your board of academy trustees, you should aim to have recruited a capable chair and identified the majority of your academy trustees at least 6 months before your school's provisional opening date. This does not include parent trustees, whom you can appoint during the first term post-opening. Your delivery officer will challenge you throughout the pre-opening period on the progress you are making in appointing academy trustees. Governance will be an important focus at your ROM meeting, at which, alongside the principal designate, the chair will be expected to play a full part in the discussion.

You may be tempted to appoint as academy 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 their skills and experience. If not, there are other ways to involve supporters and give people a say over the running of the school – for example, as non-academy trustees sitting on committees or informal working groups reporting to the academy trustees.

### **Trustees' commitments post-opening**

You will need to make sure you have academy trustees with sufficient capacity to undertake their role, the required commitment of which can be significant, particularly in the pre-opening phase and early years of a trust.

The burden on individual academy trustees can be reduced through effective use of committees and working groups. They can work on behalf of the academy trustees to explore specific areas of interest, make recommendations to the board of academy trustees, or take decisions on the board of academy trustees' behalf.

### **The transition from pre- to post-opening**

During pre-opening, some academy trustees take on additional responsibilities as part of the project team. This contribution can be vital and is welcomed, but it will be important to make sure that academy trustees understand the need to take up a more strategic role as the free school moves towards opening. To support this, having a



transition plan in place can help academy trustees make the necessary adjustments.

Taking a strategic role is not just about handing over the governance plan to the principal designate and senior leaders to enact. An important task for academy 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.

## Prompts for your governance plan

Review these points when drawing up your governance plan.

### Board structure

Consider these questions:

- is the board structure clear to all?
- do all those involved in governance understand their responsibilities within that structure?
- do academy trustees clearly understand their role in supporting the delivery of the governance plan?
- does the plan reflect the 3 core strategic functions of a board – that is, making sure there is clarity of vision, ethos and strategic direction, as well as financial oversight, and holding the leadership to account for the school's educational performance?
- is the level at which the responsibilities of the board will be executed or delegated to committees or individuals clear – for example, does the plan include a delegated-decision planner?
- have the terms of reference for committees been developed, including:
  - are there link academy trustees?
  - if so, in which areas?
  - and is their role clear?

To help your academy trustees begin to define their role as strategic leaders, DfE recommends focusing first on the guidance in the [governance handbook](#), which describes the role and duties of governors and trustees in academies.

The [National Governance Association \(NGA\)](#) has produced governing board self-evaluation guidance, which includes a list of [21 questions for a trust board](#) to ask itself about culture, practice, structure, function and impact. 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 plan during the pre-opening phase.

Ofsted's [education inspection framework](#) offers a wider picture of what academy trustees are responsible for overseeing.

## Leadership

### Senior executive leader (SEL)

You will be required to appoint an SEL – in practice, also known as the principal,



executive principal or CEO. The SEL must be the head of the line management executive chain and held accountable by the board of academy trustees for the performance of the trust. The SEL should also be the trust's [accounting officer](#). The SEL role must not rotate between individuals, although it may be filled by a job share.

The appointment of a SEL does not require an additional person to be employed. In academy trusts with only one school, the SEL will be the principal. For academy trusts with more than one school, the SEL could continue to be the principal of an individual academy within the trust while also acting as its CEO. It is important to remember that there is no 'lead school' in an academy trust. The board must not favour or show allegiance to one school but, instead, foster a common ethos and vision across the whole trust. The appointment of an AO or SEL does not remove the responsibility of the board of academy trustees for the proper conduct and financial operation of the trust.

## **Accounting officer (AO)**

Each free school trust must designate a named individual as its AO. In single free schools, this should be the principal. If a free school is joining an academy trust, it should be the senior executive leader. Having appointed an AO, the trust is responsible for making sure they engage in sufficient training to undertake the role.

The role of the AO includes a personal responsibility to ESFA's AO and to Parliament for the financial resources under the free school's control. The free school's AO must be able to assure ESFA's AO, Parliament and the public that they have maintained high standards of probity in the management of public funds. This requires the free school's AO to:

- have appropriate oversight, alongside the board of academy trustees, of the establishment, maintenance and monitoring of the free school's internal control arrangements
- make sure that the free school's assets and property are under proper control
- reduce the risk of fraud or irregularity
- keep full and accurate accounting records to make sure that there is ongoing viability

The free school's AO is also required to sign:

- an annual statement included in the free school's audited accounts attesting to the maintenance of regularity, propriety and compliance
- an annual statement explaining and demonstrating with examples how the free school has secured value for money

It is very important that the academy trustees establish robust internal control arrangements to make sure that these documents are efficiently cleared.

More details about the role of the AO can be found on the [Institute of School Business Leadership's website](#).

## **Chief finance officer (CFO)**

Free schools must demonstrate 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 academy trust's finance director, business manager or equivalent, to lead on financial matters.

In smaller free schools, it may not be possible to justify the salary of a CFO. Academy trustees can elect to have this position filled by employing staff or contractors with relevant skills or knowledge at the appropriate time, provided that effective governance and robust financial management is preserved. More details about the role of the CFO can be found on the [Institute of School Business Leadership's website](#).

## Delivering assurance

Academy trusts must have in place a process for checking their 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 in 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 academy trust's external auditor
- the appointment of a non-employed trustee with an appropriate level of qualifications or experience to check the academy trust's internal controls, who neither charges nor is paid by the trust for their work – this appointment is not mandatory, but this is one way that academy trusts are able to conduct their internal checks
- a peer review, with the work being performed by the CFO 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 [academy trust handbook](#).

## Conflicts of interest

A conflict of interest can be defined as 'any situation in which a trustee's personal interests, or interests they owe to another body, may or may appear to influence or affect their decision-making.

It is inevitable that conflicts of interest will arise at some time. Even the perception of a conflict of interest can damage your academy trust's reputation. Your priority should be to make sure that your academy trustees understand their responsibilities for managing public money, which are set out in detail in the [academy trust handbook](#) and include putting the right mechanisms in place to identify and manage conflicts of interest.

Conflicts are most likely to arise where academy 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 academy 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 delivery officer will challenge any appointment they feel creates an unacceptably high risk of a conflict for your trust, but the responsibility is yours.

DfE will expect you to meet the following conditions:

- any individual or organisation represented as a member or trustee of your

academy trust, or with influence over the trust through other means, understands they will be able to bid for contracts from the trust only on an 'at cost' basis, in line with the approach taken by DfE with regard to approved academy sponsors

- academy trustees comply with the protocols set out in [articles](#) 6, 97 and 98 of the model articles, which makes sure that decisions are taken without bias and individuals who are 'conflicted' take steps to avoid influencing a decision
- trustees establish a register of interests to record potential areas of conflict and demonstrate that decisions are being taken free from influence – this should be completed and updated by all trustees and any staff with budgetary control, covering them and their family members, and be a standing item at every meeting of the board of trustees
- trustees and members understand the need for all procurement to be preceded by open and fair competition (see [procurement and additional support](#) and the [Charity Commission](#)'s guidance on identifying and avoiding conflicts of interest)

**! DfE will take very seriously any failure to manage conflicts of interest properly, whether these are real or perceived. Negligence in relation to this could ultimately lead to the cancellation of the project.**

## Related-party transactions

The [academy trust handbook](#) sets out the reporting and approval requirements for academy trusts in advance of transacting with a related party.

Academy trusts must declare their intention to enter into a new agreement before confirming the transaction with a related-party supplier to ESFA. This includes agreements being renewed with a related-party supplier.

Academy trusts do not need to declare income transactions with related parties. For expenditure related-party transactions with a new supplier, academy trusts must confirm whether they have previously received a donation from the related party.

In line with paragraph 5.43 of the [academy trust handbook](#), salaries and other payments made by an academy trust to a related party under a contract of employment, through the academy trust's payroll, are not in the scope of this reporting requirement.

Academy trusts must continue to report all related-party transactions, regardless of value, in their annual financial statements, as set out in the [academies accounts direction](#).

Academy trusts must seek prior approval from ESFA when:

- a single proposed contract or agreement with a related party exceeds £20,000
- a proposed contract or agreement of any value means the total value of contracts or agreements with the same related party exceeds £20,000 in a financial year

A series of intended transactions with the same supplier can be submitted as a single request for approval, as long as sufficient detail about each transaction is included in the evidence provided.

Academy trusts must declare or seek approval for related-party transactions using the [online form](#).

You need to have all your information and documents ready before starting, as it's not possible to complete part of the form and return to it. The [checklist](#) sets out the type of evidence you may need to provide when seeking approval for a related-party transaction.

You need to [register for an identity and access management system \(IDAMS\) account](#) to use the form and approve other users.

## How DfE will work with you

Your delivery officer will:

- need confirmation that your trust has been established and your articles are in line with DfE's latest model
- check the proposed size of your board of trustees and request to see the governance structure, challenging you on any amendments or if your proposed board looks unnecessarily large
- ask you to confirm the names of any members and trustees you have already appointed – you must advise Companies House within 14 days of appointing a director (that is, a trustee) and advise DfE within 14 days of the appointment or removal of any trustee or member. (Note: the Charity Commission does not regulate academy trusts, so do not seek to register the trust with the Commission or provide it with details of members and trustees)
- challenge you if any concerns arise about an individual's appointment, including if DfE has a concern about a potential conflict of interest
- expect you to have drawn up plans for how your board of trustees will operate, including with regard to committees
- expect you to have put in place effective procedures for managing conflicts of interest, including setting up a register of interests.
- expect you to have resolved any concerns regarding the constitution or size of your board of academy trustees
- see evidence that you have reviewed your initial trustee skills audit as new academy trustees are appointed, and have confirmed which gaps remain
- want to know what plans you have to recruit and train your trustees to make sure you have sufficient skills and experience in place
- be particularly keen to understand your plans to recruit a chair
- ask for updates on trustee appointments, and for a pen portrait of each new trustee setting out their skills and track record
- expect you to have recruited the chair of trustees at least 8 months before your opening date, established who should be working with the principal designate, and identified or appointed the majority of the remaining trustees and support staff, such as the governance professional (clerk) and a responsible officer (as a minimum, you will need to have a workable plan to fill outstanding vacancies)

In recommending to ministers that they enter into a funding agreement, your delivery officer will need to provide assurance and evidence that your governance arrangements are appropriate and rigorous, and you have recruited high-calibre academy trustees.

As the school moves towards opening, your trustees should be working with the principal designate on the board's important documents and protocols ahead of the first board meeting. These will include the school's development and improvement plan, and a scheme of delegation.

## Further information

- [Annex A, table 3 – governance: a checklist of activities](#)
- [The role of the chair of governors](#)

- [Governance handbook and competency framework](#)
- [Academy trust governance: structures and roles](#)
- [Academy trust handbook](#)
- [Model memorandum and articles of association](#)
- [The role of the governance professional \(clerk\), and how to appoint a clerk](#)
- [National leaders of governance](#)
- [Ofsted dashboard](#)
- [Education inspection framework](#)
- [The National Governance Association's governing board self-evaluation questions](#)
- [Charity Commission guidance on avoiding conflicts of interest](#)
- [Multi-academy trusts: good practice guidance and expectations for growth](#)

## Due diligence

Proposers must comply with the [7 principles of public life](#), which set out the standards of behaviour expected of anyone who holds public office, including those who work in education. The 7 principles of public life are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

DfE will carry out a number of checks on those applying to establish a free school to provide reassurance of their suitability to manage public money and run a school. These will include due diligence checks, financial checks, Disclosure and Barring Service (DBS) checks, and other checks necessary to make sure that free schools are set up and run only by those who are suitable and able to do so.

There are several distinct actions for members and academy trustees to take as part of the due diligence process. You should engage with these requirements proactively and early on to avoid delays in the Secretary of State signing a funding agreement with your trust or opening your school.

## Action required by the chair of academy trustees

The chair of academy trustees is responsible for making sure that:

- they [apply for a suitability check](#), including a new enhanced DBS check provided by DfE's supplier, and checks on their identity and right to work in the UK – this is necessary regardless of checks performed by other DBS umbrella bodies
- all academy trustees or members have correctly completed the [suitability and declarations form](#), and hold or have applied for an enhanced DBS certificate (provided by any DBS umbrella body)

The following sections provide more information about the process and what is required.

## Suitability and declarations form

DfE carries out suitability checks on members and academy trustees of a trust setting up a free school while it is in the pre-opening phase. Once appointed, all members and trustees must complete the [suitability and declarations form](#). This does not apply to members of LGBs unless the individual is also a trustee. The chair of trustees must take responsibility for making sure that all sections of the form are

complete, declaration pages are signed, and a passport-sized picture for each individual is provided to DfE. All completed documents should be scanned, saved as a PDF and emailed to [due.diligence@education.gov.uk](mailto:due.diligence@education.gov.uk).

During the pre-opening phase, if there are any changes to the members and trustees, the chair of trustees must report these changes by email to their delivery officer as soon as possible. Once a free school is open, there is no need to send in suitability and declaration forms for new members and academy trustees.

## Disclosure and Barring Service (DBS) checks

The Independent Schools Standards and [keeping children safe in education](#) (KCSIE) require that the chair of academy trustees must hold an enhanced DBS certificate provided by DfE's approved supplier. This forms part of the [suitability checks](#).

All other members and academy trustees must hold an enhanced DBS certificate provided by any [DBS umbrella body](#). On appointment, new members and academy trustees must obtain a new enhanced DBS certificate, even if they already hold one. All other members and trustees must have an enhanced DBS certificate. The chair of trustees must see that these requirements are met. The chair of trustees must also assess whether any offences or police information disclosed on a certificate are such that an individual is not suitable to hold the role of member or trustee.

In the case of the principal designate, checks should be performed as they would be for any other employee of the school. DfE does not require a copy of the certificate. The school is required to make sure that all relevant checks, including vetting and barring checks, are conducted in line with safeguarding requirements.

## Applying for an enhanced DBS check

### Chair of trustees

An academy trust's chair of trustees (not a chair of an LGB) must complete a suitability check with ESFA as soon as they are appointed. This is to comply with legislation and to keep children safe in education. The [academy trust handbook](#) sets out a requirement to update governance information (including direct contact details) within 14 calendar days of a change. Free schools in the pre-opening phase will not be able to do this, as the school will not be registered on [get information about schools](#) (GIAS), DfE's formal register of schools, until a successful Ofsted pre-registration inspection has been carried out.

There is further guidance that explains the process to [apply for a suitability check](#). This includes:

- an identity check
- evidence to prove your right to work in the UK
- the outcome of a new enhanced DBS check performed by DfE's approved supplier
- if you have lived outside of the UK, an overseas criminal records check or a certificate of good character

When completing a suitability check, DfE will consider any further information available to us, including whether individuals are barred from teaching or the management of a school.

## All other members and trustees

Members and academy trustees (other than the chair of trustees) who already hold an enhanced DBS certificate dated within the past 2 years should email a scanned copy of the certificate to the chair of trustees. The Secretary of State requires the chair to make sure that all members and trustees can present an up-to-date DBS certificate at any time, and DfE reserves the right to request sight of members' DBS certificates at our discretion.

On appointment, new members and academy trustees must apply for an enhanced DBS certificate, using the [DBS umbrella body directory](#), even if they already have a certificate that was issued within the past 2 years.

Once received, the certificate should be scanned and emailed to the chair of academy trustees.

## Further information

- [Suitability and declarations form](#)
- [Annex A, table 4 – due diligence: checklist of activities](#)
- [DBS checks](#)
- [Keeping children safe in education](#) (KCSIE)

## Statutory duty to consult

By law, under [Section 10 of the Academies Act 2010](#) (the Act), your academy trust must meet its statutory obligation to consult about your free school proposal.

Section 10 of the Act requires the academies trust to consult with the individuals they think appropriate on whether to enter into an arrangement with the Secretary of State to set up or expand a free school.

As set out in Section 10 (1) of the Act, it is worth recognising that there are some instances where this may not apply.

The statutory consultation should inform appropriate individuals about the project. This process is very useful, as you will be able to act on the feedback and suggestions you receive. It should also help raise awareness of your project, and your marketing activity could help to increase pupil numbers.

You should speak to your deliver officer if you experience significant opposition from the local community during or following the consultation, or if the local authority becomes unsupportive of the project.

There is no requirement on you to carry out a Section 10 consultation in respect of a nursery that is part of your free school. However, it would be useful to mention the nursery as part of your consultation, as responses could help provide evidence of viability or highlight risks. It could also help marketing and local awareness-raising.

The duty to consult rests solely with you. DfE does not direct or provide specific advice to academy trusts on how you should go about it. There are some general themes you might want to think about, which are set out in the following paragraphs. You may also wish to refer to the [Cabinet Office good practice consultation guidelines](#).



## Summary of the main tasks

It is important to invest some time in planning how you will run your consultation to make sure that it complies with your statutory duty. It must be thorough and transparent. You also need to decide whether you will carry it out yourself or bring in additional resource to do so on your behalf.

Above all, you will need to decide when to carry out your consultation, how long it will take, whom you will consult, the policies and information about your school on which to consult, and how you will collect responses to the consultation. You will need to be ready to consider any responses received and whether it might be appropriate to adjust your plans, having taken into account any concerns resulting from the consultation.

You should report and present your findings and conclusions to those that have responded, the local community and DfE. The report should be submitted to DfE with a completed [checklist](#) (see Annex D) signed by the lead proposer or chair of academy trustees. You should make sure that your report contains an appropriate level of detail.

The question you should clearly ask those you consult with is whether your trust should set up the free school in question. You should provide information on the particular proposals for your school.

## Who needs to be consulted

The Act states that you should consult such persons as the trust thinks appropriate. This includes any groups or individuals that may be affected by the opening of your school. Examples include nearby schools, the local authority, any surrounding local authorities, local community groups with an interest, the local community and faith groups.

## How long the consultation should be

This is not specified, but it must be adequate to allow people time to consider the proposal and respond.

## When you should consult

It must be done before the funding agreement can be signed, but when plans are sufficiently advanced, to enable those you consult to have sufficient understanding of the school you are proposing.

## What to consult on

Examples of areas to consult on include staff recruitment, admission arrangements, special educational needs and disabilities (SEND) and other policies, and the site for the school (or at least a general location).

## How to consult

It is important to give as many people as possible an opportunity to respond. You may use a variety of channels, such as mailshots, leaflets, social media, open meetings, media announcements or a combination of these. Many academy trusts set up websites for the consultation, but you should make sure the consultation is also available to those without a computer or access to the internet. You may also want to consider translating the consultation materials into other languages if the school being proposed is in an area with a diverse population. Finally, you should be able to provide accessible formats of the consultation, on request – for example, a braille version.

## How to deal with responses

You need to build in time to consider responses and whether it might be appropriate to make any changes or additions to the plans for the school.

## How to report on the outcome

Once the responses to the consultation have been analysed, you will need to consider how the findings will be presented to DfE and other interested parties. The most effective way is to produce a report of the important findings, providing quantitative and qualitative information, details of methods and timings, whom you consulted, the questions you asked and any steps that have been taken in the light of responses. You will then need to consider how you will publish the outcome of your consultation.

## How DfE will work with you

When the time comes to decide whether to enter into a funding agreement with your academy trust, the thoroughness and transparency of the consultation will form an important part of that decision.

The Secretary of State is required, under [Section 9 of the Act](#) 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. You do not need to do this – your delivery officer is responsible for carrying out the impact assessment at the appropriate time.

## Further information

- [Annex A, table 9 – statutory consultation: checklist of activities](#)
- [Annex D – Section 10 consultation checklist](#)
- [Section 10 of the Academies Act 2010](#)
- [Model funding agreements](#)

# Funding and finance

This section provides information on the PDG, financial governance and accountability, risk protection arrangements and school financial planning.

The funding that projects 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.

## Overview of financial management

The [academy trust handbook](#) sets out financial management and governance requirements. You must put in place robust governance arrangements and accounting procedures to allow the school to manage public funding responsibly once open.

### Project development grant (PDG)

Note that:

- you must effectively plan and manage expenditure during pre-opening, including meeting the terms of the PDG agreement
- the grant is for essential non-capital pre-opening revenue costs
- the rate depends on the type of school
- there is an initial allocation of £30,000
- the full allocation is paid only once the provisional opening date and heads of terms for the site have been agreed
- you will need to submit a budget profile and statement of expenditure as requested by your delivery officer

### Financial plan

Note that:

- you must develop a financial plan that demonstrates your 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, which should be considered jointly with the development of your curriculum
- the plan should be based on delivered educational outcomes
- the plan will be assessed by DfE at important checkpoints during pre-opening
- DfE must be satisfied that the school will be financially viable before entering into a funding agreement

### Financial statements you need to submit to ESFA

Note that:

- the [academies accounts direction](#) describes the form and content of statements to submit to ESFA
- you need to be aware of the main submission and publication deadlines

### Essential information you need to provide to DfE

Throughout the pre-opening phase, projects will be required to provide DfE with the following:

- budget profiles and statements of expenditure for PDG
- evidence of PDG spend

- financial plans with supporting assumptions, demonstrating the school's financial viability when it opens

### **Risks you must manage**

Mainstream free schools are funded on the basis of pupil number estimates while they are growing. When a school recruits fewer pupils than estimated or funded for, ESFA will recover the associated funding. This will be based on the October schools census, and any excess funds will be recovered in the following academic year. It is important to note that if this affects your school, you will need to make sure you are able to pay that amount back the following year. If not, this could lead to financial problems.

Schools that have under-recruited pupils can also have financial viability issues if their plans do not have sufficient flexibility. DfE will not open a school if it does not believe it will recruit enough pupils to be financially viable.

The pupil recruitment, funding arrangements and risks involved in opening special and AP free schools are different, but DfE will assess these risks and not open such schools if their financial viability is in doubt. Your delivery officer will discuss these with you as a minimum at the main checkpoints.

Projects in pre-opening receive PDG to cover all pre-opening costs (except capital). If an academy trust runs out of PDG, DfE will not provide additional funding, except in exceptional cases.

## **More on the project development grant (PDG)**

In the run-up to your school's opening, DfE will provide a fixed-rate PDG to cover essential non-capital costs up to the point at which the school opens. Your academy trust will need to profile and effectively manage the spend of this funding, the rate of which is set out in the table that follows.

You will be issued with a grant agreement, setting out the terms under which the PDG will be paid. You must read these terms before signing the agreement and returning it to DfE. Your academy 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 an academy trust with more than one school, the trust's account may be used.

The PDG will be formed of 2 elements: you will be given an initial allocation of £30,000 and the balance of the PDG funds will be paid in instalments after the provisional opening date has been agreed. This initial £30,000 should be sufficient to meet all the pre-opening costs likely to be incurred by your academy trust until the school's site is confirmed and DfE has agreed a provisional opening date with you in writing. The remainder will be allocated at this point, with the schedule of payments modelled around the budget profile you provide for the remainder of time in the pre-opening phase.

The exception to this is any project where the heads of terms for the site and provisional opening date have been agreed at the point the project enters pre-opening. In such a case, the initial £30,000 allocation will not be provided separately but will instead be included in the overall PDG payment schedule.

You must provide regular budget profiles and statements of expenditure throughout the pre-opening phase. Your delivery officer will advise when it will be necessary to provide these returns, but, as a minimum, you are required to provide a budget profile and statement of expenditure at least once a year. Details of future returns and templates are provided as part of the grant agreement. You may also be requested to provide evidence of spend stated in those returns to provide assurance

to DfE as to how the PDG is being spent.

Future payments will be delayed or stopped at any time if the terms of the grant are not upheld – for example, if you don't make timely expenditure returns, there is inappropriate use of public funds, or your project does not make satisfactory progress. You must inform your delivery officer if you forecast that you will overspend on the PDG.

If your project is cancelled before the school opens, you must not incur any further expenditure and must return any unused PDG funding, in accordance with the conditions of the grant and as set out in the grant agreement.

After opening, free schools can reclaim value-added tax (VAT) on expenditure incurred during the pre-opening phase from His Majesty's Revenue and Customs (HMRC). More information can be found on the [HMRC website](#). DfE and your delivery officer are not able to advise on tax policy – you should seek advice from your local tax office on reclaiming VAT once open. Your school can also retain any VAT it recoups from HMRC on PDG expenditure. Note that the terms of other grants may differ.

### **PDG funding rates**

The amount of PDG you receive will vary depending on the type of school you are opening – for example, secondary, primary or AP.

If your trust is opening a single school in an academic year, you will receive the full PDG rate for the type of school you are opening. If you have been approved to open more than one school in an academic year, you are expected to realise efficiencies in areas such as project management, educational services, administration and office costs. You will receive full PDG funding for the first school and a reduced amount of PDG funding for each additional school.

If your trust is opening multiple schools, the amount of PDG will be determined by the provisional opening date of each school, as agreed with DfE. This is regardless of when the project was approved to pre-opening. The current rates payable to projects in the pre-opening phase are set out in the table that follows. These amounts are subject to review and may change.

### **PDG funding rates**

<b>Type of school</b>	<b>PDG funding for first school opening in a given academic year</b>	<b>PDG funding for each additional school opening in the same academic year</b>
<b>Primary mainstream</b>	£220,000	£150,000
<b>Secondary and all-through mainstream</b>	£300,000	£200,000
<b>Special</b>	£220,000	£150,000
<b>AP</b>	£220,000	£150,000
<b>16 to 19</b>	£250,000	£170,000
<b>Local authority presumption</b>	£25,000	£25,000

The number of schools that an academy trust is opening in a single academic year

will include any schools approved to pre-opening.

In cases where the provisional opening date is deferred, additional funding will not usually be allocated to the project. The project will retain the PDG rate that it is already receiving, although the payment profile may be amended to reflect the longer pre-opening period. Academy trusts will need to re-profile their budget expenditure plans and resubmit them to DfE.

### **Planning your PDG budget**

You must make sure that all spending is essential to the development of the school during the pre-opening phase and provides good value for money. DfE 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.

The PDG is intended to cover all revenue costs until opening. It is not intended for the purchase of any resources the school will need once open, such as books and curriculum materials. Capital costs to secure and develop the school site and information communication technology to support the curriculum are provided by FSFES and should not be funded from the PDG.

Typically, projects will use their PDG funding to pay for the following:

- project management (support to co-ordinate all work leading to the development of the school, excluding site-related issues)
- educational services
- staff recruitment (including the principal designate)
- salary costs (which often include the principal designate, finance or 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)
- academy trustee induction and support

Many projects also use their PDG to purchase the financial and management information system the school requires in advance of opening. Where possible, it is good practice to maintain a contingency 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 merged with the school's budget.

It is up to you to decide how you allocate your PDG spending. Requirements vary from project to project, depending on the local context, the school and the wider resources available to the trust.

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 should apply throughout the project to open the school.

One person within the academy trust should have overall responsibility for managing the financial plan and PDG expenditure. They should be accountable to the trust and DfE for making sure the funding is used properly and the budget is managed well.

You will receive the PDG grant letter shortly after the project enters the pre-opening phase. Your delivery officer 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 PDG funding, and can arrange for payments to be delayed or stopped, where necessary. Requests may also be made by your delivery officer

to see evidence of spend, for example, invoices.

## Governance and accounting arrangements

Before opening, your trust will need to put in place effective systems for managing the public funding it receives. Putting good governance arrangements in place at this stage will help develop a strong framework for the school on opening.

You will need to make sure that the academy trust's spending choices and decisions are in the school's best interests and are both transparent and defensible. Your trust will need to be able to demonstrate 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 delivery officer will consider the progress made towards developing effective financial governance arrangements for the school. You must inform your delivery officer if you have identified any potential conflicts of interest when spending your PDG.

You will need to agree how you will manage payments and any related decisions, such as awarding contracts. You must retain original copies of all receipts, invoices, contracts and tender documents, and DfE may ask to review these at any time.

Your trust will need to have a robust framework to manage its funding and make sure that proper accountability and procedures are maintained. In the pre-opening phase, important tasks to deliver this include:

- Setting out the role of the CFO (for example, a finance director or business manager) and recruiting an appropriate person
- Forming the finance committee of the governing board, agreeing its terms of reference, and making sure its membership includes appropriate financial expertise and there is a process in place for checking its financial systems, controls, transactions and risks in whichever way the trust deems most appropriate to its circumstances (see the [academy trust handbook](#))
- Ratifying the appointment of the AO (normally the principal for an academy trust with only one school and the SEL for an academy trust with more than one school)
- Securing formal governing board approval for the first year's budget.
- Developing policies and manuals that give guidance on 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 interest

The [governance](#) section of this guide gives further advice on some of these tasks.

## School resource management

Effective schools make the best use of resources, making sure that every pound is used to effect maximum impact for their pupils and the school. Schools that do this well tend to:

- Use [integrated curriculum and financial planning \(ICFP\)](#) – basing their financial plan on the delivery of educational outcomes rather than viewing it as a separate consideration helps them, for example, analyse the most effective deployment of staff, such as determining how flexible working arrangements can be included in the budget, thereby delivering the best decision for their curriculum and finances while being inclusive of staff needs



- have a strategic approach towards financial planning for the longer term – that is, 3 to 5 years
- deploy their staff effectively and efficiently, linked to their long-term plan
- have robust leadership and challenge from financially skilled governors and school leaders, across the 3 domains of pedagogy, business and governance
- have access to skilled staff responsible for managing finances, who have experience of seeking best value for money when procuring
- have transparent financial systems and processes that encourage constructive challenge within and between schools

[The school resource management \(SRM\) programme](#) offers a variety of support and guidance for schools and academies to help them get the best value from their resources so they can invest them into the areas that make the most difference to pupil outcomes.

The SRM offer is available to all state-funded schools and includes:

- The get help buying for schools service, which helps schools get best value when buying goods and procuring services
- Teaching vacancies – a free national search and listing service to advertise teaching, leadership and education support roles at your school
- The schools financial benchmarking service, which enables schools to compare their income and expenditure to that of similar schools and academy trusts, visualise the information using benchmarking charts, and use the data to build relationships with other schools and trusts
- The view my financial insights too, which allows academy trusts and local authorities to see all their schools in one place, providing users with an automated assessment of their data based on similar schools to help identify and investigate areas with the greatest variance
- Guidance and support to encourage schools to use ICFP to create the best curriculum for pupils with the funding available
- School resource management (SRM) advisers – experienced school business leaders who can provide free, expert, hands-on advice and support tailored to your school or academy trust
- Digital standards, which can support schools to understand their digital environment and know what technology they should have in place
- Good estate management for schools (GEMS) – a one-stop shop for guidance, tools and checklists to help you manage school buildings effectively and efficiently. which includes an interactive self-assessment tool, a top-10 estates checklist for governing boards, and energy and water management tips

These are just a few examples of the tools and services on offer. You can access the full suite of support in the [SRM collection](#).

You can also learn more about the available support by reading the 2022 [school resource management: building a stronger system strategy](#), which outlines DfE's aims and the variety of tools, guidance and resources available to support schools and academy trusts in achieving those aims.

## **The academy trust handbook**

The [academy trust handbook](#), together with the funding agreement, sets out the financial management and governance requirements for academy trusts.

You must comply with the handbook, both throughout the pre-opening phase and once your school is open. This is outlined within the grant agreements underlying any

funding you receive from DfE or ESFA. Non-compliance with the handbook is considered a breach of contract and may trigger various sanctions.

The handbook is aimed at academy trustees, accounting officers (principals, CEOs and SELs), CFOs (finance directors, business managers or equivalent), governance professionals (clerks) to the board of academy trustees, local governing bodies of academy trusts, and auditors.

The handbook makes clear that the AO is personally responsible to Parliament and to the AO of ESFA for the resources under their control. This personal responsibility extends to making sure there is regularity, propriety and value for money. The AO also has responsibilities for keeping proper financial records and accounts, and for the management of opportunities and risks.

## Financial statements

Free schools with a funding agreement with the Secretary of State and an open academy at any point during the accounting period must submit to ESFA by 31 December an audited annual report and financial statements for each year ending 31 August. The [academies accounts direction](#) prescribes the form and content of the financial statements. Prior to signing the funding agreement financial statements should be prepared in accordance with company law.

Academy trusts should set their [accounting reference date](#) to 31 August at Companies House. This is the date to which their financial statements will need to be produced.

The accounts must also be filed by 31 May (within 9 months of the end of the accounting period) with Companies House. Further information can be found at [Companies House](#).

## Other financial returns

Academy trusts must also submit the following financial returns to ESFA, once the school is open:

- a 3-year budget forecast in July
- audited financial statements for the year ending 31 August by the following December
- academies accounts return for the year ending 31 August by the following January
- a [financial management and governance self-assessment](#) within 3 months – this highlights the main requirements academies must have in place soon after opening

Academy trusts are responsible for keeping up to date with the latest deadlines and requirements. More information is available at [academies financial returns](#).

You can also keep informed through [ESFA update](#).

## Insurance cover: risk protection arrangement (RPA)

A risk protection arrangement (RPA) is an alternative to commercial insurance whereby the government will cover any losses that arise. The RPA will cover all losses that are in the scope of its [membership rules](#).

The RPA membership year runs from 1 September to the following 31 August, but members can join at any time. Free schools can join the RPA scheme via their delivery officer and receive cover at no cost in the pre-opening phase.

Free schools do not have to join the scheme and are free to make their own alternative insurance arrangements, but no additional funding will be provided if additional costs are incurred. More information can be found in the [risk protection arrangement](#) guidance.

## Funding for open schools

DfE will assess your 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 on opening. We will not enter into a funding agreement if we are not confident the school has a viable financial plan. You must talk to your delivery officer if you are unable to submit a viable financial plan.

Developing your school's financial plan is an ongoing process that should be considered jointly with the development of your curriculum. It should be updated as further details of funding arrangements become available, staff are appointed, site plans are firmed up, the projected number of pupils becomes clearer, and other costs are more confidently established.

Further updates should take account of the number of staff required to cater for the projected pupil cohort. This may change over time and updates should make sure that staffing structures are affordable and appropriate.

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 ESFA, and expenditure (including service contracts and salaries).

Guides to free school revenue funding are available for [mainstream, 16 to 19](#), [special](#) and [AP](#) free schools. These explain how the funding for new free schools opening in 2022 to 2023 is calculated and give details of how the post-opening grant provided to new schools as they build up to full capacity is calculated.

The latest version of the templates can be requested via [revenuefunding.freeschools@education.gov.uk](mailto:revenuefunding.freeschools@education.gov.uk). The rates in the template you used when you made your application may not be the ones for the year in which you will open. You will need to refresh your financial plan in the spring before opening when the new rates are available. Your delivery officer will keep you updated on any changes.

The approval of your application to the pre-opening phase is therefore conditional on you submitting a revised financial plan at important checkpoints during pre-opening so DfE can be assured your school is on course to be financially viable. In particular, you may be asked to share your financial plan with DfE before entering into a funding agreement, which should also include a version modelled around the lowest viable number of pupils for your first year of opening. This information will be used to prepare draft funding allocation packs for issue.

Your delivery officer may ask you to revise your plan or give further information, if needed, to show the school will be viable and efficient in using resources to deliver pupil outcomes both during your early years of operation, when pupil numbers are building up, and when your school is operating with all year groups. They will need to see that the school has developed robust and consistent curriculum, staffing and financial plans, and strong financial governance arrangements. These plans should demonstrate clearly how the school will minimise non-staff costs and be efficient, viable and not go into deficit in any year.

# Developing a viable financial plan

## Mainstream schools

Once the school is open, it will be funded by ESFA. Funding will be paid in equal instalments on the first working day of every month except the first after opening, when it will be paid on the sixth working day.

The funding for free schools is set at an equivalent level to funding for all other state-funded schools. 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.

The government will make sure that any new free schools that are not yet open but are in the pipeline or will enter the pipeline during the 2022 to 2023 academic year are funded consistently with other schools.

In 2022 to 2023, local authorities will remain responsible for setting individual schools' budgets through a local funding formula. Free schools are encouraged to speak with their local authority about their plans for implementation of the national funding formula (NFF). Funding for schools in 2023 to 2024 will be announced in the summer term.

Financial and therefore educational viability is dependent on you admitting sufficient numbers of pupils. To provide a sustainable, broad and balanced curriculum, there is a presumption that primary provision should have a minimum of 2 forms of entry of 30 pupils, and secondary a minimum of 4 forms of entry of 30 pupils. DfE does not expect a financial plan to be based on fewer pupil numbers – if you expect this to be the case, you should discuss your rationale with your delivery officer.

Once open, if the October schools census shows the school has not admitted the predicted number of pupils, any excess funding will be recovered in the following academic year. Where more pupils are recruited than have been funded, ESFA will carry out an in-year reconciliation and pay any additional funding in the current academic year.

More information can be found in the guide to [mainstream free school revenue funding](#).

## 16 to 19 free schools

Once the school is open, it will be funded by ESFA. Funding will be paid in equal instalments on the first working day of every month except the first after opening, when it will be paid on the sixth working day. 16 to 19 free schools are funded on the basis of the post-16 NFF.

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 to 19 provision as a whole. Financial and therefore educational viability is dependent on you admitting sufficient numbers of students.

Securing financial viability can be particularly challenging for 16 to 19 institutions. If you are proposing a 16 to 19 school with a broad curriculum of A levels, or A levels and vocational qualifications, we would expect this to be a larger school of at least 1,000 students.

If you are proposing a smaller 16 to 19 school, including one with a more specialist curriculum offer, we will need to be assured that other arrangements are in place to make sure that it is viable. This could include being part of an academy trust of more than one school or another formalised partnership arrangement, including with other 16 to 19 local providers, which could support the viability of your school through:

- shared services or facilities across providers to increase efficiency and reduce the impact on existing providers – for example, shared back-office functions
- support to extend the curriculum or extra-curricular offer available to students in your school via other local providers, including arrangements to share staff between institutions
- financial support provided to your school that will deliver an enhanced offer to students

We will need to assess the nature and sustainability of any partnerships, and if you receive financial support from a partnership, we may need to assess whether your school would remain viable should this support not be available in the future.

In addition to the considerations above, if you are proposing a sixth form as part of a secondary school, you should consider the following:

- size – our expectation is for sixth forms to have a minimum of 200 students, either in the institution or through a partnership
- breadth – our expectation is that a student should be able to choose from around 15 A levels across a range of subjects, either in the institution itself or through a partnership
- demand – including any shortage of post-16 places, and an assessment of the quality of level 3 provision overall in the area and the impact of the new provision on other providers
- financial viability and value for money – including testing financial resilience should student numbers fall and considering the degree and impact on 11 to 16 education of cross-subsidisation of funding from the school's other budgets

You may be eligible for a programme-weighting funding uplift if you offer a curriculum that is particularly expensive to deliver, such as engineering. You may also be eligible for funding uplift if you anticipate higher disadvantage levels than the local authority average. If these criteria 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.

Note that, as students are able to hold multiple offers, an adjustment of at least minus 30% must be applied to your financial plan to take account of a potential drop-out between accepted offers and start date.

Once open, if the October schools census shows the school has not admitted the predicted number of pupils, any excess funding will be recovered in the following academic year. Where more pupils are recruited than have been funded, ESFA will carry out an in-year reconciliation and pay any additional funding in the current academic year.

More information can be found in the [guide to 16 to 19 free school revenue funding](#).

### **Special free schools**

Once the school is open, funding will be calculated and paid in the school's first year by both ESFA and local authorities commissioning places at the school.

Once the school is open, it will be funded by ESFA. Funding will be paid in equal instalments on the first working day of every month except the first after opening, when it will be paid on the sixth working day.

As of 2019, funding for special free schools is included in local authorities' high-needs allocations. The number of places to be funded at special free schools from their second year of opening onwards will be agreed with the local authority through the place-change notification process.

Funding in special free schools comprises:

- flat-rate per-place funding from ESFA for a number of full-time-equivalent places – this will be paid for a number of places, be subject to regular review by the local authority for the area in which the school is located, and be dependent on local authorities' commissioning of places for pupils with education, health and care (EHC) plans
- per-pupil top-up funding from the local authority commissioning a place – this is determined in negotiation with the school based on a pupil's assessed needs and the cost of meeting them in school, is paid for as long as the pupil attends the school, and will flow directly between the local authority and the school

Pupils without EHC plans can only be admitted to special schools in certain – refer to the [SEND code of practice](#) and your funding agreement for further details.

Special free schools, like other special schools, can also receive funding from local authorities and other schools for commissioned services – for example, to provide specialist teaching support for pupils in local mainstream schools.

In all cases, the income special free schools receive, and their future viability, will depend on their providing the places needed locally and on local authorities' willingness to place pupils with EHC plans at the school and fund the special provision on offer. Local authorities often have standard rates of top-up funding for pupils with different levels of need, which they use for maintained special schools and special academies. DfE has encouraged local authorities to publish information about their top-up funding arrangements. Special free schools should expect to operate on similar levels of funding from local authorities.

More information can be found in the guidance on [special free school revenue funding](#).

### **Alternative provision (AP) free schools**

Once the school is open, funding will be calculated and paid by both ESFA and those commissioning places at the school. Once the school is open, it will be funded by ESFA. Funding will be paid in equal instalments on the first working day of every month except the first after opening, when it will be paid on the sixth working day.

AP free schools are established in response to demand by local authorities or local schools. Evidence of this demand is needed to support the establishment of the school. Local authorities are responsible for making sure that adequate alternative provision is available for pupils in their area who are not at a mainstream or special school. The detailed funding methodology may vary over time as changes are made to the school and high-needs funding systems.

From the third academic year after an AP free school opens, ESFA starts to deduct an appropriate proportion of the place-funding from the high-needs funding block within the dedicated schools grant (DSG) of the local authority where the pupil resides. This is because some AP free schools accept pupils from local authorities other than the one in the area in which they are located, or from schools and academies in other local authority areas.

Funding in AP free schools comprises:

- funding from ESFA for each full-time equivalent place for a pre-16 pupil, which – as for all funding – is subject to regular review
- per-pupil top-up funding agreed by the provider and commissioner (a local authority or another school) and paid by the commissioner direct to the provider for each pupil in order to meet any costs exceeding the base funding threshold
- per-student funding from ESFA for students aged 16 to 18
- any other funding received from a local authority or school commissioning a service such as outreach work in local schools



AP free schools' continuing financial viability depends on both the ongoing support of local authorities and schools or academies, in terms of a commitment to commission places and services, and their willingness to provide associated funding. You will need to show evidence before you open that places are being commissioned at your school.

This evidence should be accompanied by a recognition of the costs of the AP and the value for money the school will offer, an understanding of how those costs will be met by local authorities and schools in the area, and an assessment of the affordability of the provision based on these factors.

More information can be found in the guidance on [alternative provision free school revenue funding](#).

## High-needs funding overview

High-needs funding is allocated from the local authority's DSG high-needs block to provide support for children and young people with SEND, and to meet their statutory needs.

- Mainstream pre-16 free schools are expected to meet the first £6,000 per year of additional costs that may arise in supporting a SEND pupil from their own existing budget.
- Mainstream pre-16 free schools with a unit or resourced provision would fund SEND pupils using funding from their mainstream funding plus £6,000 for each occupied place and £10,000 per place for the unoccupied places in the unit.
- An AP free school or special free school would receive funding of £10,000 per year for each pre-16 school place, based on the number of places agreed with the local authority (for special free schools) or with the ESFA (for AP free schools).

The support could be provided through a statutory assessment or via an EHC plan, but local authorities also have the discretion to provide top-up funding to children and young people up to the age of 19 without an EHC plan.

Local authorities will provide top-up funding to individual pupils in mainstream, special or AP free schools when the support costs exceed more than £10,000. The local authority bears the ultimate responsibility for decisions on top-up funding, as it is accountable for spending from its high-needs budget, but DfE expects the level of support and rates to be discussed and agreed in writing with individual free schools.

More information on high-needs funding can be found in the guidance on [high-needs funding arrangements: 2023 to 2024](#).

## Funding for free school nurseries

If your free school includes a nursery, it will be funded on the same basis as other early years provision, rather than via the same formula as other free schools. This is because the Secretary of State does not enter into a funding agreement in respect of nurseries, as they are funded either by local authorities or by parents paying for places. DfE's expectation is that the school and the nursery should each be financially viable without reliance on cross-subsidy.

All 3- and 4-year-olds, and disadvantaged 2-year-olds whose parents receive certain benefits, are entitled to 570 hours of funded early education each year. These entitlements are commonly referred to as '15 hours free childcare' entitlements. Since 2017, 3- and 4-year-olds have been eligible for an additional 570 funded hours



per year if both parents (or the sole parent in a single-parent family) are employed and earn above the minimum or living wage for 16 hours per week but neither has a taxable income of over £100,000. Further information regarding the criteria for funded childcare can be found at [get childcare: step by step](#). This entitlement is more commonly referred to as '30 hours free childcare'. A nursery cannot put conditions on the free hours (for example, allowing parents to access their free entitlement only if they agree to take additional paid hours or pay for lunches), but parents should have the opportunity to pay for additional hours or consumables if this is something it offers.

If a parent chooses to take their free entitlement in a nursery that is part of a free school, the local authority will fund that provision from their DSG allocation at an hourly rate agreed by the local schools forum. The local authority is required to fund only the children who attend the nursery, not to fund empty places.

For the 2022 to 2023 financial year, the early years national funding formula (EYNFF) includes a minimum hourly funding rate for local authorities of £4.61 for the 3- and 4-year-old entitlements and a requirement for local authorities to pass 95% of funding direct to providers.

The EYNFF also established a disability access fund, which, from 2022 to 2023, pays at least £800 per year for each eligible child, to enable them to access the free entitlement. It also places a requirement on local authorities to establish a special educational needs inclusion fund to support children with SEND to achieve good outcomes in the early years. Further information on the EYNFF is available at [early years funding: 2022 to 2023](#).

To receive funding for free early years entitlements, your nursery must either be registered on the early years register (EYR) or be exempt from such registration (see [inspections and registrations as an independent school](#)) for further details). When these criteria are met, the local authority must make sure that free childcare is available at the early years provider (including nurseries) of the parent's choice. This is provided that the nursery is willing to provide the funded place, accept any terms of payment, and comply with the learning and development and safeguarding standards and requirements in the [early years foundation stage framework](#) (EYFS) – for example, requirements in respect of SEND, safeguarding and maintaining Ofsted quality standards.

A free school nursery may charge parents for additional hours above the free entitlement and is free to decide its own rate for this additional provision, but it cannot charge for the free hours that are funded by the government. It is allowed to make a profit, but the accounting must be separate from the school's general annual grant, and the provision must be set up as one of the following:

- direct provision by the free school – any surplus can be reinvested into the school
- a not-for-profit charitable company – the company can retain any trading surplus as a reserve or reinvest this into the school
- a for-profit company – the profits can be reinvested into the school once the company has accumulated a prudent reserve

The local authority will want to ascertain that any provider is mindful of the impact of additional charges on the most disadvantaged parents.

## Other sources of guidance

The [academy trust handbook](#) sets out the funding arrangements and financial management requirements your school must follow. You must refer to this handbook alongside your funding agreement for information about the financial systems and

controls your school is required to have in place.

## Further information

- [Annex A, table 5 – funding checklist](#)
- [HMRC website](#)
- [Academy trust handbook](#)
- [Academies accounts direction](#)
- [Funding arrangements for free schools](#)
- [Schools financial efficiency: top-10 planning checks for governors](#)
- [Schools resource management](#)

## Procurement and additional support

Academy 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 you achieve both the best outcomes for your free school and the best value for money.

## Purchasing goods and services

Schools need to buy a wide range of goods and services and may use different suppliers, such as public sector buying organisations, procurement consultancies and local authority traded services to help them do so. This diversity can offer opportunities to improve their efficiency, but navigating the system can be complex. Detailed guidance on [buying for schools](#) is available. The [schools buying programme 2020: prospectus 2020-2025](#) outlines the support available to help schools improve value for money from their non-staff spend.

## Summary of the main tasks

You will need to make sure you understand the rules and regulations on [buying procedures and procurement law](#) 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 are spending, the greater the scrutiny required of the procurement rules.

It is a good idea to set out the academy 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 it is clear who is responsible for what.

You will need to be clear about how best to use your PDG. You should review your proposer 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 involves 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 demonstrate you are using it well. It is always helpful to ask yourself if your

procurement decisions could be satisfactorily defended in public. There is more detail on typical areas of project expenditure in the section on [funding and finance](#).

Having a good range of expertise in your proposer group can help you to decide what you can do for yourselves at no cost and when you will need to buy in support because your capacity or capability is likely to be stretched. It will also help you to negotiate and push back on costs to get a better deal.

Good procurement decisions will help you get the right support and achieve value for money. Conversely, if you do not 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 being fair and if people think you are not using public money properly.

If you fail to follow the requirements of the [public procurement policy](#), you could be open to legal challenge from a supplier. If the challenge is successful, this could lead to a contract being cancelled, a competition having to be re-held, and compensatory financial penalties being levied.

Guidance is available on [buying for schools](#) to help you plan and implement the most appropriate processes for your procurement needs.

## How DfE will work with you

Academy trusts are accountable for their decisions and expenditure. Your delivery officer will monitor the progress of the project and check that expenditure returns are received and appropriate.

## Further information

- [Buying for schools – guidance and support](#)
- [Buying procedures and procurement law for schools](#)
- [Schools buying programme 2020: prospectus 2020-2025](#)
- [Find a DfE-approved framework for your school](#)
- [Annex A, table 2 – procurement and additional support: checklist of activities](#)
- [Academy trust handbook](#)

## Site and buildings

This section explains how free schools, FE and skills capital (FSFES) will work with you to find and secure a suitable site for your school. More detailed guidance on how this fits into a programme for delivering the site and buildings for your school, and the other stages in that process, is included in [customer journey: building your school](#).

## The right site: important information

Finding the right site for your free school is very important. It can also be the most

time-consuming, complex and frustrating aspect of your project. However, you should make sure that you do not get distracted by the site at the expense of the other important tasks during the pre-opening phase. Establishing clear roles in your proposer group is crucial – it is recommended that there is one person who leads on matters related the site and works with FSFES.

The earlier a site is secured, the relevant planning permission is obtained and building works are agreed the better. Having these in place can be very useful when marketing your school to prospective parents, pupils and staff.

The length of time it takes to secure a permanent site will vary for each free school project. Important factors when it comes to finding a site are your school's operational requirements and the location. It is difficult to find suitable sites in some regions and, for this reason, you may need to be flexible about where the school is located (as well as about the year of opening). FSFES will look at temporary accommodation only in exceptional circumstances.

The average time taken to secure a suitable site is around a year, while the normal lead time for acquiring and delivering sites ready for a school to open is around 3 years. Unless a site is already secured and requires little work and no planning approval, opening in a shorter period will be extremely challenging. Whilst it is important to secure a site that is appropriate for the school, DfE must also achieve value for money for the public purse.

You should not announce the site that has been chosen for your school until your project director has confirmed the site has been secured and it is appropriate to do so. This is because commercial negotiations are highly sensitive and can be undermined by premature public announcements about acquisitions.

## Finding a site

Free schools can be located in a wide variety of premises. They may not look like traditional school buildings – they have historically been delivered in refurbished or remodelled accommodation. They will often not require the construction of completely new buildings, though they can be delivered in new-build facilities. DfE has adopted a presumption in favour of offsite construction, where it represents value for money following the Chancellor of the Exchequer's [budget announcement](#) in 2017.

Off-site construction is the manufacture and pre-assembly of construction components, elements or sub-assemblies that are then brought to the site. There are a number of factors to be taken into consideration when establishing if a project is suitable for offsite construction, such as any road access or height restrictions preventing the delivery of the pre-assembled components, or there being a high proportion of refurbishment work. Further details of the process are available in DfE's [modern methods of construction](#) guidance.

After the approval of your proposal, FSFES will join your project's kick-off meeting, along with your delivery officer, to discuss the suitability of the proposed premises and consider any alternative site solutions. Before this meeting, FSFES, working with DfE's property services team (LocatED), 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 the review, FSFES may also have:

- contacted the relevant local authority about planning designation
- considered the availability of government buildings
- commissioned LocatED, the government-owned property company responsible

for buying and developing sites for new schools in England, to undertake a site search, and considered alternative sites where relevant

FSFES will realise you may already have a preference for a particular site, but you should be aware that it might not be the most feasible one. Common reasons why that might be the case include the following:

- it is too small or too big for the number of pupils
- it is not yet on the market, or will not be available in the time required
- it is too expensive to buy, lease or maintain
- it requires too much work to be affordable
- it does not have, and FSFES may not be able to acquire, the appropriate planning permission to become a school
- it is a listed structure – securing planning for change of use and works would be expensive, complicated and time-consuming, increasing the risk of delays, and the ongoing maintenance and restrictions of use would be expensive and restrictive for the academy trust

Keep an open mind regarding sites – just because a site doesn't look like a school, it doesn't mean it cannot become one.

## **Securing a site**

Once a site has been identified that can be delivered in the time available and that represents value for money, FSFES and DfE's property services team or LocatED will begin negotiations to acquire it. The 6 ways of acquiring a site are as follows:

- a peppercorn-rent lease, usually agreed at a nominal rent of £1 per year – this means the site is considered a 'free site' (negotiated by FSFES's property and legal teams with the local authority and other public bodies)
- an S106 agreement between a local authority and a developer that commits the developer to providing land and/or financial support in the delivery of a school – depending on the size and viability of the site, this could mean making a monetary contribution, providing the land on a peppercorn-rent lease, or providing the land and partially or fully paying to build the school (negotiated by FSFES's property services and legal teams)
- a peppercorn-rent lease for land held by the academy trust (negotiated by FSFES property services and legal teams)
- a peppercorn-rent lease pursuant to development (negotiated by FSFES's property services team)
- a freehold commercial purchase (negotiated by LocatED on behalf of FSFES)
- a commercial lease (negotiated by LocatED on behalf of FSFES)

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, and it is FSFES's duty to secure the best value for both you and the taxpayer.

It is vital that you check with your FSFES project manager before discussing or revealing the details of the site you are seeking to anyone outside your proposer group. These negotiations are very commercially sensitive – public disclosure can seriously undermine the negotiating position and may result in the transaction being aborted.

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. At the appropriate time, FSFES will welcome the

support of the academy trust in establishing a base of support for the proposal with planning officers and elected members at the relevant local planning authority.

Your project manager will tell you when you can publicly confirm your site/s (permanent, temporary or both) – see the section on [statutory consultation](#).

## **FSFES/DfE's and LocatED's responsibilities in finding and securing a site**

In cases where sites are made available through a local authority or diocese, DfE's property services team will lead the process, working closely with the FSFES project manager.

If a site search is required for a commercial lease or freehold commercial purchase, and your initial application was not made with an acceptable site in mind, FSFES or LocatED, commissioned by FSFES, will do the following:

- conduct searches and provide you with a suitable site (LocatED)
- visit and assess the site to provide a high-level view of the nature and cost of any construction works needed, the planning consents required and the likely running costs (FSFES or LocatED technical advisers)
- start negotiations to acquire the site, if an assessment shows it is affordable and good value for money (FSFES property services or LocatED)

If a market/commercial site is to be acquired, it will be LocatED's decision to secure it, based on a commission from FSFES and following close engagement with the academy trust regarding its requirements. A trust will be given an opportunity at the start of the process to have an input into the commissioning instruction. It is important that you take this opportunity to give your views, as the commissioning instruction will form the basis for the decision to secure a site.

Prior to finalising its decision to acquire a site, LocatED will be required to obtain confirmation from the project director that the original commissioning instruction has been met. The project director will keep the trust involved throughout and inform you of the site selected.

## **How the academy trust can help**

If you have any information or local knowledge you would like FSFES's property services or LocatED to be aware of as part of the site search, you should inform your project director. FSFES welcomes any information that academy trusts may have.

You must not enter into negotiations on sites, as doing so would undermine the negotiating position of the experts commissioned to undertake that task. More importantly, this is public money, and any funds for a project must be committed only with ministerial approval.

You must not announce the site that has been chosen for your school until your project director has confirmed it has been secured and it is appropriate to do so. This is because commercial negotiations are highly sensitive and there is a risk that they will be undermined by premature public announcements about acquisitions.

You will also need to take heed of FSFES advice about local developments and how they will affect your site options – for example, new-build developments and their contribution to basic need, or S106 site provision.



FSFES has developed guidance that provides an overview of the people and processes involved in securing a site. This can be accessed via [the Create: Schools website](#).

You should work with your project director throughout the process to make sure that the site is suited to the needs of your proposed school. However, you may need to be flexible, as it is not always possible to deliver a site and buildings that exactly match your preferred specifications, due to constraints such as cost, size and time.

## **FSFES's responsibilities in securing a site**

It is the responsibility of the FSFES property manager or LocatED to commence negotiations with the site owner or the agent representing them and to agree heads of terms for the purchase or lease of the site.

At the same time, the FSFES property services lead, LocatED or the FSFES project team will estimate the total costs for the site and seek approval from their investment committee – and, where required, ministers – in order to complete the acquisition.

Lawyers will carry out checks on the tenure, ownership and any restrictions affecting use of the property and complete the transaction. The time this takes will vary from property to property, depending on planning permissions and other issues.

## **Interim site solutions**

In some cases, free schools have opened on a temporary site before being relocated to their permanent buildings, but this should happen only in exceptional circumstances – for example, because the school is necessary to meet pressing demographic need, but the permanent site is not ready.

When securing the permanent site, DfE will establish with you whether opening in temporary accommodation is appropriate. DfE will evaluate the risks of this by examining the delivery of the project's permanent site, evaluating the viability of any proposed temporary solution, testing whether there is a clear evidence of need for school places in the area and making sure that value for money is provided by the new school compared to other schools of a similar phase and in a similar location. Temporary solutions can come in many forms, depending on what is required and what is available, but the most common are using:

- a building on the permanent site while other buildings are under construction
- community buildings such as a church hall or community centre
- part of a neighbouring school
- temporary accommodation on the permanent site
- a local office building

To make sure that the project represents value for money, DfE will not want to spend any more money than necessary on temporary accommodation, so will try to provide an interim solution that requires minimal alteration.

The procurement and costs associated with temporary site works, such as the rental of temporary classrooms, will be managed by FSFES, with the Secretary of State entering into required contracts.



## Difficulties in securing a site

If a project has spent considerable time in the pre-opening phase without a site having been secured, potentially wasting resources, and we do not feel it is making sufficient progress despite numerous interventions, we may contact you to inform you we are considering cancelling the project.

During this process, we will explain why DfE is minded to take a particular course of action, taking into account the representations of those affected and allowing academy trusts to respond before a final decision to cancel the project is made by the minister.

## The site and your statutory consultation

Section 10 of the Academies Act requires proposers of free schools to consult formally with those they think appropriate. This statutory consultation must be completed before the funding agreement can be signed (see the [funding agreement](#) section).

Ideally, you should do this once FSFES has secured your permanent site, but in practice that may not always be possible. If it is not possible, you could identify a particular catchment area for the free school, such as a postcode, or a particular area of a city or town. At the same time, you do not want to undermine any site negotiations, so FSFES will agree with you what information you will need to provide.

## The site and your funding agreement

Other than in exceptional circumstances, DfE will not enter into a funding agreement until heads of terms have been agreed for the permanent site and any temporary site, if relevant. We will need to be confident there is a strong prospect of securing a permanent site and approving the full capital budget for your project.

As part of the funding agreement, there will be a set of land clauses. These aim to protect DfE's public investment in acquiring and developing the land, and to make sure that the academy trust continues to meet its legal obligations as set out in the funding agreement.

Note that:

- the land clauses in the funding agreement must reflect the relevant model drafted by DfE – your delivery officer will confirm the clauses and any bespoke legal arrangements that may apply
- your legal obligations include the responsible stewardship of the site and buildings under the standard repair and maintenance requirements in all DfE leases – detailed guidance for academy trusts on effective building and site management is contained in [GEMS](#).

## Further information

- [Annex A, table 6 – site and buildings: checklist of activities](#)
- [HMRC website: VAT information sheets](#)
- [FSFES customer journey booklet](#)
- [Academy trust handbook](#)

- [Free school model funding agreement](#)
- [Public procurement procedures for free schools](#)

## Pupil recruitment and marketing

You will need to make sure that you have a relentless focus on pupil recruitment and an effective marketing and recruitment strategy in place.

You must market your school to encourage applications from pupils from a range of different ethnic, religious and socio-economic groups, including those from disadvantaged backgrounds, to promote a pupil intake that reflects the diversity of your wider local community

### Recruiting sufficient pupils

To provide a broad and balanced curriculum, there is a presumption that primary provision should have a minimum of 2 forms of entry of 30 pupils, and secondary provision a minimum of 4 forms of entry of 30 pupils. DfE does not expect your published admission number to be set below this number. If you expect this to be the case, contact your delivery officer to discuss the rationale.

When recruiting, you:

- should regularly update your delivery officer on the number of applications you have received
- must inform your delivery officer if the number of applications received by the deadline date, or the accepted offer numbers by national offer day, fall short of the above-minimum-viable expectations
- should continue with your marketing efforts throughout this period, as historically there can be a drop of around 30% from the number of applications received to the number of pupils who will accept places

### The risk of attracting insufficient pupils

It is essential to attract sufficient pupils to make sure that your school is viable. Evidence of high levels of demand for your school does not automatically equate to large numbers of applications or referrals. Similarly, do not assume that when you offer places, all those offers will be accepted.

### The importance of marketing activity

Successful pupil recruitment is an essential element of the pre-opening phase. DfE knows there will be many calls on your time and many other pressing matters, but attracting sufficient pupils to make sure that your school is viable is essential. Financial viability, educational planning and staff recruitment all depend on pupil numbers.

You should not assume that high levels of demand for your school when canvassing for support will automatically equate to large numbers of applications or referrals. Similarly, do not assume that the offers you make will all be accepted. It is essential that you have an unrelenting focus on pupil recruitment.

You may have had very high levels of interest in your free school, but you need to convert this into applications or referrals. During the pre-opening phase, your marketing activity should increase and build on the publicity and interest you have already garnered, to 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 to attract new parents who may not have paid much attention to the proposed school so far but who would be interested now it is becoming a reality.

## **Mainstream and 16 to 19 projects**

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, for these reasons:

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

An adjustment of minus 30% must be applied to financial plans for 16 to 19 projects to take account of a potential drop between applications and accepted offers. Securing financial viability for 16 to 19 institutions can be particularly challenging. See the [funding and finance](#) section for further advice.

## **Faith-designated free school projects, projects with a religious ethos, and those with a distinctive educational philosophy or world view**

It is important that your proposed school is likely to attract applications from all parts of the local community, not just those of your faith group. Therefore, you must market the school to a diverse cross-section of the local community.

## **Alternative provision (AP) projects**

AP schools do not follow the normal pupil admission arrangements and are not subject to the [school admissions code](#). Instead, many placements will be made by local authorities through their statutory duties to offer alternative provision for pupils who do not have a full-time school place, and some will be commissioned directly by schools. It is essential to engage with local authorities and commissioning schools to make sure that there is demand for the provision the school will offer.

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 referrals
- some commissioners will not have been particularly interested, but as you move into the pre-opening phase, you should build a relationship with them in order to

engage them as much as possible

## Special free school projects

Special schools do not follow the normal pupil admission arrangements and are not subject to the [school admissions code](#). Instead, all placements in special schools will be made by local authorities, either following the completion of a statutory EHC assessment or while the assessment is being undertaken.

Local authorities are responsible for commissioning and funding special schools through both a number of high-needs places agreed each year and 'top-up' funding for individual pupils. It is essential to engage with commissioning local authorities to make sure that their need for special provision places matches what the school will offer.

## Promoting integration and community cohesion

Promoting integration and community cohesion is a priority for the government. All schools should prepare children and young people to participate fully in life in modern Britain. All state-funded schools should be genuinely welcoming and attractive to pupils from different backgrounds. When marketing your school, you must consider how you can encourage applications from families belonging to different ethnic, religious and socio-economic groups, to promote a pupil intake that represents the diversity of the wider local community.

To make sure that your marketing plans support integration and community cohesion, you will first need to consider the demographics of the community your school will serve – for example, the main ethnic and faith groups represented, the proportion of pupils who are disadvantaged, and where pupils from different backgrounds live. When considering whether your marketing plans are appropriate, you should consider:

- the characteristics of the school that are emphasised in publicity materials, which should not discourage parents from particular socio-economic, ethnic or religious groups from applying to the school
- where marketing events are advertised and held, and whether prospective applicants from a representative range of backgrounds are likely to know they are taking place, or the location and timing might prevent, deter or make it difficult for some groups to attend
- if publicity materials are distributed or posted online, whether they are likely to be visible and accessible to prospective applicants from a range of backgrounds that reflects the diversity of the wider local community
- for secondary schools, whether the marketing activities are targeted at particular primary schools, and, for example, whether the pupil intakes of these schools reflect the diversity of the wider local community
- whether you have engaged with representatives of the major faith communities represented in the area and sought their support for the school
- admissions policies, staff recruitment, curricular and extra-curricular activities

## Marketing guidance

There are some general principles and lessons learnt by previous proposer groups that should help you get the most out of your planned activity. It is important to

maintain momentum, for example, so make sure that newsletters are issued regularly, emails are answered quickly, online information is up to date, and you publicise important milestones, such as the appointment of a principal designate or securing your site. You may wish to consider the guidance in the following sections.

### **Knowing 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.

### **Being aware of disadvantage**

Use your understanding of your local community to attract applications from disadvantaged groups – for example, by running taster days for pupils from local primary schools that have a high level of disadvantage in their intake. By effectively targeting disadvantaged groups, you will contribute towards closing the attainment gap for disadvantaged pupils, enabling them to benefit from the high-quality education your new free school will provide.

### **Engaging with the local authority**

Engage with the local authority in which your school will be based so the provision your school will offer for pupils with SEND can be included in the local authority's offer. This is particularly important for special schools, but also applies to mainstream schools.

### **Appointing a spokesperson**

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 whom to contact.

### **Using local radio**

Local radio is a 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, such as offering a spokesperson for an on-air debate or a phone-in programme.

### **Assembling a list of named media contacts**

In dealing with the media, try to assemble a list of named contacts. Find out who is the education correspondent for your local newspaper or the relevant programme producers at your local radio station and give them a call. Make sure they know who will be sending them public relations information and who in your group they can contact if they need to.

### **Distributing newsletters**

Consider producing regular newsletters. You can distribute printed copies locally, or via email to your contact list. You could use an online email marketing company to send out mailshots, often at little cost.

### **Considering how the school will be contacted by phone**

If you do not have a permanent site, you will not yet 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 landline number, which you can then continue to use once the school is open.

### **Providing translations into other languages**

Make sure you translate all your communications into languages that reflect the make-up of your local community.

### **Making use of your website and social media platforms**

It is essential to have comprehensive information available on your website and to update it regularly. It will help to have a dedicated member of the academy trust to maintain the site.

It is best that your email account uses the school's name, rather than an individual's, to project 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 contact list to receive future information and updates.

Consider setting up an online forum for parents, young people and, in the case of special or AP schools, potential commissioners, to make it easy for them to raise any questions or concerns.

Many areas now have community pages on social media, so start a discussion thread with some information about your school. Again, it is important to respond quickly and follow up queries. In addition, think about setting up a blog or a Twitter or Instagram account via which you can give regular updates on your progress.

You can also maintain your profile locally and nationally, especially with the media, by creating and regularly updating your own social media platforms.

### **Meeting people face to face**

Previous proposer groups have found that face-to-face contact with parents and prospective commissioners has proved especially effective and can build on any written or 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 to make sure that your group is known to local people. You may wish to consider developing online or virtual events as an alternative and have online versions of application forms available, too.

Events provide an effective platform to promote your free school and can 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' contact details and follow-up with an email or a leaflet.

Previous groups have found that holding events with a theme can attract more people and give them a flavour of what your school would be like. Mock lessons and enrichment days that demonstrate the school's pedagogy – for example, creative writing sessions, fun science experiments, dancing and singing, or creating a performance – have been popular.

After the announcement of GCSE results, and even AS level results, as some students switch schools or colleges after year 12, it's useful to have a stall in a public place to recruit students and to publicise your attendance in advance.

### **Visiting feeder schools (if applicable)**

Engage with local feeder schools, if applicable. Offer to speak at assemblies or have a presence at school events such as parents' evenings and transition days.

### **Targeting NEETs (if applicable)**

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.

## Engaging with religious organisations (if applicable)

If yours is a faith school, you will need to make contact with and have the support of your religious body and, if relevant, broader local religious organisations.

## Further information

- [School admissions code](#)

# Admissions

This section will provide you with tools to help make sure you have a clear, fair and compliant admission or referral process. It will set out the admissions processes for the different types of free school.

You have set out the vision for your school, which may be to improve standards in a particular area 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 those eligible for the pupil premium.

## Summary

- You must have admission/referral policies that, depending on the type of school, comply with the [school admissions code](#) or the relevant guidance
- You must use the [relevant admission template](#) in drafting your policies
- You must not arrange for your school to be included in the local authority co-ordinated admissions process without seeking the prior agreement of your delivery officer
- DfE will offer you advice on developing your school's first set of admission arrangements (mainstream or 16 to 19 free schools), or your referral policy (AP or special free schools), but you are responsible for getting these right, and will need to understand the requirement to have clear and fair admission or referral policies
- If you are opening a mainstream free school, DfE expects you to consider how you could use your admission arrangements to enable pupils from different backgrounds to access the school, in order to promote an intake that reflects the diversity of the wider local community

## Risks

Your admission or referral arrangements must be strong enough to withstand challenge. Unlawful admission arrangements can result in significant resourcing issues, while complex or overly prescriptive admission arrangements could put off potential applicants.

Previously, a significant number of admission policies and application forms submitted to DfE failed to comply with the school admissions code – for this reason, schools must now use the [admissions templates](#).



## Essential information you must provide

During the pre-opening phase, you must provide your delivery officer with a copy of your proposed admission policy, referral policy and statement of provision, including any catchment area maps and application forms.

## Mainstream free school admissions

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

- 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
- consulting on the proposed admission arrangements, before you open, as part of the consultation you will carry out under Section 10 of the Act
- complying with the mandatory requirement to admit all pupils with an EHC plan naming the free school, and having regard to the [SEND code of practice](#)
- determining (or finalising) the school's admission policy, once you have your funding agreement in place
- consulting on and determining future admission arrangements after the school opens, in accordance with paragraphs 1.45-1.48 of the school admissions code
- managing applications to the school – you will be responsible for this in the first year (either by managing the process directly or agreeing that the local authority will do it) and the local authority will do this as part of its co-ordinated process in subsequent years
- organising an independent admission appeals panel (or contracting this out) in compliance with the school admission appeals code

Every mainstream free school must operate within the local fair access protocol. This is established by the local authority to make sure that, outside the normal admissions round, unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.

## Nursery admissions

The school admissions code does not apply to nurseries, including those that are part of a school. As such, there is no requirement on them to adopt objective admissions criteria.

It is possible for schools to prioritise children for admission to reception who attend a nursery that is part of the school, or established and run by the school, in their criteria for admission to reception. However, you must make sure that giving priority is fair to local parents who choose not to send their child to nursery, taking into account the location of the school, the availability of reception places in the area and the number of places offered without any reference to whether the child has attended the nursery.

In most cases, such arrangements are likely to be unfair, and vulnerable to objection, if few or no places are available to other children once those attending the nursery have been admitted to reception. In such circumstances, it is strongly recommended that your nursery admission policy is the same or similar to your policy for admission to reception, to minimise the risk of objection. You must discuss this with your delivery officer, to make sure that your policy for admission to reception is compliant with the school admissions code.

Within any priority given to nursery children, the school may prioritise those children attending the nursery who are eligible for the early years pupil premium, the pupil premium or the service premium above other children attending from the nursery (see paragraph 1.42 of the schools admissions code).

Fee-paying nurseries cannot be named as a feeder institution to your free school. However, it is possible to give priority to those paying fees for their child's nursery provision only where any fee is for additional provision above the 'free' 15- or 30-hour funded early education offer.

## **The admissions process (including co-ordination)**

In your first year of opening, our normal expectation is that you either:

- operate your own admissions process
- 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 co-ordinated admissions process without seeking prior agreement from your delivery officer.

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 phase, 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 academy trust. This is because, in law, a local authority can only make a firm offer for a place at an open school.

Your delivery officer will not advise the Secretary of State to enter into a funding agreement for your school until DfE is confident it will open successfully on its proposed date.

It is important to make sure parents applying for your school are not left without a place, or with a place at a school they would not have chosen, if for any reason your school's opening is delayed. Parents should make an application for other schools as well as yours, by submitting the common application form (CAF) to their home local authority.

There are 3 options for handling the admissions process. Unless you choose to follow option 2a, you will need to produce 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.

### **Option 1: the school handles the application process**

Parents make a stand-alone application direct to the free school. The school will provide an application form, set the application deadline and offer day, and manage the process of considering applications and making offers itself.

You should encourage parents who apply to your school to submit a CAF to their home local authority to apply for other schools as well, in case your school doesn't open in time. If your funding agreement is not signed by national offer day, you can make conditional offers, while parents can accept the place allocated by the local authority at an existing school as an insurance place. If your school's funding agreement has been signed by the national offer day, you will be able to make firm offers.

Even if you manage the application process yourself, the local authority must still publish the school's admissions policy both in its composite prospectus and online.

### **Options 2a and 2b: the local authority handles the application**

There are 2 ways the local authority could manage the process for your school. Local authorities are under no obligation to process admissions for proposed free schools before they have a funding agreement in place, so if you want to do this, you will need to secure agreement from your home and neighbouring authorities.

#### **Option 2a**

The local authority handles the admission process as if the school were in co-ordination, but if the funding agreement is not signed by national offer day, the local authority would make a conditional offer for the free school alongside a firm offer for another open school.

Parents would submit the CAF to their home local authority, naming the free school as one of their preferences, and normal deadlines would apply (31 October for secondary schools and 15 January for primary schools). Parents would be encouraged to name other preferences as well, in case the free school doesn't open in time.

This option is unlikely to be open to a free school if its final admission policies are not in place in time for them to be fully included in the process. It is not possible for proposed schools in any of the local authorities included in pan-London co-ordination (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), because the process adopted by these local authorities does not permit a conditional offer to be made alongside a firm offer for another school.

#### **Option 2b**

The local authority handles applications for the school outside co-ordination.

Parents would fill in the school's application form and submit this to the local authority along with a CAF expressing a preference for other schools, in case the free school doesn't open in time. You would need to decide whether to use the national deadlines and offer days or to specify different dates.

## **Composite prospectus**

Local authorities have a statutory duty to provide information about school choices in their local area and must publish a composite prospectus each year by 12 September. When a provisional opening date is agreed for a free school, 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 see that information about the free school is included in its prospectus and must include your school's admissions policy once it is finalised.

The local authority is required to keep the composite prospectus under review as admission policies change – for example, as a result of adjudicator determinations on admissions or new schools opening. Once DfE has indicated that your policy appears to comply with the school admissions code, it should be determined as final and submitted to the local authority. The local authority is required by the school 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.

## Your admission arrangements

DfE has developed comprehensive guidance on [free school admissions](#) to help you develop your first set of arrangements. You must use the admissions template and refer to the oversubscription criteria/admission processes within it when drafting the admission policy. Arrangements, including application forms, must be clear, fair and objective, and comply with the [school admissions code](#).

Promoting integration between people from different ethnic, religious and socioeconomic backgrounds is a priority for the government. Where a mainstream school's oversubscription criteria are based around proximity to the school, the school's intake might not represent the diversity of the wider local area. Your delivery officer will expect to see evidence that you have considered whether the school's oversubscription criteria will enable pupils from a range of backgrounds that represents the diversity of the wider local community to access the school.

## Appeals

Parents whose children have not been offered a place at your school have the right to appeal, and your admission arrangements must include information about this.

It is the responsibility of the academy trust to set up an independent appeals panel in accordance with the [school admission appeals code](#) but local authorities, as well as other bodies, will run appeals services and you may want to consider buying into one of these to run your appeals.

If you want to manage your school's own appeals, you should be prepared to commit time, funds and resources to it. You will need to make sure that the appeals panel is completely independent of the school and the academy trust. Whether or not you contract out the service, it is the trust's responsibility to make sure that panel members and the governance professional (clerk) are properly trained in accordance with the requirements of the school admission appeals code. Additional non-statutory advice on [school admission appeals](#) is available for admission authorities, governance professional (clerks), appeal panels and parents.

## Consulting on your school's admission arrangements

In the pre-opening period, you should include at least an outline of your proposed admission arrangements as part of your Section 10 consultation and take into account any responses you receive. Once the school's funding agreement is signed and the arrangements are determined and published, you cannot make any further changes, other than as permitted by the school admissions code.

Once your school is open, in accordance with the school admissions code, you will need to consult on your admission arrangements if you propose to make any changes, and at least every 7 years even if you do not want to make any changes. You will have to carry out your consultation in the academic year before the new arrangements would take effect. This means there is nearly a 2-year lead-in period before you would be able to admit children according to any changed arrangements.

## Special free schools

Recruitment and admission to special free schools is via an EHC plan drawn up by a local authority that names the school. The only exception to this is where the

Secretary of State has specified in the funding agreement that the school can also admit a minority of pupils with the type of SEND in which the school specialises who do not have an EHC plan. See the [SEND code of practice](#) for details. Such innovative proposals will be approved only as an exception and if a strong case can be made.

It is important to remember that, as the admissions authority for your school, it is the academy trust's responsibility to get things right. This includes:

- setting out the school's age range, number of pupils with EHC plans provided for and type of SEND specialised in, as part of the consultation you will carry out under Section 10 of the Act
- complying with the mandatory requirement to admit all pupils with an EHC plan that names the school and to have regard to the SEND code of practice
- publishing the school's SEND statement of provision on its website, drafted using the [statement of provision template](#) – see [special free school admissions](#) for additional guidance
- publishing on the school's website any narrative that sets the scene in terms of the proposed free school's target cohort or policies, including methods of teaching or curricular or specialist offer

### **Children with EHC plans**

Local authorities have a statutory duty, where necessary, to identify, assess and arrange provision for children with SEND. Where a local authority has carried out a statutory assessment and decided to issue an EHC plan, it will issue a draft plan to parents. Parents can request for the local authority to name their preferred choice of school in their child's EHC plan. The local authority must take into account parental requests and must consult with a school, if it is intending to name it in an EHC plan. However, the final decision on the school to be named rests with the local authority responsible for maintaining the plan.

A special free school must admit a child where the school is named in a child's EHC plan, even if the child's SEND is not a type of SEND for which the school is designated. A special school is organised to make educational provision for any pupils with SEND. They are designated for specific type(s) of SEND, and the main designations of SEND are set out in the SEND 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 SEND. It should publish details of its provision and capacity online.

A school has a duty to comply with an EHC plan. If a school disagrees with being named on an EHC plan, it can appeal to the Secretary of State through ESFA. 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: either if the local authority has acted unreasonably or has failed to carry out one of its important duties under the Education Act, including its SEND duties.

If parents disagree with a school being named in their child's EHC plan, they have a right of appeal to the SEND first-tier tribunal. Decisions made by the tribunal are binding on all parties.

If a special free school is allowed within its funding agreement to admit children without an EHC plan, the process for admitting these pupils must be set out in an admissions policy that complies with the school admissions code. Your delivery officer will be able to provide more information on this.

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

In the pre-opening period, DfE advises that you set out details of the size and type of the provision your school will offer and any proposed admission arrangements (if

admitting children with SEND but without an EHC plan) 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.

Once your school is open, in accordance with the school admissions code, you will need to consult on your admission arrangements for children with SEND but without an EHC plan if you propose to make any changes, and at least every 7 years even if you don't want to make any changes. You will have to carry out your consultation in the academic year before the new arrangements would take effect. This means there is nearly a 2-year lead-in period before you would be able to admit children according to any changed arrangements.

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 or similar, this will require a change to your school's funding agreement, to be agreed with ESFA on behalf of the Secretary of State once the school is open.

## **Alternative provision (AP) free schools**

AP free schools must be principally concerned with providing full-time or part-time education for children of compulsory school age who may not otherwise receive suitable education for any period because of illness, exclusion or another reason. This means that the majority of pupils (over 50%) must be of compulsory school age (between 5 and 16 years old). AP free schools may also choose to cater for some 16- to 19-year-olds, but they must number less than 50% of your students.

Children of compulsory school age can only be admitted to an AP free school by being referred by commissioners (local authorities or schools), using their existing referral powers or duties.

AP free schools have the freedom to adopt a policy whereby students or their parents can choose to apply for a post-16 place, but this is not compulsory. Applications to AP free schools for post-16 places should be managed through the same process as applications to 16 to 19 provision at mainstream schools. It is not compulsory for a student to attend a specific school or college post-16, so any referral system for students over compulsory school age would also require an application from the student to ascertain that they were willing to attend.

The [school admissions code](#) does not apply to referrals or post-16 admissions at an AP free school. AP free schools can adopt code-compliant post-16 arrangements if they wish, but the minimum requirement is that they follow DfE guidelines on admissions to 16 to 19 free schools.

As an academy trust, you are responsible for making sure that the referral policy and any post-16 admissions policy comply with the funding agreement. That means they must be fair, transparent and objective; admit any pupils with statements of SEND or an EHC plan naming the school; and give highest priority to looked-after children and previously looked-after children.

Your referral or admission policy should include:

- Your school's referral process for children of compulsory school age, compliant with referral powers and duties. Need is assessed by the commissioner, so it should not include an additional process for the school to consider the need for a referral other than to determine that the child is genuinely not suitable for mainstream education. The school should include a tie-break to decide which student should be admitted if there are more referrals than places.
- Your school's referral or application process for post-16 provision, if applicable.



You need to state whether applications from post-16 students will be accepted only 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.

- 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.
- A process for managing referrals to the school, with systems in place to manage and track referrals from the opening date.
- Information to make sure that unsuccessful commissioners and others are aware they can submit complaints about the referral process or complaints about the post-16 admission arrangements to ESFA.

AP free schools should be aware of the fair access protocol. This is the mechanism for making sure that children who are hard to place are allocated a school place quickly during the school year. The requirements in relation to AP are set out in the [statutory guidance on alternative provision](#).

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

Statutory guidance sets out the government's expectations of local authorities and maintained schools that commission alternative provision and pupil referral units. The government expects those who are not legally required to have regard to the statutory guidance – for example, academies – to use it as a guide to good practice.

Local authorities are responsible for arranging suitable education for permanently excluded pupils and for pupils who, because of illness or other reasons, would not receive suitable education without such arrangements being made.

Governing bodies of schools are responsible for arranging suitable full-time education from the 6th day of a fixed-period exclusion. Schools may also direct pupils off-site for education to help improve their behaviour.

### **The referrals or admissions process**

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 on 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.

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.

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. 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.

Schools are required to use the [AP referral template](#) to draft their referral policy. A model commissioner's referral form is also included.



## Consulting on your referral and admission arrangements

In the pre-opening period, DfE advises 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.

If you admit students post-16 (through student application), your policy should be reviewed and published on an annual basis to take account of changing demographics in your area. DfE recommends that you consult local people on any changes and publish your policy every September for the following September's admissions. For example, your policy for 2023 admissions should therefore be published in September 2022, or as early as possible if this is not achievable.

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

It is possible for people to submit complaints about your referral and admissions policy to ESFA, which will make sure that the policy is fair, clear and objective, in accordance with the funding agreement.

## 16 to 19 free schools

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 fair, objective 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
- organising an independent admission appeals process

As 16 to 19 free schools are not legally schools but educational institutions, your free school is not covered by the school admissions code. However, its admission 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, whether there are minimum entry requirements, whether there will be a test or an interview as part of the application process, and which criteria will be used to decide how applications will be prioritised. Arrangements should therefore be as straightforward as possible and clear about how criteria are to be applied.

Unlike mainstream schools, there are no national co-ordinated deadlines for when applications to post-16 institutions need to be made. Institutions generally set their own deadlines based on how large or oversubscribed they are and, therefore, how long they need to consider initial applications. Our strong advice is that you should aim to make provisional offers to students in the spring term, so that applicants are clear about any academic conditions you will place on their offer sufficiently in advance of sitting their exams in the summer. The timeline might look like this:

1. Invite applications from the autumn term onwards, with an initial application deadline no later than early spring.
2. Sift applications and apply selection criteria during the spring term.
3. Make conditional or unconditional offers before Easter, so students are clear what requirements they will need to meet.
4. Confirm places once students have received their GCSE or A level results in

August (or earlier if you are offering unconditional places or places based on predicted grades).

You will need to include your timeline in your admissions policy, making it clear to students and parents how and when to apply.

## The admissions process

You are required to draft your admission policy using the [template](#) on GOV.UK. Your criteria should be fair and objective, so it is clear how decisions will be made. This will also minimise the chance of potential challenges or complaints. There are some important elements that 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
- details of how and when applications can be made
- an application form
- details of a waiting list
- details of your independent appeals process

## Oversubscription criteria

If you have more applications than places, you will need to apply clear oversubscription criteria to help you allocate places fairly. As a 16 to 19 academy, you have a great deal of flexibility about how you admit students. You can select by criteria such as ability, qualifications or tests, but if you choose to do this, you must be clear about your intentions from the start and explain in your admissions policy the requirements necessary to be admitted.

You can set specific requirements for specific courses, and you can turn down applicants to whom you have offered places 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, as 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 admissions criteria.

You are required to admit all students with an EHC plan naming the free school. Although you are not required to, DfE would encourage you to give first priority within your oversubscription criteria to looked-after children and previously looked-after children.

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, admitting the students who will thrive and benefit most from the provision you offer without being overly complex or burdensome, or inadvertently disadvantaging a prospective student.

## Offering places

Once your application deadline has passed and you have applied the admission criteria, you can choose to make either conditional or unconditional offers. Before

your funding agreement is signed, you should make only 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.

At the point DfE is ready to enter into a funding agreement with you, your delivery officer will want to know how many formal applications have been made, and from March onwards, how many conditional offers have been made and how many accepted. Information about expressions of interest will generally not suffice.

## **Finalising choices**

Unlike a school with a sixth form, where students can move into year 12 in the same institution, you need to create opportunities to engage with students after you have offered them a place. It is beneficial to both you and them if you continue to get to know them and help them finalise their plans, such as which A levels or vocational subjects they want to study. This will help you plan timetables and teaching loads, and makes sure students have a strong start at your institution.

DfE suggests you host a 'getting ready' day for students, much like a secondary school would hold an induction for pupils moving from primary school.

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

## **Waiting lists**

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

## **Appeals**

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

Local authorities, as well as other organisations, 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, you need to make sure they understand that, as a 16 to 19 academy, you do not have to abide by the school admissions code or the school admissions appeals code.

If you want to manage your own appeals, you should be prepared to commit time, funds and resources to it. You will need to set up an appeals panel, which should be independent of the institution. It should comprise a governance professional (clerk), a DfE adviser and at least 2 other people. We strongly recommend you provide training for all panel members.

## Administration and verification of information

In operating your admission arrangements, you can request proof that the information provided in the application form is valid. For example, you can ask for proof of address to confirm that a student lives where they say they do. However, you should recognise that many students won't have access to the same types of proof of address as their parents. You must not ask for evidence that includes, for example, parents' financial or marital status, or the first language of the parents and family.

## Consulting on your arrangements

In the pre-opening period, DfE advises that you include your 16 to 19 free school's proposed admission arrangements as part of your Section 10 consultation. Once you have taken account of any responses to your consultation and published your final arrangements on your website, and DfE have signed your funding agreement, you should not make any changes to the arrangements until the application process is over for the year. It should be reviewed and published on an annual basis to take account of changing demographics in your area.

DfE recommends that you consult local people on any changes and publish your policy every September for the following September's admissions. Your policy for 2023 admissions should therefore be published in September 2022, or as early as possible after that if this is not achievable.

It is possible for people to submit complaints about your policy to ESFA, which will make sure that the policy is fair, clear and objective, in accordance with the funding agreement.

## Further information

- [Annex A, table 7 – admissions: checklist of activities](#)
- [School admissions code](#)
- [School admission appeals code](#)
- [Free schools admissions guidance](#)
- [Alternative provision statutory guidance](#)

## Religious character

If you would like particular beliefs to be reflected in the life of your school, and specifically in your curriculum, staffing and admissions policies, DfE requires you to seek a religious designation. This is a legal recognition that your school will have a religious character. A faith-designated free school has the following freedoms that will allow you to maintain and develop that religious character:

- apply up to 50% of pupil admissions by reference to faith when the school is oversubscribed
- appoint teachers by reference to faith
- deliver religious education (RE) and collective worship according to the tenets of the faith of the school

This is a separate application, and your school's religious designation will 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.

It is important to note that the freedoms set out above are not available to free schools that wish to register as having a 'faith ethos' – a part of the independent school registrations process.

## Applying for a religious designation

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:
  - the provision of education
  - the conduct of an educational institution in accordance with the tenets of one or more religions or religious denominations
- at least one academy trustee is a person appointed to represent the interests of one or more religions or religious denominations
- 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

In advance of approving a religious designation application, the Secretary of State may consult the relevant religious body, or any other religious body. The Secretary of State will need to be assured that your school will be managed in accordance with the tenets of your faith.

To apply for religious designation, you need to complete the FSRDApp1 form and return it to your delivery officer for processing as soon as possible. The guidance and application form can be found via [religious character designation: guide to applying](#).

Note that 16 to 19, special and AP free schools cannot be designated as having a religious character, although they may have an ethos or worldview that is reflected within the vision and values of the school.

Faith-designated free schools with nursery provision are able to reflect their religious outlook within the life of the nursery – for example, by celebrating religious festivals or using stories based on religious texts. They are not permitted to apply any faith criteria for admissions to nursery places, and the nursery must abide by the same requirements in the funding agreement and regulations as apply to the rest of the school.

## Additional responsibilities for faith-designated free schools

The government is keen for all schools to support inclusivity and integration between communities. All schools must be inclusive, whatever their religious character or ethos. Academy trusts that are opening a faith-designated free school will be expected to provide evidence of their commitment to inclusivity and community cohesion and plans to support this, which will be tested rigorously throughout pre-opening. There are a number of ways you could demonstrate your commitment to inclusivity:

- having plans to develop a sustained and structured linking programme with a school of a different or no religious designation, to create meaningful relationships between young people of different faiths or no faith, including sharing teachers and resources, conducting joint lessons, assemblies or sporting activities
- having diversity on the academy trust's board by including one or more members or academy trustees who are of another faith or no faith
- setting up a mixed-faith trust with schools of different faiths or no faith that will be used to expose pupils in your faith-designated school to peers from different religious and ethnic backgrounds

DfE expect faith-designated free schools to appeal to a wide range of parents and pupils. You therefore need to make sure that your school policies are inclusive, your school is welcoming to pupils of other faiths or no faith and it is likely to attract applications from all parts of the local community, not just those of your faith. This includes making sure that your school policies and curriculum would not deter pupils from other faiths or no faith from applying for a place, nor prevent them from playing a full part in the life of the school. Policies that might deter applicants from other faiths or no faith are a combination of the following:

- lessons taught in community languages
- large proportions of curriculum time devoted to faith-related studies
- restrictive dietary requirements
- any separation of pupils, including when they are eating
- the mandatory wearing of symbols or clothing associated with your faith or world view

Parents have the right to withdraw their children from RE at any age and from collective worship until the age of 16. From the age of 16, the right to opt out of collective worship passes to the pupil.

Like all free schools, you must also adhere to the conditions set out in your funding agreement. You will also need to demonstrate a commitment to making sure that your curriculum and ethos will prepare pupils for life in modern Britain.

## **What a religious body does and how academy trusts can find one**

Most faith schools will be formed by groups that look to a religious body or organisation for guidance on how their religious character should be expressed in the life of the school. Therefore, if you are designated with a religious character, in most cases you should have a 'religious body' set out within your funding agreement. This body will:

- advise you on your admission arrangements, and you must consult it during your public consultation before changing your admission arrangements (and before any public consultation, if you are a Church of England School)<sup>[footnote 1]</sup>
- set out how faith activities – such as attendance at a place of worship – must be expressed within your admission arrangements. Without a religious body to advise you on how faith activities must be laid out, you cannot lawfully include them in your admission arrangements<sup>[footnote 2]</sup>

The religious bodies for maintained schools in relation to admission arrangements are listed in [schedules 3 and 4 of the School Admissions \(Admission Arrangements and Co-ordination of Admission Arrangements\) \(England\) 2012](#), but note that these have been amended by regulations 3 and 4 of [the School Admissions \(Admission Arrangements and Co-ordination of Admission Arrangements\) \(England\) \(Amendment\) Regulations 2022](#). The bodies named in Schedule 3 (as amended) are

those that should normally be written into your funding agreement if your school is designated as being from one of those faiths.

If your faith is not covered by any of the bodies listed in the regulations – for example, you are intending to seek a designation of ‘Christian’ or ‘multi-faith’ – you will need to identify an alternative body or bodies and should seek advice from your delivery officer. You should also seek advice if your faith is listed within the regulations, but your intention is to name an alternative religious body.

You should be clear about the role you intend the religious body to play in the design and running of your school beyond the consultation role required by law and the admissions code.

Those proposer groups opening a free school designated with a Church of England religious character will also need to agree to the [church supplemental agreement](#) in addition to their funding agreement. This document provides more detail on the roles of the diocesan board, the trust and DfE and how they will work together on issues relating to land, intervention, and support and termination.

Separately, in relation to the inspection of your denominational education or collective worship, the faith bodies that provide inspection services are:

- Church of England or Roman Catholic: the appropriate diocesan authority
- Jewish: the Jewish Studies Education Inspection Service
- Methodist: the education secretary to the Methodist Church
- Muslim: the Association of Muslim Schools UK
- Sikh: the Network of Sikh Organisations
- Seventh-day Adventist: the education department of the British Union Conference of the Seventh-day Adventist Church

These are set out within regulation 9 of the [Education \(School Inspection\) \(England\) Regulations 2005](#) and are not always the same bodies set out in the admissions regulations.

It is not compulsory for you to use these organisations to carry out the inspection, but you are required to consult with the appropriate body, if one is listed, before you opt to organise it independently.

There is a protocol that you should follow to claim grant funding towards the cost of inspection. You will need to draw up a framework and provide details and assurances about the independence of the inspectors you are using and submit it and the inspection report to DfE before any grant can be considered. Seek advice from your delivery officer.

## **Recruiting teachers before the school obtains religious designation**

Being a faith-designated free school gives you limited exemptions from the Equality Act 2010 (see [equality duties](#)). This includes being able to give preference to recruiting teachers of the faith.

To be designated officially, you will need to have signed a funding agreement with the Secretary of State and have successfully applied for designation. If you wish to appoint teachers before you are designated, you will need to be able to demonstrate that adherence to a particular faith is a genuine occupational requirement, such as for 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 the religious designation and signed a funding agreement.

## Free schools that register a faith ethos

If you want your school to reflect a distinct ethos aligned with a particular religion, you can register that your school has a religious ethos. The ethos could then be reflected within the vision for the school, the values the school represents, and the importance placed on particular beliefs.

Unlike schools that are faith-designated, schools registered with a religious ethos are not entitled to any of the freedoms of faith-designated schools, except in the appointment of senior leaders, where the faith of candidates can be taken into account.

As with all other schools, your school will be expected to be inclusive in its outlook and practices, and be likely to attract applications from pupils of other faiths and no faith. Your delivery officer will expect to see evidence of the actions you are taking to encourage applications from the wider local community.

Throughout the pre-opening phase, DfE will expect groups who are proposing a school that will have a religious ethos to be able to explain clearly how faith will (or will not) manifest itself in, and influence, the curriculum, policies and look and feel of the proposed school. DfE will also expect you to be able to demonstrate how you will make this clear to parents and pupils.

Schools with a faith ethos, in common with all schools without a religious designation, can apply to be exempted from the requirement to provide broadly Christian collective worship. This may be where the belief of the majority of its pupils or the local community is such that another faith would be more appropriate.

## Further information

[Annex A, table 8 – faith: checklist of activities](#)

## Equality duties

Every child in the country should have the opportunity to get the very best education, giving them knowledge and skills that will set them up for life. The free schools programme supports equality of opportunity through opening high-quality new schools in the areas where they are most needed.

The Equality Act 2010 provides a single, consolidated source of discrimination law and makes it unlawful for your academy trust to discriminate against, harass or victimise a pupil or potential pupil based on protected characteristics:

- 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

[Section 149 of the Equality Act 2010](#) requires all public authorities, when exercising

their functions and making decisions, to have due regard to the 3 limbs of the Public Sector Equality Duty (PSED). These are:

- to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act
- to advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it
- to foster good relations between those who share a relevant protected characteristic and those who do not share it

Meeting your obligations under the Equality Act 2010 is a continuing obligation on your academy trust and must be considered both throughout the pre-opening phase and once the school is open.

The Secretary of State has a statutory duty to consider the potential equality impact – positive and negative – of their decision before deciding whether to enter into a funding agreement with you.

## **Summary of the main tasks**

Throughout the pre-opening phase, you must consider how the decisions you make will affect people due to their protected characteristics.

The protected characteristics are:

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

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

A person's age is a protected characteristic in relation to employment, and the Act extends this – except for children – to the provision of goods and services, but age as a protected characteristic does not apply to pupils in schools.

## **How DfE will work with you**

When making all your important decisions in the pre-opening phase, you must make sure that you comply with the PSED. Your delivery officer will be looking for evidence that it is being considered throughout this phase.

At meetings, you should aim to keep your delivery officer informed about how your equality duties are being met.

To show that consideration has been given to the relevant protected characteristics in your school's plans and policies, some examples of the information your delivery officer 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 make sure all candidates will be treated in a fair and transparent way during the recruitment process
- your SEND policy, to show what provision will be available for pupils at the school and the other specialist provision that will be available

Your delivery officer will keep a record of all pertinent information. This will help the Secretary of State to assess the impact on people with reference to protected characteristics.

## School food

All government-funded schools (including academies) must offer free school meals to every infant pupil. DfE expects all infant pupils to be offered a nutritious and, where possible, hot meal.

The Children's Food Trust and the Lead Association for Catering in Education run a free support service for schools that need help providing these universal infant free school meals (UIFSM). The support service can be contacted on 0800 680 0080, or by email at [info@childrensfoodtrust.org.uk](mailto:info@childrensfoodtrust.org.uk).

Schools are encouraged to promote healthy eating and to provide healthy and nutritious food and drink. The Requirements for School Food Standards Regulations 2014 apply to all government-funded schools (including academies). Guidance on [school food standards](#) is available online. A summary of the standards, and a practical guide, are available from the [School Food Plan](#) website.

## Further information

- [Annex A, table 10 – equalities duty: checklist of activities](#)
- [Section 149 of the Equality Act 2010](#)
- [Equality Act 2010: advice for schools](#)

## Staffing, education plans and policies

During the pre-opening phase, you will need to turn the detailed staffing and education plans in your application into reality to make sure that everything is in place to open successfully – from recruiting high-quality staff to having high-quality education policies and schemes of work in place. You will need to make sure there is joint planning of finance, curriculum and staffing throughout the process, in order to deliver an affordable curriculum that meets pupils' needs.

You will need to have some policies in place early for consultation and pupil recruitment. Others will be needed ahead of the ROM with DfE 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 the third year after opening.

You will also need to consider how you will make sure the workload is manageable and sustainable for all staff as the school expands to aid recruitment and retention, ensuring that the demands on staff are proportionate and reflect the most efficient and effective practice.

You should be conscious of planning for the wellbeing of all staff, including the senior

leader, and the need to implement flexible working practices in a way that promotes a good work-life balance and supports teachers and leaders.

Flexible working in schools can help to recruit, retain and motivate teachers, improve staff wellbeing, and promote equality of opportunity and diversity in the workforce. Read more about the [benefits](#) flexible working can bring.

## Summary

An external expert will be allocated to your project and provide advice on your progress to your delivery officer. External experts are contractors and highly experienced education professionals who have worked in senior education roles, typically as a head of an outstanding school or an Ofsted inspector.

Appointing a high-quality principal designate is probably the most important thing you will do as an academy trust during the pre-opening phase. The recruitment process should not take place before the provisional opening date has been confirmed. 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 and policies, and the schemes of work you will need ahead of opening. It may take more than one recruitment round before a suitable candidate is appointed, and this presents a risk to the successful opening of your school. If you are experiencing difficulties recruiting a principal designate, you must escalate this to your delivery officer.

All serving headteachers and teaching staff will be bound by contractual resignation dates, and you will need to factor this into your recruitment plans. Appointments made before a funding agreement is in place should be conditional on the trust entering into the funding agreement and the school opening.

As an academy trust, you have statutory duties in terms of the policies that need to be in place before opening. DfE has published a [guide for schools](#) (including free schools) about these duties. Education plans and policies are not routinely signed off by external experts, but they will always review the pupil assessment, recording and reporting policy and the safeguarding policy.

It is important that, as an academy trust, you fully understand your responsibilities for safeguarding the children in your care. You should consult DfE's [keeping children safe in education](#) (KCSIE), [working together to safeguard children](#) and [what to do if you're worried a child is being abused: advice for practitioners](#) guidance documents.

Your delivery officer will ask you to report on the recruitment of staff in the context of pupil recruitment and financial plans, and on the development of your education plans and policies, at specific points during the pre-opening phase, including ahead of the Ofsted pre-registration inspection and at your ROM.

You should consult DfE's [recruitment and retention strategy](#) to help you understand ways to create the right climate to establish a supportive school culture and make sure you have planned for a manageable workload for all staff.

In creating a culture that promotes flexible working, you have the potential to create new and innovative opportunities for addressing teacher supply, and to promote greater diversity in the workplace.

To support you to implement effective flexible working practices, DfE has published a [collection of supportive resources](#) including [non-statutory guidance](#) and [case studies](#).

## Risks

Inspected schools that have not had a change in principal designate are more likely to receive a 'good' or better Ofsted judgement than those that have, so it is vital that you find the right person for the job. It may take a few attempts to recruit a suitable principal designate, so it is sensible to consider very carefully when to begin the recruitment process as serving headteachers and teaching staff are bound by contractual resignation dates.

Where a principal designate candidate has no leadership experience or is a direct appointment, a benchmarking exercise should be carried out by an external expert, who will advise you and DfE on the suitability of the candidate for the role. You should also think about the support and mentoring programme you will provide to support them.

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 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.

Once you have your principal designate in post, it is important to get your wider tracking and assessment systems in place. Failure to do this may affect your ability to obtain a good Ofsted judgement.

## Essential information you will need to provide to DfE

You'll need to provide DfE with details of your:

- proposed staffing structure
- pupil assessment, recording and reporting policy
- safeguarding policy
- the education plans or policies requested by your delivery officer or external expert

## Summary of main tasks

### Appointing a principal designate

Principal designate appointments can be made either through open national recruitment or as a direct appointment, without advertising. Given the importance of the appointment, DfE will commission an external expert to support in the recruitment process. You must notify your delivery officer before going against advice from the external expert.

The external expert will:

- provide advice on the job specification role, skills or specialisms, and talk through and agree the job specification
- provide support by being a panel member, reviewing and sifting applications and providing feedback to enable you to make the decision on which candidates to be interviewed
- provide support by being a panel member, providing feedback after the sifts and interviews, making sure the recruitment approach is fair and transparent

In exceptional circumstances, such as where an experienced academy trust is behind the project, DfE may agree that an external expert does not need to be involved. Your delivery officer will discuss this with you.

Direct appointments can be made, where appropriate, but as an academy trust, you will need to be able to demonstrate that the appointment was transparent and fair.

Once you have identified a suitable candidate, DfE may suggest they undergo a benchmarking exercise. This will involve the candidate being interviewed by your external expert and having their performance assessed against relevant leadership standards. The results can then be used to inform the design of a development programme that you can then take forward with the principal designate.

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.

The principal designate of a free school forming an academy trust with only one school will also be the AO. In academy trusts with more than one school, the AO will be the CEO or senior executive leader (SEL) of the trust. The role of the AO includes a personal responsibility to both ESFA's AO and Parliament for the financial resources under the free school's control. Further information about the role of the AO can be found in the section on [governance](#).

You will need to send a copy of the principal designate's contract to your delivery officer when an appointment has been made. This is to make sure DfE is aware of any costs that could be incurred as a result of the principal designate's salary being underwritten.

Serving headteachers and teaching staff are bound by contractual resignation dates. Appointments made before a funding agreement is in place should be conditional on you entering into the funding agreement and the school opening. You must escalate to your delivery officer if you are experiencing difficulties appointing high-quality teaching staff.

DfE recognise that you may be asked by a potential principal designate for additional security, if 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, DfE will underwrite the salary costs, plus on-costs, should the free school not open, or if its opening is deferred by a year.

**! DfE will only underwrite the principal designate salary once the provisional opening date has been confirmed and we have started to release PDG beyond the initial allocation.**

DfE will pay the principal designate's salary plus on-costs, including employer pension contributions and National Insurance, for no more than 2 academic terms. This begins from, and includes the remainder of, the term in which the decision to cancel or defer the project is made, and the subsequent term. In cases where one clear term's notice can be given, DfE will underwrite only one term.

DfE will agree a cap on the underwriting on a case-by-case basis. If required, we may pay the salary directly to the principal designate.

The principal designate's employment contract with you must state that, if, after the free school has been cancelled or deferred, the principal designate becomes underemployed, they may be required to take on additional work for DfE while their salary is being underwritten.

The principal designate's employment contract must also state that, should the free

school not go ahead, while still being paid by DfE, they must take all reasonable steps to seek alternative employment. Furthermore, in the event that they do take up any such alternative employment, DfE will deduct the value of that remuneration from payments to them.

In exceptional circumstances, DfE may agree, on a case-by-case basis, to also underwrite the salary costs plus on-costs for key essential teaching staff. In considering such cases, DfE will look at the progress you are making on the project. If agreed, underwriting for other key essential teaching staff will be subject to the same conditions set out above. If you are intending to underwrite the salary of your principal designate or essential teaching staff, you must speak to your delivery officer at the earliest opportunity.

### **Finalising staffing structure and recruitment**

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 important posts, including senior leaders, who must be carefully budgeted for. You might find it useful to consider the [top-10 planning checks for governors](#), and the [ICFP resources](#), which provide tools to help ascertain that you are making the best use of resources when planning your staffing and curriculum. Further practical resources for school leaders and teachers can be found at [reducing teaching workload](#).

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 the pre-opening phase and year one, and to regularly consider 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.

Most free schools advertise for staff in both the national and local press. Some find holding their own recruitment fairs a good way of attracting staff. Others have used agencies or organisations with talent pools, but these will often charge schools for this service. Many of the major education recruitment agencies have access to pools of staff. When considering options, bear in mind the principle of effective [school resource management](#) (SRM).

[Teaching vacancies](#) is a free national service for searching and listing teaching roles. It is available to publicly funded schools in England. DfE developed the service to address school leaders' concerns about the level of expenditure on teacher recruitment advertising. By using the service, schools can save money.

Access to the service is available for individual free schools once they have been given access to [DfE Sign-in](#). Free schools that are part of a multi-academy trust can access it earlier to recruit staff for free through multi-academy trust level access. If your trust does not have access, further information can be found at [how to request organisation access](#).

Schools will need to make sure all employment laws are met, and applicants have equality of opportunity throughout the selection process. We trust schools to use their judgment in implementing this.

The [supply teachers and agency workers framework](#) supports schools to reduce costs when recruiting supply teachers and other agency workers. This deal provides easy access to supply teacher agencies and shows mark-up in a wholly transparent way. As part of the deal, agencies cannot apply fees for making temporary staff permanent after 12 weeks, if given 4 weeks' notice, and administration time is reduced, as rigorous background checks must have been conducted on all staff in line with our statutory guidance [keeping children safe in education](#) (KCSIE).



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. As it may take a few attempts to recruit a suitable principal designate, it is sensible to consider very carefully when to begin the recruitment process, factoring in that you will first need confirmation of your provisional opening date.

## Free schools' freedoms for appointing staff

As the employer, you are responsible for appointing staff. If you are working with an education provider, you may pass the responsibility on to them, but you may still want to be involved in the recruitment process, as you will be the legal employer of all staff. As academies, free schools have some freedoms in appointing staff that other schools do not:

- you are not bound by national pay and conditions and can set your own – for comparative purposes, national pay scales are set out in [school teachers' pay and conditions](#)
- you are not required to employ staff with qualified teacher status (QTS), with the exception of the SEND coordinator (SENCO) and the designated lead for children in care – this freedom does not apply to special free schools
- your principal designate is not required to hold the National Professional Qualification for Headship (NPQH)

If your free school includes nursery provision, you will need to make sure your staff:child ratio meets the minimum requirements outlined in the [early years foundation stage framework](#) (EYFS). Exact ratios depend on the age of the child, the level of qualification of the staff and the type of setting. Your delivery officer and external expert will need to satisfy themselves that your planned staffing numbers meet these requirements.

## Free schools' statutory responsibilities

There are some statutory requirements on free schools with regard to staffing:

- the SENCO and designated lead for children in care must hold QTS
- as an employer, you have a statutory duty to enrol all your staff into either the Teachers' Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS), depending on whether their role is teaching or support – pension contributions must start with employment, so you should make sure that provisions are in place for staff taking up their post during the pre-opening phase
- with regard to the TPS, you must comply with TPS regulations, including making sure those who are eligible are enrolled and comply with the requirements of the TPS administrator, Teachers' Pensions (TP), for example, to provide data, information, contact details and timely pension contributions – you should contact TP as early as possible for help and guidance on these issues
- if your 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](#).

# Transfer of Undertakings (Protection of Employment) (TUPE)

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (amended 2013) (TUPE) protects employees by providing for their automatic transfer by operation of law under their existing terms and conditions when their work activities transfer from one employer to another. It applies only to employees – it does not apply to volunteers or agency workers, other than in respect of information and consulting obligations.

DfE would not usually expect TUPE to apply to a free school if it is not replacing an existing school. Most free schools are new and additional schools. The only exception to this basic position is where existing provision (such as an existing AP or special school) converts to become a free school.

The TUPE regulations place a statutory obligation on the employer to inform and consult prior to a transfer taking place. The employer will need to inform their employees' representatives (that is, the recognised union or, if there is not one, elected representatives) of certain matters in writing:

- the fact that the transfer is to take place
- the date of the transfer and the reasons for it
- the legal, economic and social implications of the transfer for any affected employees, and any measures the employer envisages it will take in connection with the transfer, in relation to any affected employees

There is no set period for the information and consultation process, but it has to be long enough before a transfer to enable the employer of any affected employees to consult the appropriate representatives. You should aim to provide the information and start consulting as early in the process as possible. As a rough guide, DfE suggest this should be not less than 30 days before the transfer, but this is for the academy trust to determine.

If you know that staff will need to transfer, you will want to have information from the outgoing employer about the employees and any liabilities you may be taking on. The outgoing employer (the 'transferor') is legally obliged to notify you (the 'transferee') of the employee liability information of any person employed who would be in scope to transfer. This includes:

- the identity and age of the employee
- the particulars of employment for the employee
- any relevant information such as disciplinary procedures taken against the employee
- any information on court or tribunal claims that the transferor has reasonable grounds to believe may be brought after the transfer
- information as to any collective agreements that will have effect after the transfer that are relevant to transferring employee

Even staff who are in the process of being disciplined will transfer, if in scope, and the transferee will then continue the disciplinary process to its conclusion. Staff can object to the transfer, but if they do so unreasonably, they will lose any right to claim compensation for unfair dismissal or any redundancy rights. The basic assumption is that they are expected, if they are in scope, to transfer to the new organisation. They do so with their continuity of service and their terms and conditions protected. After a year, it is possible to harmonise terms and conditions, but only by agreement.

Some matters do not transfer, such as criminal liabilities and terms in relation to pensions. Again, specific legal advice may be necessary. Determining the application of TUPE is complex because a number of factors need to be considered. Each project is different and dealt with on a case-by-case basis. Academy trusts

should always consult their legal advisers regarding any potential TUPE issues.

## Developing an education brief

It is good practice to put all strategies and statements together in one document, called an education brief, which provides detail of how your school will operate. This can be distributed to staff and governors before opening, so everyone in the organisation understands the vision for the new school, the way the school will operate, the educational programme that will be delivered, the goals the school wishes to achieve, and its ambitions for the future.

It is important to be clear about what the essential elements that constitute a good brief are, how they may be constructed, the audience or audiences it will be for, and the purpose it has. It is also important to state how it may be put into practice and owned by the entire school, including the trust, governing board, the senior leadership team, staff and pupils and their parents. Details of what the education brief should contain are provided [in Annex E](#).

A well-developed education brief will do the following:

- inform your pre-opening phase planning and timescales
- take you through your Ofsted pre-registration inspection successfully
- help you choose the right staff and governors, and show how you will retain them, with particular regard to developing a manageable and sustainable workload as the school expands – refer to the [workload reduction resources](#), which include a helpful toolkit produced by DfE to support you
- help you create a whole-school approach to mental health and wellbeing, and integrate the staff wellbeing policy in the school's culture
- make sure that you are effective, safe and secure, and are achieving from the first day of opening
- be accessible and written in a way that you feel confident in sharing it with a wide range of audiences, internally and externally
- be focused on pupil outcomes from the start
- prepare you for your first Ofsted Section 5 inspection and help you achieve a good or outstanding judgement

The education brief also provides valuable evidence and reassurance to your delivery officer that you are offering a high-quality and inclusive educational offer, and that the school is on track to be educationally viable. This will inform their judgement to recommend the Secretary of State enters a funding agreement.

## Developing education policies

You have statutory duties in terms of the policies that need to be in place before opening. DfE has published a [guide for schools](#) (including free schools) about these duties. This includes details of the policies your school must have and how frequently they must be reviewed.

Policies may fulfil one or more of 4 requirements:

- a statutory requirement of education law or other legislation impacting on schools
- required prior to the funding agreement and are also a statutory requirement
- required for the Ofsted pre-registration inspection
- related to teaching and learning, and may be requested during an Ofsted

## inspection post-opening

It is imperative that policies are in place by their respective deadlines.

You will 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 the third year after opening). In the Annex A [checklist of tasks](#) DfE has 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.

Closing the attainment gap for disadvantaged pupils is a priority for DfE. Your education plans and policies should reflect the local context in which your school will operate and be designed to improve outcomes and enhance the life chances of children in the local community.

When planning your curriculum, you should make sure it is aligned with the needs of children in the local area in which your school will operate, including how you will address the specific forms of disadvantage affecting pupils. For example, if your school will be situated in an area where a high proportion of pupils speak English as an additional language, you should make sure your approach towards literacy reflects this. You should also consider how your approach to teaching and learning will ensure the curriculum is delivered in a robust and effective manner, and meet the needs of your expected intake.

DfE is also committed to maximising the number of children and young people who are regularly attending school. Regular attendance is vital for a pupil's education, wellbeing and development. When developing your school attendance policy, you should refer to the published attendance guidance [working together to improve school attendance](#) and consider how you will develop a school culture that promotes the benefits of excellent attendance.

When planning assessment monitoring and tracking processes, you should pay attention to the advice for schools and governing boards in the [making data work](#) report (published November 2018) to make sure that excessive data burdens are avoided.

If your free school includes 16 to 19 provision, you might want to consider offering T levels. T levels are high-quality, rigorous, level 3 classroom-based technical study programmes that will sit alongside apprenticeships within a reformed skills training system. They will support entry to skilled employment in technical occupations and progression to higher education options, including a higher technical qualification, higher apprenticeship, degree apprenticeship and technical degree.

The first 3 T levels were launched in 2020 with a small number of providers for specific occupations in 3 industries: digital production, design and development (digital industry); design, surveying and planning (construction industry); and education (education and childcare industry). A further 6 were launched in 2021, including in health and science.

By 2024, a total of 23 T levels will be available, covering 11 industries. Once T levels are rolled out nationally, DfE expects the majority of funding for 16- to 19-year-old students studying level 3 qualifications to be directed to T level and A level programmes. More information can be found at [introduction of T levels](#).

Many free schools and academies have also found the overarching structure of the education brief (available in [Annex E](#)) helpful, as this brings together all of the school's strategic and detailed education plans and policies.

Exemplar education plans and policies are widely available. You can find them on your local authority's website or acquire them from your project management

company, if you are using one. You should tailor them to take account of the vision and curriculum plans for your free school.

Non-faith free schools, like other non-faith academies and schools, may apply for an exemption (called 'a determination') from providing a 'broadly Christian' daily act of collective worship. This can be replaced with an alternative daily act of collective worship that better reflects the faith background or backgrounds of the academy's pupils. The determination lasts for 5 years. If you wish to apply for this status, your delivery officer will provide you with the relevant application pack.

Academies (including free schools) are required by law to publish specific information on their website. Guidance as to what must be included can be viewed at [what academies and free schools must publish online](#). You must also make sure that you have the following documents in place prior to opening.

## **A scheme of work**

This should set out details of the programme of learning, and must be written for each subject or programme of study. These are usually prepared by the subject head of department, or the subject or phase co-ordinator in a primary setting.

## **A school development plan for the opening year**

This is a strategic document, typically constructed by the principal designate and senior team, which sets out the main objectives the school wishes to achieve within its first years. This includes success indicators, actions, staff responsible, timelines and costings for the opening and subsequent years.

You may wish to consider including an annual survey of workload and wellbeing into your plans to make sure you are able to fulfil your commitment to a manageable and sustainable work-life balance for staff. An example [survey](#) is available to download as part of DfE's workload reduction toolkit, and [what works for wellbeing](#) offers examples on how to measure wellbeing in schools.

## **Promoting integration and community cohesion**

The government is committed to building strong integrated communities in which people, whatever their background, live, work, learn and socialise together, based on shared rights, responsibilities and opportunities. Schools have a duty to promote community cohesion and integration, with a view to making sure that all children and young people are prepared to participate fully in life in modern Britain.

There are a number of practical activities you could undertake in your school to promote this and support pupils to mix with those from different backgrounds, equipping them with the skills, knowledge and confidence to contribute to the local community as active citizens. Initiatives such as sport days, arts competitions and music events bring together pupils from across the school, for example. You may wish to consider the further suggestions that follow.

## **Establishing sustained and structured linking arrangements with another school**

Linking arrangements with another school can help promote sustained social mixing and create meaningful relationships between pupils from different backgrounds, fostering more positive attitudes, building understanding of different communities and cultures, and breaking down barriers to greater integration.

You may find it useful to engage with [the Linking Network](#), which can provide support and training to help you establish a meaningful and structured linking programme with a suitable school. The [Connecting Classrooms](#) programme provides opportunities to partner with schools in different countries.

## **Promoting British values**

Organising programmes, activities or trips aimed at promoting the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs will help pupils to value difference; challenge prejudice, discrimination, stereotyping and intolerance of others; and understand the diversity of both the local community and wider society.

This can include activities in the classroom to teach these values as part of a broad and balanced curriculum, including through the teaching of spiritual, moral, social and cultural (SMSC) education, through subjects such as RE; citizenship; personal, social, health and economic education (PSHE); and relationship and sex education (RSE), as well as activities outside of the classroom.

## **Youth politics and civic engagement**

This can help to get young people thinking about the role they could play as active citizens in modern Britain. This should be linked to plans for lessons on and the ethos around democracy, elections and political systems. Initiatives could include a youth parliament, a school council and mock elections.

Active citizenship activities, such as volunteering opportunities in the local community, [National Citizen Service](#) or [Youth Ambassador schemes](#) build links between pupils and the local community.

## **Career programmes and policies**

These could focus on improving links between pupils and local employers, and on encouraging apprenticeships. Large employers often have schemes targeted specifically at broadening access from disadvantaged and more diverse groups, which you may wish to explore.

Different areas will face different barriers to and opportunities for promoting integration and community cohesion. You should consider the appropriateness of your approach to promoting integration and community cohesion through your education plans and policies based on the characteristics of the local area in which your school will be based.

## **Measuring pupil performance**

In order to demonstrate that your pupils are making progress, you will need to establish a baseline of pupils' current levels of attainment on entry to your school. As



such, you will need to develop a system for baselining before your school opens, otherwise you will not be able to demonstrate that progress. You will also need to implement a system of assessment that enables you to measure pupils' performance, and a strategy for improving this.

Once your school opens, it is important that you review your success measures and expectations regularly, in order to improve performance. This could include benchmarking your assessment data with other schools'. As with your system for baselining and assessment, you should make sure you have developed a robust plan for reviewing performance before your school opens.

When designing your plans for measuring pupil progress, you should make sure they encompass how you will approach the following requirements:

- identifying the learning needs of your disadvantaged pupils and using the information to develop approaches for tackling the individual issues faced
- using appropriate and proportionate data to inform teaching and drive progression and attainment for all pupils – you should refer to the recommendations of DfE's report [making data work](#) to support you in this
- monitoring and evaluating whether your approaches for disadvantaged pupils are working
- focusing on measuring and improving the quality of teaching in the classroom
- involving parents and reporting their child's progress to them

## Safeguarding

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 in this, as they are in a position to identify concerns early and provide help for children to prevent those concerns escalating.

It is vitally important that, as an academy trust, you fully understand your responsibilities for safeguarding the children in your care. You should consult DfE's [keeping children safe in education \(KCSIE\)](#), [working together to safeguard children](#) and [what to do if you're worried a child is being abused: advice for practitioners](#) guidance documents. All governing bodies must have regard to this guidance, which means they should comply with it unless there is good reason not to. When the school opens, DfE would expect it to be meeting the requirements as set out in KCSIE.

Every school must have a single central record (SCR) – for example, in a spreadsheet – alongside its documentation in personnel files. This should record in one place specific information on every adult employed by the trust or coming into regular contact with children on a voluntary basis. This is a statutory requirement. A senior administrator or other gatekeeper should maintain the SCR. The SCR must include for each adult employee, governor or volunteer whether the following checks have been carried out or a certificate was obtained, and the date on which each check was completed or the certificate was obtained:

- an identity check
- a barred list check
- an enhanced DBS check or certificate
- a prohibition from teaching check
- a further check on people living and working outside the UK
- a check of professional qualifications
- a check to establish the person's right to work in the UK



You can 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 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. The safeguarding checklist in [Annex F](#) summarises these requirements and is a useful aide to keep on top of what needs to be in place.

## External experts

External experts are contracted by DfE to provide expert educational advice and reassurance to the department that your project is progressing well and on course to open a good school. Access to an external expert will only be through your delivery officer.

You will need to have your own educational expertise in place to support you as an academy trust. As a minimum, the external expert contracted by DfE will usually do the following:

- 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 comment on the quality of the governance plan
- comment on the build-up of the senior staffing structure
- comment on the quality of the [education brief](#) (see Annex E) and education policies – in particular, safeguarding and assessment
- attend and contribute to the ROM

There is a differentiated approach to DfE's support across free school projects. The external expert will be contracted to provide the support on a needs basis. The factors DfE will take into account in determining the level of external expert support include the experience within your group and the complexity of your vision for the school. For example, if your educational expertise is limited, or the group has not set up a new school before, DfE may contract additional external expert support.

The level of external expert 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.

After opening, an external expert will be contracted to provide professional advice and challenge, via your delivery officer, to make sure your school is delivering a high standard of education to your pupils. An external expert may be contracted to undertake first-, fourth- and/or sixth-term visits to your school, reporting to DfE on your progress until your first Ofsted inspection.

## Further information

- [Annex E: what should an education brief contain?](#)
- [Annex F: safeguarding checklist](#)
- [Benefits of flexible working for teachers](#)
- [Keeping children safe in education \(KCSIE\)](#)
- [Working together to safeguard children](#)
- [Child abuse concerns: a guide for practitioners](#)

- [Teacher recruitment and retention strategy](#)
- [Inspecting safeguarding in early years, education and skills](#)
- [National Citizen Service](#)
- [The role of Youth Ambassadors](#)
- [Introduction of T-levels](#)

## Funding agreement

The funding agreement is the legally binding contract between the academy trust and the Secretary of State, which contains the terms and conditions on which a free school is funded.

Entering into a funding agreement is an important decision for both parties, so requires careful consideration. DfE will need to be sure your trust is ready to enter into the agreement and is likely to establish and maintain a popular and successful school.

The funding agreement sets out what the academy trust needs to do. This includes, for example, a requirement for admissions to be consistent with relevant admissions law. The trust must meet these and other requirements in order to receive funding. The funding agreement also sets out the circumstances in which an agreement can be terminated.

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 phase. For mainstream primary, secondary and all-through schools, the ideal is to enter into a funding agreement at least one month before the relevant national offer day in the year in which the school is due to open, to give parents receiving admission offers the confidence the school will open that year.

However, the Secretary of State will not enter into a funding agreement until they are confident, on the basis of advice from the relevant regional director, that the school will be good, viable, sustainable and successful, able to open on its proposed date, and sufficiently secure about its permanent site, and that any conditions set during the pre-opening phase or following assessment have been met. The Secretary of State can cancel or defer a project at any point during the pre-opening phase, even after your funding agreement has been signed, if your anticipated pupil numbers are not at a previously agreed level, or if they consider the school would provide an unacceptably low standard of education.

The Secretary of State does not enter into a funding agreement in respect of a nursery that is part of a free school, because nurseries receive their revenue funding from the local authority or fees charged to parents for provision above the 'free' entitlement. However, provisions about the use of the land for the nursery may need to be included in the funding agreement. Further information on nursery revenue funding arrangements is included in the section on [funding for free school nurseries](#).

The funding agreement checklist, available in [Annex A](#), sets out a non-exclusive list of the main tasks you will need to complete in order to begin the process of agreeing the funding agreement for your school.

## Why DfE uses model funding agreements

DfE produces model funding agreements for all types of academy, including free schools. There are different models available to reflect the requirements of different

types of free school – see [academy and free school funding arrangements](#). Using model funding agreements helps DfE make sure that there is consistency across free schools.

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 that reflect the specific circumstances of that school, such as land arrangements, the 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 delivery officer will tailor them accordingly before sending the document to you.

## **When you should begin the process for entering into a funding agreement**

The timing for entering into a funding agreement will vary depending on the project. Your delivery officer will decide the appropriate time for your project. Funding agreements are usually signed when a project has achieved all its main milestones and the delivery officer judges that the school is likely to be good and viable on opening.

There are a small number of circumstances in which DfE might consider entering into a funding agreement before all these main milestones have been passed. The most common circumstances are:

- when entering into a build contract for a permanent site
- to enable schools to enter local authority co-ordinated admissions

DfE aims to have all funding agreements in place by the following dates in the year in which your school will open, although this will depend on whether the project has achieved its main milestones and is on course to be good and viable on opening:

- mainstream school: one month ahead of national offer day (1 February for secondary schools and 15 March for primary schools)
- special school: in sufficient time to enable the school to be listed on a child's EHC plan, which local authorities need to review by no later than 15 February if the school is opening in September or one term before it opens if it is opening in a month other than September
- AP school: one term before it opens (by mid-April for September openers)

Your delivery officer will normally want to arrange a formal checkpoint meeting with your academy trust to make sure that everything is in place to enable the Secretary of State to sign the funding agreement.

## **Statutory duties**

Before either party can begin the process of signing the funding agreement, there are certain statutory duties that must first be fulfilled by both parties.

The academy trust must consult under Section 10 of the Academies Act 2010 – see the [statutory duty to consult](#) section for full details. The trust must also have due regard to Section 149 of the Equality Act 2010.

Section 9 of the Academies Act 2010 requires the Secretary of State to complete an

assessment of the impact the opening of the free school would have on maintained schools, academies, institutions within the further education sector and alternative provision in the area.

The Secretary of State is also required under Section 149 of the Equality Act 2010 to have due regard to the needs of the PSED in the opening of the free school before the funding agreement can be signed. Management of these processes will be undertaken by your delivery officer.

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 on opening. In making this decision, they will consider the following criteria:

- Will the school 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?
- Has the school recruited sufficient pupils to be financially viable?
- Will it be full by the time all year groups are present?
- Are the admission arrangements compliant with the school admissions code?
- Will the board of academy trustees be capable and effective?
- Does the proposed board include academy trustees with appropriate educational, financial and business experience or expertise?
- Are there arrangements in place to manage conflicts of interest?
- Will the school open on an appropriate, value-for-money site?
- Is the school financially viable and efficient in its use of resources to promote pupil outcomes?
- Can the school cope with reasonable levels of change to its income and expenditure?
- Are the school's plans for promoting community cohesion appropriate and likely to be effective for the local context where the school will be based?

## **How to enter into a funding agreement: process and people involved**

1. DfE sends the academy trust a signature-ready version of the relevant model funding agreement tailored to the school's specific circumstances.
2. The academy trust consults its lawyers, if necessary, on land-specific clauses. All other clauses are non-negotiable.
3. DfE provides advice to the Secretary of State on whether to enter into a funding agreement with the academy trust.
4. The academy trust confirms with DfE that it is ready to sign the funding agreement.
5. DfE communicates the Secretary of State's decision to the academy trust.
6. The academy trust prints and signs (but does not date) a copy (with each Annex attached to it) and sends it to DfE.
7. If the funding agreement is approved, DfE arranges for it to be signed, sealed and dated, and sends a hard copy back to the academy trust.

The Secretary of State will not negotiate terms for individual projects and will not accept amendments to the model funding agreement.

To make sure that the funding agreement is executed correctly, academy trusts must

arrange for 2 academy trustees, or one trustee and a witness, to sign the copy. In addition, academy trusts should leave the document undated when they send it to their delivery officer – DfE will date the document at the point it is signed and sealed.

## Duration

The timings for the process will vary for each project. However, the stage that most often holds up the process is agreeing the final version of the funding agreement. It is for that reason that DfE asks academy trusts to focus only on the school-specific clauses, as highlighted by your delivery officer. We cannot guarantee that the academy trust will receive its signed funding agreement in the timescale agreed if we are not confident that the proposed school will be successful.

To speed up the process, you should discuss with your delivery officer, at an early stage in the pre-opening phase, your preferred timings for signing the funding agreement, which may include being in line with the local authority admissions process. While DfE cannot guarantee that this will always be met, agreeing a timescale helps to focus both the academy trust and the delivery officer on making sure they have completed the necessary tasks in advance.

## Arrangements for academy trusts with more than one school

Academy trusts with more than one school require different funding agreements to academy trusts with only one school. While academy trusts with only one school will have one funding agreement for their only school, trusts with more than one school require a master funding agreement to cover all schools within the trust, alongside supplemental funding agreements for each individual school.

Model funding agreements ([single, master and supplemental](#)) are available for mainstream, special, 16 to 19 and AP free schools on the [academy and free school funding arrangements](#) page. The master funding agreement contains general clauses (such as the freedom to set the duration of the school day and year), whereas the supplemental agreement contains those clauses that are specific to the individual school.

If yours is an existing academy trust looking to open a new free school, the models for academy trusts with more than one school (master and supplemental) will apply to you. Your delivery officer will be able to advise on which model will need to be used.

## Further information

- [Annex A – funding agreement checklist](#)
- [Academy and free school funding arrangements](#)

## Inspections and registration as an independent school

This section summarises the process whereby proposed free schools are formally registered as independent schools, based on advice from Ofsted.

Your free school must undergo an Ofsted pre-registration inspection and be registered on GIAS before it can legally open.

16 to 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 make sure there is parity of accountability for all free schools.

Once open, your free school will have more freedoms and flexibilities than other state-funded schools, but it will be held accountable in exactly the same way, and subject to the same Ofsted inspection regime.

## Risks

You must keep to the deadlines set out in this document or provided by your delivery officer if your school is to open on time. If in doubt, speak to your delivery officer.

## Why you need an Ofsted pre-registration inspection

In order for your school to be added to GIAS and legally allowed to open, the Secretary of State must decide whether or not your free school, when open, is likely to meet the relevant independent schools standards outlined below. Guidance on the standards is available in the [independent schools standards guidance](#). The Ofsted pre-registration inspection informs this 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

Part 1 of the regulations (quality of education) does not apply to free schools in the pre-opening phase. Your education plans and policies will be considered throughout the pre-opening phase and, in particular, during your ROM with DfE.

The pre-registration inspection is not like a full inspection, to which you will be subject once open. Instead, it seeks to establish whether the proposed school is fit to open as measured against the standards outlined above.

The full regulations are available at Education (independent school standards) Regulations 2014.

## Registering a nursery with Ofsted

In the following circumstances, a nursery does not need to be registered separately with Ofsted and will be inspected as part of the free school's pre-registration inspection, provided:

- the nursery is contained within the school's age range and is for children aged 2 years or older, as it will be covered by the free school's own registration
- the nursery is run by a subsidiary company that is completely owned and controlled by the free school

If the nursery is run by a subsidiary company that is independent from the free school, or if the free school does not exercise a high level of control over it, it is likely the subsidiary company will need to register the childcare separately. Your delivery officer will advise you if this is the case.

Schools that take children under 2 years old must register with Ofsted via its EYR. Where separate registration is necessary, Ofsted will conduct a number of background checks and a separate pre-registration visit. Following this, it will be inspected under the arrangements set out in Ofsted's [early years inspection handbook](#). Ofsted will also register the nursery provision on the Childcare Register.

Further detail on registering a nursery is available in [Ofsted's guidance on registering school-based childcare provision](#).

## Timing of pre-registration inspections

Your delivery officer will discuss with you when your inspection should happen. The Ofsted inspector will then contact you directly to confirm the date of inspection. You will be given 5 working days' notice of your inspection and be expected to make yourselves available on that date.

Inspections for free schools opening in September will take place in May and June. For free schools opening at other times during the year, inspections will usually take place in the term prior to opening.

Free schools that have made the most progress towards opening will be prioritised for early inspection, while those that would benefit from having 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, but having an early inspection gives you more time to put right any issues identified by Ofsted before your opening day.

## What you need to do ahead of an inspection

You will need to provide the following documents:

- a plan showing the layout of the premises and accommodation of all buildings
- a copy of the school's policy on
  - preventing bullying – changes to the independent school standards in 2013 mean it is no longer prescribed that bullying policies must take into account DfE guidance [preventing and responding to bullying](#), but you may still find it useful to consider the advice
  - safeguarding and promoting the welfare of children who are pupils at the school, compliant with the relevant health and safety law
  - safeguarding and promoting the health and safety of pupils undertaking activities outside of the school, which should have regard to DfE's guidance at [health and safety: advice for schools](#)
  - promoting good behaviour among pupils, setting out the sanctions to be adopted in the event of pupil misbehaviour
- a copy of the school's complaints procedure, as outlined in [part 7 of the Education \(independent school standards\) \(England\) Regulations 2014](#)
- evidence the school has appropriate procedures in place for undertaking DBS checks of staff and is recording the results in an SCR – ahead of registration, as a minimum, the chair of academy trustees must hold a valid DBS certificate, countersigned by DfE, and DBS checks on all trustees and other members should



be well underway, if not completed, as outlined in [due diligence](#)

You will need to provide these documents directly to Ofsted. Ofsted will provide information on how to do this when it advises you of your inspection date.

**! If you do not submit the necessary documentation in time, your inspection may be delayed.**

Ofsted will contact you direct to advise you of the inspection date and give 5 working days' notice.

## **Compliance with the Regulatory Reform (Fire Safety) Order 2005**

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

You will need to inform the local fire and rescue service ahead of opening, although the fire service may decide not to inspect the premises immediately. Note that the fire service is not under any obligation to provide this service before the school opens, though many will do so. Ofsted will consider alternative evidence such as written confirmation from the fire and rescue service that it has approved your fire risk assessment in principle, or, alternatively, one or more of the following:

- documentation or a certificate issued by an independent fire safety advisor
- confirmation that you have undertaken a fire risk assessment and are complying with the Regulatory Reform (Fire Safety) Order 2005
- a completion certificate confirming construction of the school premises is in accordance with building control regulations and in compliance with fire safety standards

## **The day of the inspection**

The inspector will usually spend half a day with your school and will normally need to be met and escorted by the principal designate 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 simply because the principal designate is unavailable.

In order to make a judgement about each of the standards, the inspector may ask to see other policies on the day. If, for any reason, a particular document is not available, whomever is meeting the inspector needs to be able to discuss the plans for its development. Similarly, if the work on the site is not yet completed, they 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, that would be desirable but is 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

After the inspection, the inspector will provide DfE with an advice note and a checklist detailing their views on whether the school is likely to meet the independent school standards when it opens.

In the event that the Ofsted feedback indicates there are issues that must be addressed, known as conditions of registration, your delivery officer will discuss these with you, and you must take appropriate action to resolve these before your school can open.

DfE needs to be certain that any conditions have been met before your registration on GIAS can be completed.

You should be careful about how you communicate the outcome of the inspection to your local community. These inspections are about whether or not the school is fit to open, rather than providing any judgement of quality. For example, it would be misleading to say that Ofsted has visited and judged your school as good or outstanding just because there are no conditions to satisfy.

## Get information about schools (GIAS) registration

[Get information about schools](#) (GIAS) is DfE's database of all educational establishments in England and Wales. Being entered on GIAS automatically generates your free school's DfE number and unique reference number (URN), which are used in a variety of circumstances to formally identify the school.

Around 9 months before your school is due to open, your delivery officer will provide you with a GIAS application form that you must complete and return.

Once the form has been processed, you will be issued with your URN and DfE number. Your school is initially entered on GIAS as 'pending approval', which means the school is not yet fully registered and is not publicly visible or searchable online.

Your school will not be publicly searchable until your school's status is changed to 'proposed to open' and registration is complete. This will happen when you have a funding agreement in place, any pre-opening ROM actions have been addressed, and you have successfully completed your Ofsted pre-registration inspection.

## DfE Sign-in

DfE Sign-in is DfE's portal for systems such as collections online for learning, education, children and teachers (COLLECT) which is used by schools, local authorities and DfE for processing data collection returns, and the school-to-school, key to success, teaching vacancies and GIAS services. Access to systems is granted on a user-by-user basis and only those systems that a user has permission to access will be displayed. Not all systems will be available until your free school is open.

Around 4 months before your free school is due to open, your delivery officer will be in touch with you to obtain the details of the person you want to be given the initial access to DfE Sign-In.

Initial approver access will be given to the person you nominate. They will receive their DfE Sign-in details once you have successfully completed an Ofsted pre-registration inspection and your free school's status has been changed to 'proposed to open' on GIAS.

Academies (including free schools) and academy trust accounts can have up to 20 user accounts and 2 approver accounts per organisation.

The approver can create accounts for other members of staff and add services to accounts such as COLLECT. They also archive accounts when they are no longer in use. It is their responsibility and decision whom they add to the account.

Once registration is complete, it is important that someone at your school takes responsibility for keeping your GIAS record accurate and up to date. DfE will not do this for you. If you do not confirm your school information on GIAS is correct every 60 days, you will get a reminder that you need to review and update your details. This will continue to be issued weekly until you review and confirm details.

## Inspections once open

Once open, mainstream, AP and special free schools are inspected under the same arrangements as maintained schools. 16 to 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 third year of opening (for schools with boarding provision, this will be the first year).

Ofsted inspections of schools, early years settings and further education and skills providers focus on making sure learners are receiving a high-quality education that puts them on a path to future success.

Ofsted inspectors will spend less time looking at exam results and test data, and more time considering how a nursery, school, college or other education provider has achieved their results – that is, whether they are the outcome of a broad, rich curriculum and real learning, or of teaching to the test and exam cramming. Further information is available on [Ofsted's website](#).

Many open free schools have found it useful to buy in support to undertake a trial-run inspection ahead of their first Ofsted inspection to identify any outstanding issues. Many providers offer this service and employ former inspectors to deliver it. These external assurance exercises will help validate your school's self-evaluation and inform school improvement plans ahead of your first Ofsted inspection.

## School-to-school support

One of the most effective ways of achieving school improvement is by working with other schools. There are many opportunities for school leaders and governors to work with and receive support from their peers. Further information can be found in the guidance [get school-to-school support from system leaders](#).

## Further information

- [Annex A, 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](#)
- [Keeping children safe in education \(KCSIE\)](#)
- [Health and safety of pupils on educational visits](#)

- [Ofsted website](#)

## The readiness-to-open meeting

You may be invited to a ROM to confirm that all necessary plans are in place and ready for your school to open. This section summarises the process of preparing for and successfully managing the meeting in the run-up to opening your school. ROMs may be held face to face or virtually. In a small number of cases, your ROM may be paper-based, or it might be felt it is not necessary to hold one at all. Your delivery officer will advise.

### Summary

ROMs will normally take place before the end of June ahead of opening in September. They are formal meetings between DfE and the academy trust, and designed to achieve the following:

- identify issues and risks that might prevent the school from being financially and educationally viable on opening
- assess whether the school's plans for promoting integration and community cohesion are appropriate and likely to be effective for the local context where the school will be based
- identify actions needed to mitigate risks or address issues
- enable ministers to take decisive action, such as to defer, before the opening date, if necessary

Education and viability will be the main focus of the ROM. DfE will use the meeting to make a judgement on how confident it is that the proposer group will open a successful school.

Attendees from the proposer group should be:

- the chair of academy trustees (DfE suggests both the local governing board chair and the chair of the board of the academy trust should attend, where appropriate)
- the principal designate (the headteacher or executive headteacher may also attend, where appropriate)
- any other person who can provide information useful to the meeting – for example, the chair of the finance committee, or the business manager

Only those who hold a governance or leadership role should attend, with a maximum of 5 proposer group attendees overall.

**!** DfE will postpone the meeting unless both the chair of governors and the principal designate are able to attend, or if the information we need is returned too late for us to review before the meeting.

### Summary of tasks

The principal designate will be required to complete a risk report and return it to the delivery officer at least 2 weeks prior to the ROM. The report will:

- underline any risks or issues and the actions needed to address those issues

- identify areas that require further discussion

## Working with DfE

Your delivery officer 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 principal designate.

The ROM will be chaired by a senior DfE official and attended by your delivery officer and, where appropriate, representatives from ESFA. DfE may also ask an external expert to attend. DfE representatives will ask questions about progress, risks and issues in main areas of the project and agree with you what actions might be needed to address each relevant issue.

## Further information

- [Annex A, table 14 – readiness to open: checklist of activities](#)

## Once your school is open

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

The final stage of the pre-opening phase is to prepare for opening. Once your school is open, your delivery officer will act as the main point of contact and will monitor your progress in the first few years after opening. You may also be allocated an EFSA link officer, who will be the main point of contact for the school on matters relating to finance. If you are in temporary accommodation or there is still capital work needed on the permanent site, you will also work with a FSFES project manager.

Your delivery officer will see that the FSFES project manager and ESFA are fully briefed on your project so they know what challenges you may experience in your early days of opening.

The expectation is that, once your school is open, you have the freedom, autonomy and responsibility to run it, within the expectations and requirements set out in the [academy trust handbook](#) and your funding agreement.

## What ESFA does

ESFA is an executive agency of DfE. The role of ESFA is to provide revenue funding and to be accountable to Parliament for how funds are used, making sure there is regularity, propriety and value for money of expenditure. To do this, ESFA must be satisfied that academy trusts have appropriate arrangements for sound governance, financial management, value for money and accounting, and that academy trusts' use of public funds is consistent with the purposes voted for by Parliament.

ESFA expects free schools to make the most effective use of their financial freedoms to raise educational standards while operating with full accountability for how they spend taxpayers' money. Schools are asked to provide financial returns so

ESFA can provide assurance that this is the case and that free schools are meeting the terms of their funding agreements.

ESFA 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 matters such as approval to enter into a lease or to dispose of land.

## How ESFA will work with you

ESFA has published a [guide for newly opened academies, academy trusts and free schools](#) to introduce you to its areas of work and guide you through the first few months on matters relating to funding, funding agreement compliance, finance and financial assurance.

The GOV.UK website has [information about ESFA](#) for all ESFA customers and a specific area for academies and free schools funding, payments and compliance.

The [academy trust handbook](#) sets out the responsibilities and requirements relating to academy trusts' financial governance and management. Compliance with the handbook is a condition of your funding agreement.

[ESFA update](#) is a weekly email bulletin. Articles are brief and focus on important new information and actions for you to take.

ESFA aims to provide clear and comprehensive information about all of its areas of work. If there is anything you do not understand, or you need clarification on a specific issue related to your academy or academy trust, its [enquiry service](#) will be able to help or point you in the right direction for assistance.

## Regional directors

As the number of academies and free schools continues to grow, DfE has considered how the system should respond, to make sure 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 understand what is right for academies and free schools locally.

There are 9 DfE regional directors across 9 regions of the country. The 9 regions are:

- East Midlands
- East of England
- London
- North East
- North West
- South East
- South West
- West Midlands
- Yorkshire and the Humber

[Advisory boards](#) of up to 8 members with equal status – 4 elected by academies in their region, 2 appointed by the regional director and 2 co-opted by the regional

director with ministerial approval – provide advice and challenge to regional directors on the academy-related decisions they make. Advisory board members tend to be academy headteachers, CEOs of academy trusts, and business leaders in a non-executive role.

Regional directors make 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 regional directors can be found on [GOV.UK](https://www.gov.uk).

Regional directors' general responsibilities include:

- taking action where academies, free schools, UTCs or studio schools are underperforming
- intervening in academies, free schools, UTCs or studio schools where governance is inadequate
- deciding on applications from local-authority-maintained schools to convert to academy status
- improving underperforming maintained schools by providing them with support from a strong sponsor
- encouraging and deciding on applications from sponsors to operate in a region
- taking action to improve poorly performing sponsors
- advising on proposals for new free schools
- advising on whether to cancel, defer or enter into funding agreements with free school projects
- deciding on applications to make [significant changes](#) to academies, free schools, UTCs and studio schools

Their main responsibilities in relation to free schools are:

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

## Important tasks in the early days of opening

You'll need to:

- prepare for an external expert visit in your first term of opening
- make sure that the academy trust has approved an annual budget for the first year of operation and submitted this to ESFA in accordance with the published timetable
- make certain that it has implemented the requirements of the [academy trust handbook](#)

## Further information

- [Annex A, table 15 – handover to ESFA: checklist of activities](#)
- [ESFA website](#)
- [Academy trust handbook](#)



- [Schools and college funding and finance](#)
- [Priority school building programme](#)
- [ESFA update](#)
- [Schools resource management](#)

## Freedom of Information

Free schools are subject to Freedom of Information (Fol) requests, as academy trusts are public authorities under the [Freedom of Information Act 2000](#) (the Act) in their own right. The Act provides a right of access to any recorded information held by public authorities. It does this in 2 ways:

- public authorities are obliged to publish certain information about their activities
- members of the public are entitled to request information from public authorities

If the information in scope of the request is about or details an impact on the environment, such as new school buildings or the change of use of land, then the request will need to be handled under Environmental Information Regulations (EIR). Guidance on this can be found on the [Information Commissioner's Office](#) website.

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 to the organisation that holds the data under the [Data Protection Act 2018](#). However, if you receive an Fol request where the information asked for is the requester's personal data, you should inform the requester that the information is exempt under the Freedom of Information Act, but, at the same time, deal with it as a subject access request under the Data Protection Act.

## Summary of the important tasks

DfE cannot advise free schools on how to answer an Fol request. However, if you receive a request and are unsure how to deal with it, you should ask your delivery 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.

## Other sources of guidance

It may be helpful, when considering how best to answer an Fol request, to look at the [Information Commissioner's Office website](#). Compliance with the Freedom of Information Act 2000 is overseen by the Information Commissioner's Office (the independent body with responsibility for the regulation of the Act, EIR and the Data Protection Act). If you receive requests for information that is already publicly available, you should direct the requester to wherever the information is published.

## Further information

- [Free school applications](#)
- [Revenue expenditure for free schools](#)
- [Capital funding for open free schools](#)

# Checklists

Download checklists from Annexes A to F of the [Free school pre-opening guide](#).

1. See paragraph 1.38 of the School Admissions Code <https://www.gov.uk/government/publications/school-admissions-code-2> ↵
2. See paragraph 1.9(i) of the School Admissions Code ↵

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