



Department
for Education

The free school presumption

**Guidance for local authorities and new
school proposers**

January 2023

Contents

Summary	3
Expiry or review date	3
Who is this publication for?	3
Terminology	4
About the free school presumption	5
Roles and responsibilities	5
Local authority	5
Successful sponsor	6
The department	6
Free school presumption process	7
Steps for running a presumption competition	8
Step 1: Local authority consultation	8
Step 2: Impact and equalities assessment	8
Step 3: Community cohesion	8
Step 4: School specification	9
Step 5: Seeking proposals	11
Step 6: Notifying the department – specification and proposals	13
Step 7: Assessing proposals	14
Step 8: Due diligence	16
Step 9: Local authority recommendation	16
Approved sponsor	17
Funding arrangements	18
Financial viability	20
Terminating the process	20
Other useful information	21
Further sources of information	21
You may also be interested in	21

Summary

This guidance is non-statutory. It is aimed at local authorities and new school proposers and sets out the department's advice and guidance about how the free school presumption process should operate in practice and the characteristics, qualities and evidence that new school proposers should demonstrate.

This guidance applies to all new schools established following the process in section 6A of the Education and Inspections Act 2006¹, which is known as the 'free school presumption' route. [Guidance on establishing new maintained schools](#)² (including voluntary aided schools) can be found on the [GOV.UK](#) website.

Section 6A requires that, where a local authority identifies a need for a new school in its area, it must seek proposals to establish an academy (free school). Section 6A came into effect on:

- 1 February 2012 for new mainstream and special schools; and
- 1 September 2012 for new alternative provision (AP) free schools.

The legislation that relates to this guidance includes:

- the Education Act 2011 (EA 2011)
- the Education and Inspections Act 2006 (EIA 2006)
- the Academies Act 2010

This guidance only relates to schools in England.

Expiry or review date

This guidance applies from January 2023 and supersedes all previous versions. This guidance will be kept under review and updated versions will be published if necessary.

Who is this publication for?

This guidance is for:

- local authorities
- prospective proposers who may wish to apply to establish a new free school in response to an invitation published by a local authority

¹ <https://www.legislation.gov.uk/ukpga/2006/40/contents>

² <https://www.gov.uk/government/publications/school-organisation-maintained-schools>

Terminology

- 'Proposer' and 'sponsor' in this document refer to the body or group that is proposing to establish the new school.
- When 'department' is used in this document it is referring to the Department for Education.
- RD refers to the Department for Education's [Regional Directors](#)³. RDs act on behalf of the Secretary of State for Education and are accountable to the [Director General of Regions Group](#)⁴.

³ <https://www.gov.uk/government/organisations/regional-department-for-education-dfe-directors/about>

⁴ <https://www.gov.uk/government/people/john-edwards--2>

About the free school presumption

The presumption process is the main route by which local authorities bring about the establishment of new schools to meet the need for additional places.

The presumption process can be used to deliver all types of academy schools, including mainstream, special schools, and schools designated with a religious character (faith schools), and can also be used to deliver alternative provision academies. Where the proposal is for a primary school, there is an expectation that the specification will include a nursery, unless there is a demonstrable reason not to.

The presumption process sits alongside the central mainstream and special/alternative provision free schools programmes⁵. Free schools have delivered tens of thousands of high quality school places across the country.

All new schools established through the presumption process are classified as free schools. This reflects the fact that 'free school' is the department's term for any new provision academy. Academies are state-funded schools that are independent of local authority control and receive their funding directly from the government. Schools established through the presumption process are not required to use the term 'free school' in their name: this follows practice within the department's free school programme.

Roles and responsibilities

Local authority

Presumption projects are funded and delivered by local authorities in response to their sufficiency duty. Local authorities are expected to:

- [determine the specification](#) for the new school;
- [lead and fund the capital project](#), including the delivery of the site and the buildings solution;
- work with the approved sponsor during the [pre-opening phase](#)⁶ to undertake effective risk management, including dealing with any unforeseen issues and agreeing appropriate mitigating actions with the successful sponsor; and

⁵ Information on the latest [central free schools application waves](https://www.gov.uk/government/publications/free-school-application-guide) can be found on GOV.UK (<https://www.gov.uk/government/publications/free-school-application-guide>)

⁶ [Annex D](https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption) (<https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption>)

- take joint accountability for ensuring that the school opens successfully (although ensuring that milestones are met is the successful sponsor's role).

Presumption free schools are set up as academies, so after opening, the free school will be run by the sponsor and funded by the department in the usual way.

Successful sponsor

The successful sponsor's role is to open a financially and educationally viable school. During the [pre-opening phase](#), the sponsor is usually expected to take responsibility for the day-to-day project management and producing the project deliverables against key milestones to prepare the free school for opening (except the site, which the local authority takes responsibility for), but the practical arrangements will be for the successful sponsor and local authority to agree.

The department

The department will tailor the support it provides to the needs and experience of the local authority and the successful sponsor. All presumption projects will be assigned a delivery officer in the department, who will help, advise and challenge to ensure that the school will operate successfully from day one. A representative from the department will also participate in the assessment panel to support the local authority to appoint an appropriate sponsor.

The departmental delivery officer will need to know who is project managing the delivery so that they can periodically monitor and report progress and prepare for a funding agreement at the appropriate time. There will be regular interactions between the delivery officer, local authority and successful sponsor, including a number of formal meetings at specified milestones. This will include an initial kick-off meeting at the start of the pre-opening phase to agree the roles and responsibilities of the respective parties involved in the process.

At all these meetings, the delivery officer will assess the project's overall progress, identify any key risks which might prevent the school from opening on time and operating successfully once open, and assess the costs incurred to date and expected future spend.

Free school presumption process

Local authorities that have identified a need for new school places and are considering ways to provide them, are advised to contact the relevant RD's office as early as possible to ensure that there is a common understanding of action being taken to provide new school places and to improve the overall quality and diversity of educational provision in the area, including whether any free school applications through the central route have been made.

To support this the department will contact the local authority when a new free school is proposed through the central route, and there is also an expectation that all academies which are proposing to expand should first consult the local authority. These measures will ensure a co-ordinated response to the need for additional places as well as quality and diversity of provision. There is a strong expectation that all schools/academy trusts will support the local authority by providing additional places where they are needed, and in removing places where they are surplus to requirements.

The decision of with whom to sign a funding agreement to run a new free school lies with the Secretary of State. Following any assessment, the local authority recommends its preferred sponsor to the Secretary of State. The Secretary of State's approval is required as it is they who will enter into a [funding agreement](#)⁷ with the sponsor chosen to run the new school. The Secretary of State will consider any recommendation on the choice of a proposer made by the local authority. However, in some cases the Secretary of State may have additional information about the capacity, capability or the academic track record of a proposer which they will take into account when making their decision. They may therefore agree a sponsor of their own choice (from the [department's list of approved sponsors](#)⁸).

In reaching their decision, the Secretary of State will also have regard to the quality and diversity of existing local provision, the ability of the proposed sponsor to redress social disadvantage, as well as to improve educational standards in an area. The Secretary of State's decision is normally made on their behalf by the RD for the area in which the school will be located.

As the intention is to ensure that the school is always established by the most suitable proposer possible, involving a representative of the Secretary of State in the local authority's assessment processes ensures that all relevant and up-to-date evidence is

⁷ <https://www.gov.uk/government/collections/opening-a-free-school#model-funding-agreements-for-free-schools-and-studio-schools>

⁸ <https://www.gov.uk/government/publications/academy-sponsor-contact-list>

taken into account and that the process of appointing a sponsor runs as smoothly as possible.

Steps for running a presumption competition

Step 1: Local authority consultation

Before launching the competition, local authorities should decide how they will consult on the proposed new school and with whom (e.g. potential providers, other local schools including academies, the wider community, (where relevant) the religious body of any school with a religious character, and any others affected by the proposals). In conducting their consultation, local authorities should be clear about the type (e.g. mainstream, faith, special educational needs, alternative provision), age range, gender and capacity of the free school they wish to see established, the expected cost and funding available, the proposed site for the new school and the date by which it is expected to open. Feedback gathered through consultation can be helpful and used to help formulate and finalise the local authority's specification for a new school before its publication.

The above consultation should take place before publication of the call for free school proposals and the specification of the new free school. This is not the formal statutory consultation which sponsors are required to undertake under section 10 of the Academies Act 2010, which takes place during the pre-opening phase, i.e. after the sponsor has been selected.

Step 2: Impact and equalities assessment

As part of the planning process for new schools, local authorities should also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils (and others) from an equalities perspective. This should be sent to the departmental delivery officer allocated to the local project. Most local authorities will do this when putting together the specification for the school.

If the Secretary of State has concerns about the level of analysis, they reserve the right to ask the local authority to undertake further work on the impact of the proposed new school and/or the equalities assessment.

Step 3: Community cohesion

Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from, and about each other; by encouraging, through their teaching, an understanding of and respect for other cultures, faiths and communities. When considering the specification, the LA should consider its impact on community

cohesion. This will need to be considered on a case-by-case basis, taking account of the community that will be served by the school and the views of different groups within the community.

Step 4: School specification

The local authority should prepare a specification which is detailed enough to enable proposers to understand the needs identified by the local authority and submit the strongest proposal possible.

Local authorities should determine the amount and type of pre- and post-opening funding they will give to the successful sponsor and include this in the specification (read the [funding arrangements](#) section of this guidance for more information). This will enable proposers to tailor their proposal according to the funding available, making for stronger proposals for the local authority to consider. There may be scope for adjustments after the sponsor is appointed, depending on the circumstances (the local authority and successful sponsor will formally agree the funding to be provided). Where it is not possible to provide clear details of funding in the specification, then including an indicative amount and/or details about the factors that the local authority will consider in determining funding may be helpful.

Local authorities should include the following details in the specification:

- type of school;
- character/ethos of school;
- phase and age range (will it include nursery/sixth form provision?);
- opening date;
- pupil capacity;
- proposed Published Admission Number(s) (PAN), number of forms of entry on opening, and expected rate of growth;
- proposed admission arrangements, including catchment area if applicable;
- where relevant, any requirement to include a special unit or resourced provision for pupils with special educational needs;
- reasons the new school is required (e.g. due to a new housing development);
- profile of the area, including data about Free School Meals (FSM); Looked After Children (LAC) and Previously Looked After Children (PLAC); Black, Asian and Minority Ethnic (BAME); Special Educational Needs and Disability (SEND); Key Stage 2 outcomes;
- details of any desired community use of the school and/or a preference for any shared facilities;
- details of the site/building, including details of ownership;
- details of pre-opening funding to be provided by the local authority;
- details of post-opening diseconomies of scale funding to be provided by the local authority, including underwriting of places and how many years this will be for;

- timelines for the project, including deadline for proposals;
- process the local authority will follow when assessing proposals;
- how to make a proposal (including application form); and
- local authority contact details.

Local authorities should ask proposers to set out how the proposal will be likely to lead to improvements in the standard, quality and range of educational provision for children with special educational needs.

In the case of special and AP free schools, the local authority should also set out:

- the types of special educational needs which the school will be expected to meet, in the case of special schools;
- an indication of the top-up funding likely to be provided;
- a summary of its strategic plan for SEND, AP and high needs, and where this provision fits;
- (if appropriate) which local authorities are committed to commissioning places;
- how many places would be commissioned and by which local authority;
- in the case of AP, the type of placements offered (e.g. full time/short term/part time);
- any planned outreach, training and/or reintegration support (including funding that will be made available to support the school with this); and
- in the case of AP, arrangements for referrals and pupil transition.

A model specification template (which can be modified to meet a local authority's specific requirements) along with an example specification, can be found in [annex A](#)⁹. A model application form for proposers (which aligns with the model specification template) can be found in [annex B](#)¹⁰.

Contacting the department when planning the project

Local authorities should send their early draft specification to the free school presumption mailbox (FreeSchool.Presumption@education.gov.uk). This enables the delivery officer to use their experience of previous projects to make helpful comments and suggestions, which the local authority can take into account before publishing the final version of the specification. This may increase the likelihood of receiving stronger proposals and reduce the likelihood of problems arising later on in the project.

⁹ [Annex A](https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption) (https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption)

¹⁰ [Annex B](https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption) (https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption)

Why should the specification include such detailed information?

The clearer and more specific the requirements in the specification, the more efficient the rest of the process will be and the more likely the local authority will be to attract better quality prospective sponsors. Benefits include:

- prospective sponsors will be able to respond to specific requirements, and provide higher quality proposals;
- fewer proposals are likely to be judged to be unsuitable later on;
- it will be easier (and quicker) for the local authority to assess the bids against the stated requirements, and present the recommendation to the RD;
- it will be easier (and quicker) for the RD to appoint the best sponsor (and more likely the RD will agree with the local authority's recommendation); and
- the partnership between the local authority and sponsor will run more smoothly throughout the delivery process.

Step 5: Seeking proposals

The local authority should publish the specification on their website. A copy of the web link should also be sent to the department (FreeSchool.Presumption@education.gov.uk) for publication on GOV.UK ([New school proposals](#)¹¹).

The local authority should market the presumption competition as widely as possible to ensure that the broadest possible range of groups or organisations that might be interested in establishing the new school are aware of the opportunity to do so and have sufficient time to develop proposals. This will ensure a fair and open competition and the best pool of prospective sponsors.

When deciding whether to support the local authority's recommendation, the RD (acting on behalf of the Secretary of State) will always consider whether the local authority has followed a robust process and run a full, transparent and open competition designed to attract a wide range of proposals. Suggestions to advertise the presumption competition as widely as possible include:

- promoting through any local authority newsletter or bulletin which is regularly sent to education providers in their area;
- identifying and contacting trusts and good or outstanding schools in the local authority area or region which may be interested in applying;
- advertising in the local and national press;

¹¹ <https://www.gov.uk/government/publications/new-school-proposals>

- holding a public meeting for prospective sponsors and local stakeholders to find out more (i.e. a sponsor engagement and information event); and
- where a local authority has more than one project coming up, it may be appropriate to hold an event inviting a wide range of possible sponsors where they can find out details about all the projects.

The department will also play a role in generating interest from a range of high quality proposers – by posting details of [new free school proposals](#) on the GOV.UK website, encouraging key stakeholders to do the same and by sign-posting proposals to existing sponsors or potential sponsors. The department will also inform The Schools Network (SSAT) and the Confederation of School Trusts (CST), to alert potential proposers to the need for a new school.

Length of the competition period

The local authority should decide how long to allow between publication of the specification and the deadline for submission of proposals. Local authorities should bear in mind that the longer potential sponsors have, the better and more detailed the proposals will be – making it easier for the local authority to assess and make a recommendation. We recommend at least 6-8 weeks, but if the timescale allows, 12-14 weeks may be more appropriate. Local authorities must specify a date by which proposals must be submitted to them – this is a statutory requirement.

Who can submit a proposal?

The proprietors of local good or outstanding schools that are interested in submitting a proposal to run a new school will need to have or acquire academy trust status and be an approved sponsor. More information on the sponsor approval process is provided [here](#). The [department's list of approved sponsors](#)¹² can be accessed on the GOV.UK website.

All presumption free schools must go through a fair and open competition. To avoid any conflict of interest, academy trusts should avoid engaging with housing developers prior to the outcome of a presumption competition.

Concerns about responses

If the local authority is concerned about a low response rate or the quality of the proposals they have received, they should contact the delivery officer at the department at the earliest possible opportunity to discuss next steps.

¹² <https://www.gov.uk/government/publications/academy-sponsor-contact-list>

Step 6: Notifying the department – specification and proposals

Local authorities should notify the Secretary of State of their plans to seek proposals for a new school as soon as the need for a new school competition has been agreed. Local authorities should forward the following documents to

FreeSchool.Presumption@education.gov.uk:

- a copy of the new school specification;
- confirmation:
 - that the local authority has identified the required capital to establish the new school, the amount and its source (for example the local authority's basic need funding, its own funds or developer contributions);
 - that the local authority will meet all pre- and post-opening revenue costs associated with establishing the new school;
 - that the local authority will provide the site for the new school;
 - of the full address and postcode of the site for the new school, or all sites where a school will operate from split sites (if the school is on a new development, local authorities should provide an approximate or nearest available postcode);
 - of site ownership or tenure arrangements and how these will operate for the new school;
- the impact and equalities assessment;
- a link to the local authority's webpage where the relevant information will be available to interested parties.

Once the specified date for submitting the proposals to the local authority has passed, the local authority must provide the Secretary of State (using the email address above) with details of the steps they have taken to seek proposals and any proposals submitted to them by that date. This should include details of all proposers. If no proposals have been received before the specified date, the local authority must inform the Secretary of State.

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

Step 7: Assessing proposals

Local authorities can use the model criteria at [annex C](#)¹³ when assessing the proposals they have received, adapting them as necessary in line with their specification.

The assessment of proposals should be based on the criteria as set out in the published specification and a clear and transparent process should be followed. The model documentation in the annexes to this guidance provides a framework designed to make the assessment process straightforward for local authorities and proposers alike.

Involving the department

Local authorities should invite a department official to be part of the assessment panel. The department official will take part in the assessment and provide any relevant and up-to-date information the department holds on the sponsor to help the local authority identify the best and most appropriate proposal. By involving the department in the assessment of proposals, a local authority will ensure that the process of appointing a sponsor runs as smoothly as possible.

In addition, the departmental delivery officer may provide the local authority with relevant written evidence of the capacity, capability and recent performance of each proposer in writing, prior to the assessment panel.

Please allow a minimum 4 week period before the proposed date of the assessment panel to allow the department to gather evidence about each of the proposers. The purpose of this is both to reduce the time it takes to reach a final decision and to ensure the local authority has access to the same information as the Secretary of State when deciding.

¹³ [Annex C](https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption) (https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption)

The benefits of departmental representation

Local authorities have told us they found it extremely useful to have their departmental delivery officer involved in their assessment panel, especially for reporting the results of the assessment and providing their recommendation (and the reasons for it) to the RD. They told us that:

- it streamlined their assessment process (no need to build in an extra stage to consider the department's evidence);
- it made it easier to show that they had taken the department's comments into account when making their recommendation;
- the delivery officer gave useful advice as to how to present the recommendation to the RD;
- it meant that the recommendation to the RD could be made jointly by the local authority and delivery officer.

Assessment panels can assess proposals in different ways. It is for the local authority to determine how the proposals they receive will be assessed. It is usual for local authorities to include an interview as part of the process, where each proposer or a short list of proposers is invited to present their case and answer questions to provide clarification and further detail. In addition to inviting the department's delivery officers to sit on the panel, some local authorities choose to involve local councillors and/or invite representatives from the local community to join the assessment panel too (to provide a local and strategic context to the new school).

Taking into account all the information provided, the local authority should assess all proposals they have received and put forward a recommendation to the department supported by the reasons for that recommendation. The recommendation should give strong, credible evidence that the sponsor is best placed to run the new presumption free school and that the school will raise the overall standard of educational provision, reduce social disadvantage in the local area, and add high quality places to the system.

Scoring

Local authorities often find it useful to score each criterion on a 4-point scale, so that:

- 0 = The evidence and argument contained in the proposal is 'inadequate'
- 1 = The evidence and argument contained in the proposal is 'adequate'
- 2 = The evidence and argument contained in the proposal is 'good'
- 3 = The evidence and argument contained in the proposal is 'excellent'

It is up to the local authority to determine what constitutes a score of 0, 1, 2 or 3 in their assessment of proposals. Local authorities may choose to decide to prioritise some

criteria over others, in which case they should state which criteria they will give weight to in the specification and/or application form.

Step 8: Due diligence

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

Step 9: Local authority recommendation

Local authorities should provide their assessments of each proposer to the Secretary of State at the earliest opportunity, including the scoring given for each proposal. This assessment will enable the RD, on behalf of the Secretary of State, to decide on the most suitable proposer to take forward the new free school.

As well as recommending its preferred sponsor, the local authority should provide the Secretary of State (via the RD) with a list of all the trusts it considers approvable. Whilst the local authority can recommend its preferred sponsor, it is necessary for the Secretary of State (via the RD) to make the final decision about with whom they will enter into a [funding agreement](#)¹⁴.

The local authority's preference is supported in most cases. However, there are times when the evidence the department holds about sponsors means that a different sponsor may be considered more suitable. Involving the department in their assessment of proposals will therefore help local authorities to factor in all the relevant information.

Experience has shown that the more evidence that the local authority supplies to the department on how it reached the decision on its preferred sponsor, including any scores, any narrative from the assessment process and the rationale for their recommendation, the more likely the Secretary of State (via the RD) is to support their decision.

¹⁴ <https://www.gov.uk/government/collections/opening-a-free-school#model-funding-agreements-for-free-schools-and-studio-schools>

If none of the proposers is deemed to be suitable, or if no proposals are received, the Secretary of State may choose a sponsor of their own choice. A statutory competition may also be held with the consent of the Secretary of State under section 7 of the Education and Inspections Act 2006. Further information on this can be found in the [opening and closing maintained schools guidance](#)¹⁵.

Local authorities should await the Secretary of State's final decision before making any announcement of its recommendation or providing feedback to any proposers.

As soon as a suitable sponsor is agreed 'in principle' by the Secretary of State, the department will notify the local authority, the successful proposer and the local MP. It will then be for the successful sponsor to work towards establishing the new school, with support from the local authority and the departmental delivery officer. The Secretary of State will consider signing a funding agreement with the successful sponsor once content that the school is ready to open successfully.

Once the local authority has been notified of the successful sponsor, they are expected to inform other proposers that they have not been successful in the competition and provide them with feedback as appropriate. In cases where the Secretary of State has chosen a different sponsor to that of the local authority, the relevant RD should inform the unsuccessful proposers.

Approved sponsor

The Secretary of State will only consider entering into a funding agreement with an approved academy sponsor (see [the department's approved academy sponsor list](#)¹⁶). New proposers, who are not already an approved academy sponsor, will need to be assessed by the department through the normal sponsor approval route (see [the department's sponsor approval process](#)¹⁷). We recommend that local authorities make it clear when publishing their invitation for proposals that proposers that are not an approved academy sponsor will also have to go through this approval process and should contact the department at the outset, and certainly before submitting a formal proposal to the local authority. If a proposer is not an approved academy sponsor, the local authority should immediately advise the proposer to apply to become an approved sponsor. It is important to note that if a proposer's application to become an approved academy sponsor is rejected by the RD, they will not be eligible to sponsor the new school.

¹⁵ <https://www.gov.uk/government/publications/school-organisation-maintained-schools>

¹⁶ <https://www.gov.uk/government/publications/academy-sponsor-contact-list>

¹⁷ <https://www.gov.uk/government/collections/academy-sponsorship>

Funding arrangements

The local authority is expected to provide the site for the new school and to meet the associated capital costs, and is expected to grant the standard [DfE model free school lease](#)¹⁸ (not the academy model lease) to the trust on handover of the new school. It is the department's expectation that the site be made available free or on a peppercorn basis by the local authority to the sponsor. The local authority is also expected to meet the associated capital and pre/post-opening revenue costs. Basic need capital funding is provided on an un-ringfenced basis, so that local authorities can provide the places that they need, including through new presumption schools.

If costs increase between the specification being drafted and the school opening, these should be covered by the local authority; the department will not provide any funding.

In respect of any capital development, the local authority is strongly encouraged to consider the use of both the department's [Construction Framework](#)¹⁹ and its [Modern Methods of Construction \(MMC\) Framework](#)²⁰ where these are likely to deliver overall savings and advantages. A local authority should encourage academy trusts and other responsible bodies to do the same, should they be procuring a construction project directly.

The EBD OG²¹ study (published 2022) shows that the department has been delivering primary schools in the range 13-30% cheaper than local authorities over the time frame 2012-2020²².

Local authorities are also expected to meet the revenue costs of the new provision. This relates to:

- the per-pupil revenue funding (which the Education and Skills Funding Agency (ESFA) recoups from the local authority and pays directly to the school);
- all funding for pre-opening development costs and post-opening funding required to address diseconomies of scale as the school builds up to capacity including underwriting of places (which local authorities should make provision for in their

¹⁸ <https://www.gov.uk/government/publications/free-schools-utcs-and-studio-schools-model-lease>

¹⁹ <https://www.gov.uk/government/publications/school-buildings-construction-framework-2021>

²⁰ <https://www.gov.uk/government/publications/offsite-construction-framework-modern-methods-of-construction>

²¹ Educational Building and Development Officers Group

²² <https://documents.hants.gov.uk/property-services/NationalSchoolDeliveryBenchmarkingreport.pdf>

growth funds to support increases in pupil numbers relating to basic need, as detailed in the [Schools operational guide: 2023 to 2024 - GOV.UK](#)²³).

Once the Secretary of State (via the RD) has decided on the sponsor of the new school, the local authority and the sponsor should work together to resolve any funding related issues as quickly as possible. Once the two parties have agreed a reasonable and mutually acceptable funding allocation to cover pre- and post-opening costs, as well as the timing of any payments, they should inform the delivery officer.

The department expects local authorities to provide sustainable underwriting arrangements for presumption free schools in support of the pupil forecasts agreed between the sponsor and the local authority. This can provide the necessary reassurance of the financial viability of the new school ahead of the funding agreement. This can be achieved by the local authority agreeing to underwrite the per-pupil revenue funding for new presumption free schools by guaranteeing pupil numbers in the [Authority Proforma Tool \(APT\)](#)²⁴. Alternatively the local authority can choose to fund any unfilled places that it has agreed to underwrite directly using its growth fund. Such payments should be listed in the local authority's APT the following year.

The department currently provides a one-off Project Development Grant (PDG) payment of £25,000 to the successful proposer towards meeting the legal costs associated with establishing the new school.

The Secretary of State will not enter into a funding agreement for a new presumption free school without adequate assurances that the school will be financially viable in its initial years as it builds up to capacity, and once operating at steady-state. In determining the financial viability of the school, the local authority and successful sponsor will need to consider the minimum viable number (MVN) for the school, i.e. the minimum number of pupils required in order to be financially viable. This is not the same as the school's published admission number (PAN) and will need to be understood in the context of any post-opening diseconomies funding and financial underwriting arrangements that the local authority will provide. When the local authority and sponsor have reached agreement on the school's MVN, this information (along with the background to the decision) should be provided to the department, which may provide constructive challenge to ensure that the local authority and successful sponsor are confident in their agreed MVN for the school.

²³ <https://www.gov.uk/government/publications/pre-16-schools-funding-local-authority-guidance-for-2023-to-2024/schools-operational-guide-2023-to-2024#growth-funding>

²⁴ <https://www.gov.uk/guidance/authority-proforma-tool-apt-information-for-local-authorities>

Financial viability

To determine the MVN and financial viability, local authorities should take the following factors into account:

- the financial capacity of the sponsor for the project;
- financial plans produced by the sponsor (sponsors should complete the departmental finance template, to ensure a common approach);
- the agreed post-opening support to be provided by the local authority;
- the size and phase of the school;
- curriculum plans;
- staffing plans;
- build-out rates of the local housing development (if the new school is linked to a new development);
- impact on other local schools;
- a clear understanding of local school place planning dynamics including basic need and sufficiency of places;
- in the case of special or AP free schools, the forecast number of medium to long-term placements, the types of need expected to be met, and the rates of top-up funding which the local authority expects to offer.

If at any point prior to opening, the financial viability of the school looks uncertain, the local authority should consider deferring opening until sufficient demand exists, or assess what options are available to ensure the school's viability (e.g. additional diseconomies funding or underwriting of pupil places). The local authority should engage with the department's delivery officer at an early stage to decide on the best way to address the situation.

Where a decision is made to defer the project after proposals have been received but before a sponsor has been appointed, it may be appropriate to pause the process, rather than formally [terminate it](#). When circumstances allow the project to be resumed, the local authority and delivery officer can agree whether it is necessary to re-run the competition, or whether to proceed to assess the proposals already submitted, giving those organisations the opportunity to update their original proposals.

Upon opening, the school will be funded by the ESFA on the same basis as other academies and free schools in the same local authority area (with the exception of Post-Opening Grant (POG), which the ESFA does not pay to presumption free schools).

Terminating the process

If the local authority decides, prior to proposals being submitted, that circumstances have changed such that it is no longer satisfied that there is need for an additional whole school (for example, where a housing project has been cancelled or where an approved

central route free school will meet the identified need), then the local authority can terminate the process and withdraw the specification on these grounds. If this happens, the local authority should ensure that they inform the departmental delivery officer at the earliest possible opportunity.

If proposals have been received, then the local authority should seek the Secretary of State's permission to terminate the process, providing evidence that the basic need no longer exists or has reduced to such an extent that a new school is no longer needed. The local authority should send their request to the departmental delivery officer at the appropriate time. The Secretary of State will consider this evidence when making a decision but should be satisfied that the local authority is able to meet its statutory duties under section 14 of the Education Act 1996.

Other useful information

- Local authorities must continue to plan for and secure sufficient school places for their area in line with their duties under section 14 of the Education Act 1996.
- Where the new provision free school is [designated as a faith school](#)²⁵, the school can fill up to 50% of places using faith-based admissions criteria (when the school is oversubscribed).
- Following reviews of the post-16 landscape, there is a general expectation that new secondary schools will not include a sixth form.
- The circumstances in which a new maintained school can be established are limited but include provision for local authorities to approve a proposal for a body to establish a voluntary aided school.

Further sources of information

- [Education Act 2011](#)
- [Education and Inspections Act 2006](#)
- [Academies Act 2010](#)
- [Confederation of School Trusts](#)
- [SSAT \(The Schools Network\)](#)

You may also be interested in

- [Alternative provision free schools/academies](#)
- [New school proposals](#) – information and links seeking proposers to establish a new free school under the free school presumption.

²⁵ <https://www.gov.uk/guidance/religious-character-designation-guide-to-applying>

- [Opening and closing maintained schools](#)
- [Sponsored academies](#)
- [University technical colleges](#)
- [Voluntary aided schools](#)
- [Academies: making significant changes](#)
- [Academies: closure by mutual agreement](#)
- [Making prescribed alterations to maintained schools](#)



Department
for Education

© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

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

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk