

FOUNDATION SCHOOLS – Questions and Answers

Q How does a school acquire foundation status?

A Regulations published in 2005 provide a ‘streamlined’ route for secondary schools to acquire foundation status. This involves a decision by the governing body following a period of consultation with parents, the local authority and other stakeholders and the publication of statutory notices. Secondary schools that are subject to a formal warning, are in special measures or which have serious weaknesses may still seek to become foundation schools but must follow the mechanism currently available to primary and special schools. This involves a longer period of consultation and requires the specific approval of the School Organisation Committee.

Q Can a foundation school become a community school?

A Statutory guidance from the DfES states that all categories of school are of equal value and all proposals to change the category of a school should be determined on their individual merits. It is possible for a foundation school to become a community school providing that a transfer agreement has been entered into regarding land and buildings.

FUNDING

Q How are foundation schools funded?

A Foundation schools in Nottinghamshire are funded through the same LMS formula as other schools. There are two factors within the formula which are particularly relevant. Voluntary aided and foundation schools receive additional funding through the admissions factor in the formula to recognise the additional costs to such schools of managing the admissions process including appeals. However, these schools also receive a reduced allocation through the premises factor to reflect reduced VAT on energy for schools which have charitable status.

- Q. Do foundation schools pay reduced rates?
- A. Foundation schools have charitable status and rates are reduced by 80%. Under the Nottinghamshire LMS scheme rates are paid at actual cost and so this reduction is helpful to the overall budget for school funding rather than a direct benefit to the individual school.
- Q Do foundation schools have different freedoms in managing their budget than other schools?
- A No. All schools have equal freedom to determine their spending priorities, and secure the services they choose. All schools are subject to the provisions of the Scheme for Financing Schools which sets out the authority's requirements for financial management in schools. Under this scheme schools are, for example, required to provide budget information, provide information on a school surplus, and, if necessary, to agree a budget recovery plan. Where there are grounds for serious concern, the authority may suspend delegation for any school.
- Q Can a school claim a proportion of the local authority's budget if it acquires foundation status?
- A No. The structure of school and local authority funding has been substantially overhauled since the days of grant maintained schools. School and local authority funding are separate and are calculated through different formulae. From 2006, school funding will be provided through a ring fenced grant, the Dedicated Schools Grant. The authority's budget is aligned to its own responsibilities and its size is a matter for the County Council. A different set of issues arises with regard to provision for pupils made by the authority which is funded from the non-ISB (non-delegated) part of the Schools Budget provided by the Dedicated Schools Grant. It is within the remit of the Schools Forum to provide advice to the local authority on such issues. Any decision to delegate funding and reduce central provision would apply to all schools not just a single school or group of schools.
- Q What are foundation partnerships?
- A These partnerships, now re-named Education Improvement Partnerships, can involve schools from any category. A local authority could consider the devolution of funding for certain services to such a partnership. Authorities cannot, however, delegate the corresponding statutory responsibilities. Services would be delivered by the partnership for the authority under a service level agreement. The DfES has cited SEN assessment and provision and support for excluded pupils as examples of the kinds of service that might be considered.

EMPLOYMENT OF STAFF

Q Who is responsible for employing staff in foundation schools?

A The school governing body is the employer. As such, the governing body has the full range of employer responsibilities under employment law. The governing body will however usually delegate responsibility for day to day staffing matters to the head teacher.

Q Who appoints the head teacher at foundation schools?

A The school governing body is responsible for setting up a selection panel of at least three governors. The governing body may agree to grant 'advisory rights' to the local authority or to a representative of the local authority who would then be entitled to attend meetings of the selection panel to offer professional advice, but would not be able to vote. Where a governing body has not agreed advisory rights with the local authority the Secretary of State may determine that such rights should be granted. The governing body has to provide the local authority with details of the candidates selected for interview and must consider any views the local authority may have on the unsuitability of any particular candidate.

Q What about the appointment of other teaching staff?

A The school governing body is again responsible for such appointments. The local authority or a representative will have the right to attend selection meetings to offer advice if it has been agreed by the governing body or determined by the Secretary of State.

Q What liabilities may attach to the governing body in respect of employment matters?

A The governing body may, as employer, in some circumstances have to appear before an Employment Tribunal to defend themselves if, for example, candidates for a post at the school complain that a governing body's decision or procedures discriminated against them, or if an employee complains that they had been dismissed unfairly.

In cases of dismissal, the local authority has to pay any compensation or legal costs awarded by an Employment Tribunal unless they can show that they have good reason to charge the school's delegated budget (for example, if the local authority had previously advised the governing body that an Employment Tribunal was likely to decide a dismissal was unfair).

Q Who is responsible for the cost of premature retirements and compensation for redundancy?

A The governing body, as the employer, can grant premature retirement to the staff either for reasons of redundancy or can terminate a member of staff's employment in the interests of the efficient discharge of their employer function. The governing body also decides on the level of compensation to

grant any member of staff they may make redundant. The local authority, as the “compensating authority” has to pay “mandatory compensation” towards a teacher’s annual pension and retirement lump sum if they are granted premature retirement by the governing body. However, the local authority has the power to take the costs of premature retirement from a school’s delegated budget if the authority has not agreed to the premature retirement. Similarly, the authority is empowered to take the costs of discretionary compensation for redundancy from a school’s delegated budget if they have good reason to do so (an example of this might be if the local authority thought the discretionary payment in a particular case was too high in relation to its own policy).

Q How are the pensions of teaching and non-teaching staff affected by a school acquiring Foundation Status?

A Teaching staff would stay in the Teachers’ Pension Scheme and would not be subject to any change as such. The local authority would continue to be responsible for completing and signing off all the relevant documentation in relation to individual staff’s pensions.

Non-teaching staff at foundation schools are allowed to continue to be in the Local Government Pension Scheme (LGPS) if the local authority, with the consent of the school governing body, has by a statutory resolution specified them to be eligible to belong to the scheme. Otherwise, the non-teaching staff will no longer be members of the LGPS and it will be for them and the school governing body to make alternative pension arrangements.

Q What legal and personnel advice/support is available to Foundation schools from the local authority?

A Foundation schools, like all other schools maintained by the local authority, are able to purchase a range of legal and personnel services from the local authority. These services are described in the annual ‘*Management Choices*’ publication. No additional legal or personnel services are available from the local authority. Foundation schools, like all other schools, are not restricted to purchasing these services from the local authority. Possible alternative providers are described in *Management Choices*. The school budget may have to stand certain costs, for example compensation or legal costs awarded by an employment tribunal, if the governing body makes an employment decision which has not been supported or advised by the local authority.

ADMISSIONS

Q What powers do foundation schools have with regard to admissions?

A For foundation schools and voluntary aided schools the governing body is the admissions authority and may determine the admission arrangements for the school. This function cannot be delegated to the head teacher in terms of determining policy or deciding on the admission of particular pupils. The governing body is also responsible for managing the admission appeal process.

Q What statutory framework governs the admissions process?

A All admission authorities must have regard to the statutory guidance within the School Admissions Code of Practice and the School Admission Appeals Code of Practice. The admissions code of practice provides guidance on acceptable oversubscription criteria. Foundation schools, like voluntary aided schools, are included in the coordinated admissions process and must consult other admission authorities on their admission arrangements before determining them. The coordinated process ensures admissions details are published according to a common timetable.

Q How are admission difficulties resolved?

A Local authorities must establish Admissions Forums to enable all local admissions authorities to discuss existing and proposed admission arrangements and to promote agreement on any difficult admissions issues in the area. School Adjudicators, appointed by the Secretary of State, determine school organisation and admissions issues where local agreement has not been possible.

Q Can foundation schools select pupils?

A Not as such, but specialist schools may introduce partial selection of up to 10% by aptitude. Being a foundation school is not necessary for this to be possible.

Q Can the local authority direct admission to a foundation school?

A Under Section 96 of the School Standards and Framework Act 1998, and in accordance with the statutory code of practice on school admissions, the local authority may direct the admission of a child refused admission or permanently excluded from schools within a reasonable distance if no other local school is available. The governing body may appeal to the Secretary of State within 15 days. A foundation school may be named in a statement of SEN and the school would be legally required to admit a child under such circumstances.

Q Are there particular arrangements to allow foundation schools to expand?

A No. The arrangements for the expansion of 'popular and successful' secondary schools and the addition of sixth forms date from 2003 when the Education Act 2002 changes were implemented. Subsequent consultations have largely concerned matters of process. Community and voluntary controlled schools have the same powers as foundation and voluntary aided school governing bodies to make proposals to enlarge their school or add a sixth form. Proposals would be considered by the School Organisation Committee.

SCHOOL REORGANISATIONS

Q Can foundation schools be included in any reorganisation or amalgamation proposals developed by the local authority?

A Yes. Where proposals to change a school's category to foundation status are published and conflict with existing proposals, for example to close or amalgamate a school to take surplus places out of the education system, the School Organisation Committee (SOC) may consider the earlier proposal from the local authority within the timeframe already planned. Similarly, where a school becomes a foundation school before proposals for the school are decided, the SOC may still make a decision on the other proposals although the school has meanwhile obtained a different status.

CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Q What responsibilities for children with special educational needs relate to foundation schools?

A All schools, including foundation schools, must take account of the statutory code of practice on special educational needs.

The governing body must admit any pupil with special educational needs whose statement issued by the local authority names their school. Before naming a school in a statement, the local authority must consult the school governing body.

The governing body is responsible, with the head teacher, for deciding the school's general policy and approach to meeting children's special educational needs, for those with statements and those without. The governing body has a legal duty to make every effort to ensure that the necessary special arrangements are made for any pupil who has special educational needs.

Governing bodies do not have a right of appeal to the SEN and Disability Tribunal over issues concerning the statutory assessment and statementing procedures for children with special educational needs.

Q How does the Disability and Discrimination Act affect foundation schools?

A In the same way as any other maintained school. The Special Educational Needs and Disability Act 2001 amended the Disability and Discrimination Act 1995 to include education in schools. There is now a duty on all schools, including foundation schools, not to discriminate against disabled pupils or prospective pupils on the grounds of disability. Schools, and the local authority, are also under a statutory duty to plan to increase access to education for disabled pupils over time.

EXCLUSIONS

Q Who is responsible for exercising the power to exclude a pupil from school at a foundation school?

A Like all other maintained schools, only the head teacher (or acting head teacher) has the power to exclude a pupil either for a fixed period or permanently.

Q What is the governing body's role in exclusions?

A The governors' role is to review the head teacher's exclusion decision in the case of permanent exclusion and some fixed period exclusions, and can reinstate the pupil if appropriate. In reaching a decision whether or not to direct reinstatement the governing body (or its discipline committee) is required to have regard to any guidance given by the Secretary of State. They must also have regard to any representations made by the parent and the local authority.

Q Who deals with appeals against any decision of the governing body of a foundation school to uphold a permanent exclusion?

A Such appeals are heard by an appeal panel established by the local authority. Its decisions are binding on all parties to the appeal. If the governing body considers the panel's decision to be perverse it may seek a judicial review. The Secretary of State has no powers to quash or amend the decision of a properly constituted appeal panel.

SCHOOL ATTENDANCE

Q Who is responsible for enforcing the attendance of pupils of compulsory school age who attend foundation schools?

A The local authority has the legal duty to enforce school attendance. The school governing body, for its part, has a legal duty to assist the local authority in this respect by keeping an admissions and attendance register in the format required by statutory regulations and for telling the local authority about any pupils who do not attend regularly or who are absent for long periods.

LAND AND ASSETS

Q Who owns the land and assets for foundation schools?

A Foundation schools own their land and assets. There is a transfer of ownership from the local authority to the school governing body. The Secretary of State has the power to issue a direction in the event of any dispute in respect of such a transfer.

Where a school has a specific foundation, the land and buildings are transferred to the trustees to hold in trust for the purposes of the school. However, the local authority still has a duty to maintain the school. As such it retains an “insurable interest” in foundation schools. The local authority has a duty to provide (and fund) new premises if, for example, a foundation school was to be destroyed or substantially damaged by a fire.

If the local authority accepts it has an insurable interest in a foundation school it can make arrangements for such cover to be funded from centrally retained expenditure or through a school’s delegated budget. In the latter case, the local authority would need to satisfy itself that the insurance the school arranged satisfactorily covered the authority’s risk as well as that of the governing body or foundation.

Q Does all a foundation school’s land transfer to the foundation body or school governors?

A Regulations set out what land should transfer. In the case of a community school becoming a foundation school all land held and used by the local authority for the purposes of the school will transfer and be vested in the school’s foundation body or, if it has no foundation body, the governing body.

In the case where the local authority holds land partly for the purposes of the school and partly for other purposes its ownership is to be determined by reference to the tests contained in Schedule 10 of the Education Reform Act 1988, as amended by regulations. The first test is to see whether it is possible or practical to divide the property. If it is not possible to divide the property its ownership should be determined by having regard to which party has greater need of the security afforded by having ownership and, if neither, which party is likely to make greater use of the facility. Schedule 10 also provides for the party not granted ownership of the property to have its user rights protected.

Regulations also make provision for the local authority and the school to apply, either jointly or individually, to the Secretary of State to direct that specific land/property (and any associated rights and liabilities) be excluded from transfer.

Q What powers does a foundation school have to dispose of its land?

A Foundation schools are entitled to seek to dispose of their land but in most cases the permission of the Secretary of State is required. It is open to the Secretary of State to decide that the local authority should have a share of the funds raised if they are not required for reinvestment in the school.

USE OF SCHOOL PREMISES

Q Who controls the use of the premises of foundation schools?

A The governing body controls the use of the premises during and outside school hours. Exceptions to this might be if a trust deed says someone else has control of the use of premises or a 'transfer of control agreement' has been made. Governing bodies are however expected to be sympathetic to the needs of the local community when deciding out of hours use. They must also follow any reasonable directions from the local authority as to the use of the premises on up to three days a week for education or welfare provision for young people.

Q What is a 'transfer of control agreement?'

A This is an agreement by which the governing body can share control of the school premises with another body or transfer control to it. One of the aims of the agreement must be to encourage local community use of the premises. The governing body is required to obtain the local authority's consent before entering into any agreement which transfers control of the premises during school hours.

EXTENDED SCHOOLS

Q What powers does the governing body of a foundation school have in relation to extended schools?

A The governing body has the power to provide, or enter into contracts to provide, any facilities or services that will further any 'charitable purpose' for the benefit of pupils at their school, families of pupils and people who live and work in the local community. 'Charitable purpose' in this context means services and activities such as childcare, adult and family learning, parenting support, co-located health and social services etc. The governing body can provide such services directly or indirectly (through third parties), enter into agreements, incur expenditure and charge for services or facilities subject to certain limitations. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

Q What limitations are there on such activities?

A A governing body cannot engage in any activity that might interfere with its legal duty to conduct the school with a view to promoting high standards of educational achievements at the school. The governing body's powers in this respect are also limited by any restrictions contained in the school's instrument of government or in its trust deed (if it has one) and to any directions issued by the local authority regarding the control of school premises.

The provision of community services or facilities may not be funded or subsidised by the school's delegated budget, and must abide by any restrictions contained in the local authority's scheme for financing schools. The governing body must consult the local authority, among others, before providing community services and facilities and must have regard to any advice given to them by the local authority.

GOVERNANCE

Q How is the governing body of a foundation school made up?

A The size of a foundation school governing body may range from a minimum of 9 to a maximum of 20. In addition the governing body can, if it wishes, appoint a prescribed number of sponsor governors.

Q What is legal requirement concerning the composition of the governing body?

A There are five compulsory stakeholder groups for foundation schools that must be represented on the school governing body. The proportion of places on the governing body that must be reserved for each are as follows:

- parent governors: at least one-third;
- staff governors: at least two places but no more than one-third, including the head teacher;
- local authority appointed governors: at least one but no more than one-fifth;
- community governors: at least one-tenth;
- foundation governors (or partnership governors if the school has no foundation): at least two but no more than one quarter.

Additionally, the governing body can appoint a maximum of two (four in the case of secondary schools) sponsor governors.

Q What are sponsor governors?

A Sponsor governors are persons who give substantial assistance to the school – financially or in kind – or who provide other services to the school.

Q Are there any special considerations if a foundation school has a foundation?

A The DfES has been consulting on proposed changes to the composition of the governing bodies of secondary foundation schools with foundations. The proposals are that foundation governors of such schools could have a majority of up to two on the governing body but the foundation governors would have to include a sufficient number of persons eligible to be sufficient parent governors so that when counted with the specific parent governors they make up at least one-third of the governing body. To accommodate this the proposal is to amend the requirement for the number of specific parent governors to at least one who is elected by parents or appointed by the governing body.

The composition of the remainder of the governing body (staff, local authority and community representatives) would remain unaltered.

LIABILITIES

Q Does foundation status confer any additional liabilities on the school governing body?

A The governing body has additional liabilities related to its responsibilities as the employer of staff, the owner of the school land and buildings and as its own admissions authority. The governing body will need, therefore, to take out adequate insurance to cover its potential liability for negligence in carrying out these responsibilities. This can be either arranged by the governing body or through the local authority. If a governing body makes its own arrangements, rather than buying into a policy arranged by the local authority, the local authority is entitled to check that the arrangements are adequate and, if they are satisfied that they are not, can charge the cost of additional insurance to the school's delegated budget.

Q Are individual governors personally liable for the governing body's decisions and actions?

A Because it is a corporate body, individual governors are generally protected from personal liability in such circumstances. Provided they act honestly, reasonably and in good faith any liability will normally fall on the governing body as a whole rather than on individual members.

HEALTH AND SAFETY

Q Who is responsible under the relevant legislation for health and safety issues at a Foundation school?

A Statutory health and safety responsibilities fall to the governing body (as the employer) and on the head teacher and staff (as employees). Under the Health and Safety at Work Act and related regulations, the governing body has a range of legal responsibilities, as employer, including devising and implementing a health and safety policy for the school, allocating adequate resources, carrying out accident reporting and investigation, ensuring access to a 'competent person' to assist with the management of health and safety, implementing various monitoring procedures and keeping up-to-date with changes in the health and safety legislation.

LOCAL AUTHORITY POWERS OF INTERVENTION

Q Does the local authority have any powers of intervention in foundation schools?

A The code of practice on LEA – school relations (issued in 2001) does not distinguish foundation schools from any other local authority maintained schools in terms of the authority’s powers of intervention in certain circumstances. Statutory guidance from the DfES makes it clear that all schools causing concern should receive support from their local authority.

Both local authorities and the Secretary of State have powers of intervention to tackle problems of schools requiring special measures or which have serious weaknesses. Local authorities also have powers to intervene in schools which have been the subject of a formal warning and where the governing body has not complied with that formal warning. The local authority is able in such circumstances to appoint extra governors and/or suspend the school’s governing body. They may also seek approval from the Secretary of State to replace the governing body by an interim executive board where the use of other intervention powers has failed or would in their view be likely to fail.

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