

# DBULLETIN

## Free schools

The Education Secretary, Michael Gove unveiled an innovative free schools programme in 2010. This allow teachers, parents, charities, faith groups and other organisations such as independent schools and businesses to establish and run state funded schools. The Department for Education (DfE) has since received over 320 free school proposals and the first free schools will open in September 2011.

The highly experienced Education Team at Devonshires has acted for numerous old and more recently new academies and is well placed to assist groups interested in establishing a free school. One of the free schools Devonshires is acting for has recently been approved by the Secretary of State to proceed to open in September 2012.

### What are free schools

Free schools are state funded schools independent of local education authority control and set up in response to parental demand. Free schools will provide inclusive education to young people of all-abilities and will be fully accountable and inspected by Ofsted.

### Key freedoms for free schools

Free schools will be subject to the same legal requirements as academies and will enjoy the same freedoms.

#### Pay and terms and conditions of staff

The governing body will be the employer of all free school staff and will have the freedom to set levels of pay, conditions of service and staffing structures.

#### National curriculum

Free schools will not be obliged to follow the national curriculum although they will need to

ensure that they provide a broad and balanced curriculum. The national curriculum subjects of English, Mathematics, Science and ICT must be taught. Free schools will be able to offer the international baccalaureate to its pupils. The proposers of free schools will not be allowed to advocate violence, intolerance, hatred or an ideology that runs counter to the United Kingdom's democratic values.

#### Length of terms and school days

The governing bodies of free schools will be able to set the length of school terms and school days.

#### Budgets

Free schools will be funded on a comparable basis to other state funded schools with the funding model to be based mainly on a per pupil funding level and a pupil premium for disadvantaged pupils. Free schools will receive additional funding for central services currently carried out by local authorities.

#### Conditions for free schools

To establish a free school the governing body must agree to be bound by certain conditions.

#### Admissions

Free schools will be bound by the same Admissions Code that governs all state schools. They will need to provide places for pupils who are

# Free Schools

partly or mainly drawn from the area in which the school is situated.

Free schools should note:

- They will not be able to select by ability.
- They will not be able to interview applicants.
- They should not seek any payment for admission.
- They can refuse to admit pupils who have been permanently excluded twice but should otherwise not take behaviour into account in admitting pupils.

If a free school is planning to be a faith school it will be expected to demonstrate the support of a faith body. For free schools, it is important to note that 50% of places must be offered without reference to faith.

## Special educational needs

Free schools must have regard to the Special Education Needs Code of Practice. Where a school fails to meet its special educational needs obligations the Secretary of State may intervene to ensure that these obligations are met. Disability discrimination legislation also applies to free schools so they cannot discriminate against disabled pupils and must make reasonable adjustments to prevent such discrimination. Free schools must consent to being named in a statement for a child with special educational needs.

## Exclusions

Free schools are required to follow the Exclusions Code of Practice, "Improving behaviour and attendance."

## Process for establishing a free school

Nearly a year on, the DfE has recognised that the review process of free school proposals needed tightening. In light of this, the DfE has released a new and more vigorous approach to the free schools procedure. From now on groups will be required to submit a high level of detail about their plans from the very outset. This will allow Ministers and officials to identify the strongest plans more quickly, and allow groups to demonstrate the full range of their abilities much earlier on in the process.

### Preparation

The Government has established a formal relationship with the New School's Network and has made available funding to support groups interested in setting up free schools. All interested groups should contact the New School's Network as the first stage of the process.

### Completing the application form

All applicants need to complete a proposal form which is available from the DfE's website. Section 1 should include details of the Company Limited by Guarantee which must be established before an application is submitted. Section 2 requires the outline of the school including the proposed school name, age range and religious character. Section 3 requires details on the school's 'educational vision' such as why the free school is being established and the vision and ethos of the school. Section 4 deals with the school's 'educational plan' and asks proposers to set out what the pupils will achieve and the planned structure of the school. Section 5 requires the proposer to demonstrate that there is sufficient parental demand for the type of provision and number of places proposed and that they have engaged with the wider community. Section 6 requires the proposer to demonstrate that the

# Free Schools

group / team has the capacity to set up and run a school, and has access to the relevant educational and financial expertise. Section 7 deals with the Premises where the free school will be run. Partnerships for Schools are assisting free school applicants to secure sites and require applicants to show that a range of sites have been considered. Section 8 is the final section of the application form and requests details of the initial costs involved with setting up the free school. It will also need to demonstrate that once at full capacity, the free school will be financially viable in the long term and sustainable within the per pupil funding which it is likely to receive.

## Submitting an application

Proposers have an application window from 16 May 2011 until 17:00 hours on 1 June 2011 to submit their application to the DfE. Applications received by the Department either before 16 May or after 1 June will not be considered.

## Assessment

Between 1 June and 31 July 2011, the DfE will assess applications in the following three ways:

1. against the minimum criteria (see below) to decide if the proposed free school is likely to be one of acceptable quality;
2. against other free school applications, to ensure that only the best applications are approved; and
3. against cost considerations, to ensure that the proposed free school is affordable and offers maximum value for public money.

## Evaluation criteria

Minimum criteria:

- Demonstrate that the proposal to establish

the school represents value for money in the use of public funding - any additional funding considered necessary e.g. staffing diseconomies, above that provided through the per pupil funding formula and any formulaic start-up funding, should be kept to the absolute essential items to provide a balanced budget whilst ensuring that the educational vision of the school can still be delivered.

- Demonstrate that the planned school will be financially sustainable once there is a cohort of pupils in each year (as an expectation, this means generating in year operating surpluses).

Those that do not meet the minimum criteria will not be approved

Comparative criteria:

- Show that the planned school would be financially resilient to reductions in income caused by failure to recruit pupils to the best estimate recruitment pattern or failure to receive contributions from third party sources (where these are expected to be significant) - as a minimum, this means demonstrating that there is sufficient flexibility in the budget so that the school will be able to realistically change its expenditure to keep within reduced levels of income, without detriment to the delivery of the educational vision;
- Financial plans that are consistent with other aspects of the application and are based on supportable and realistic assumptions about income and expenditure; and
- For existing independent schools, show that the existing school has a good track record of financial management and that there are no other existing financial issues which would impact on the transfer to academy status.

# Free Schools

## Interviewing applicants

If an applicant meets the minimum criteria **and** is assessed as one of the strongest applications against both the minimum and comparative criteria, the DfE will invite the proposer to interview in the first two weeks of August (between 1st – 12th August).

## Final approval and decisions

The DfE will let everyone know the outcome of their application, successful or otherwise, by the end of September.

If the Secretary of State approves an application to move to pre-opening stage the proposer will be provided with a dedicated project lead from the DfE, along with support to help secure a site and open the school in September 2012.

Assuming good progress is made against the key milestones in the pre-opening stage, the Secretary of State will then make a decision on whether to enter into a Funding Agreement – this represents final approval.

## Pre opening

Devonshires will be able to assist proposers of free schools who will need advice in the following areas:

- Establishing the Free School Trust, including drawing up the Memorandum and Articles of Association.
- Registering the Free School Trust at Companies House. It appears that free schools, like all other academies, will become exempt charities and so will not need to register with the Charity Commission. Free schools will instead be subject to regulation by the Young Peoples Learning Agency which is

expected to become the Education Funding Agency from April 2012.

- Advising on the roles and responsibilities of trustees.
- Advising on employment matters and service contracts. Free schools will need to ensure that appropriate CRB checks are carried out on staff.
- Drawing up and advising on the schools' policies and procedures, including school admissions.
- Advising on all land and property issues, including agreeing the form of any transfer of land and advising on planning and construction issues.
- Considering and advising on any tax implications, specifically VAT recovery on supplies.

Devonshires Education Team contains specialist advisers that can provide a fast and responsive service covering the whole process of establishing a free school and providing ongoing support.

Anyone with specific queries or those wishing to commence the formal process for establishing a free school are welcome to contact us.

For further information please contact:

Emma Swann on 020 7880 4245  
[emma.swann@devonshires.co.uk](mailto:emma.swann@devonshires.co.uk)

Antony Power on 020 7065 1823  
[antony.power@devonshires.co.uk](mailto:antony.power@devonshires.co.uk)