

**DERBYSHIRE COUNTY COUNCIL**  
**CABINET – CHILDREN AND YOUNG PEOPLE**

**9 SEPTEMBER 2014**

**Report of the Strategic Director for Children & Younger Adults**

**APPROVAL FOR PROCEDURES AND PROTOCOLS FOR WORKING  
WITH ACADEMIES**

**1. Purpose of Report**

- 1.1 To seek approval for the draft procedures and protocols for DCC school improvement working with academies.

**2. Information and Analysis**

- 2.1 Derbyshire County Council believes that schools should be maintained within a democratically accountable framework. However, there are schools that have converted to academy status and are therefore accountable directly to the Secretary of State.
- 2.2 The local authority has a statutory responsibility as champion for all children regardless of where they attend school and are accountable for the outcomes of all children.
- 2.3 In order to ensure that academies within Derbyshire are appropriately held to account by the local authority for the progress and achievement of our children it is necessary to work with the academies and maintain a dialogue that enables concerns about performance or inclusion, or conduct to be raised at the earliest opportunity.
- 2.4 The draft procedure and protocols sets out the responsibilities for both academies and the local authority in order that there is a shared understanding of respective roles and responsibilities. The expectation is that there will be an annual conversation about standards which will provide the opportunity to discuss the academy's validated performance and their processes for school improvement.

- 2.5 Where there are concerns regarding the performance of an academy the local authority are expected to raise their concerns with the Department for Education. Whilst there is no basis in law or any statutory powers for the local authority to intervene in an academy as there are for a maintained school, the local authority shall by virtue of Section 13a of the Education Act 1996 exercise its education function to promote high standards by working in agreement with academies to resolve concerns over low standards of performance or conduct within their settings. The draft procedures therefore outline a process for issuing letters of concern to academies where there are unacceptable low standards of performance or concern over an academy's conduct. This practice is similar to the procedures of issuing a statutory Performance and Standards and Safety Warning Notice pursuant to Section 60 of the Education and Inspection Act 2006 to a maintained school as set out in the local authority procedures for schools causing concern.

### **3. Financial Considerations**

- 3.1 Any school improvement support required by the academy will be at a cost to the academy. Officers' time and resources are committed to providing the necessary challenge to academies in the interests of Derbyshire children.

### **4. Legal and Human Rights Considerations**

- 4.1 The Academies Act 2010 sets out the requirements for academies.

### **5. Human Resources Considerations**

- 5.1 Decisions that are taken by schools as a result of being a school causing concern that affect the employment of staff within the school will be subject to consultation with affected employees and trade unions. It will be for the Local Authority and/or the Governors to follow the approved Human Resources policies and procedures as appropriate.

### **6. Equality and Diversity Considerations**

- 6.1 The Council will have regard to its equality and human rights obligations in applying the procedures. The local authority will challenge

academies appropriately where there is discrimination in relation to admissions, special educational needs and inclusion.

## **7 Other Considerations**

- 7.1 In preparing this report the relevance of the following factors has been considered: prevention of crime & disorder; and environmental, health, property and transport considerations

## **8. Key Decision**

No

## **9 Is it necessary to waive the call-in period?**

Yes

## **10 Background Papers**

Draft procedures and protocols for working with Academies.

## **11. Strategic Director's Recommendation**

- 11.1 It is recommended that Cabinet approves:

the draft procedures and protocols for working with Academies.

**IAN THOMAS**

**Strategic Director for Children & Younger Adults**

## **Journey to Excellence**

# **DCC School Improvement Procedures and Protocols for Working with Academies**

## **DCC School Improvement Procedures and Protocols for Working with Academies**

A framework for dialogue between Derbyshire County Council (DCC) and Academies

### **1. INTRODUCTION**

This protocol sets out the responsibilities for both academy schools and DCC so that both parties share the same understanding of their respective roles in enabling the children and young people attending Derbyshire schools achieve their potential. It is a protocol that explains how both parties will continue to work together and how any problems can be resolved. It is important that there is a continuous dialogue so that concerns about performance or inclusion issues are raised at the earliest opportunity and within the context of an agreed framework.

In a diverse educational landscape DCC will exercise a range of roles and responsibilities in line with its statutory responsibilities. These are outlined in DCC's policy 'Journey to Excellence – Local Authority Procedures for Schools Causing Concern' (September 2014). DCC believes that schools should be maintained within a democratically accountable framework. However, DCC is committed to continuing to work with academies, sponsors and new providers, most particularly to ensure that vulnerable students can access their local school and receive the support they need to make good progress. Some academies might also include an Enhanced Resource School (ERS) provision. DCC retains its statutory responsibilities and a requirement to promote excellence and address underperformance across all settings and providers.

Whilst this protocol focuses on the statutory responsibilities of each party, it is also important to recognise the Local Authority's (LA) role in supporting schools and academies through provision of traded services to ensure a sustainable offer of quality education services to schools and academies.

National policy clearly indicates the LA is expected to raise concerns about the conduct or performance of Academies directly with the EFA and/or Secretary of State. It is our shared intention that concerns and issues should always be dealt with at a local level, but the LA will exercise its right to direct formal concerns to the Education Funding Agency (EFA) or Secretary of State where the concern is either persistent or so serious it cannot be resolved locally.

This protocol will apply to convertor and sponsor academies, unless they formally communicate that they do not want to work within this Protocol when their concerns will be dealt with through the Department for Education or EFA.

### **2. PRINCIPLES**

Both parties recognise their joint responsibilities to ensure the best provision possible for all children and young people living and/or attending schools in Derbyshire. This particularly applies to vulnerable groups of children such as those that suffer deprivation, have special needs, disabilities, are children in need or in care, or those who are from a minority ethnic group.

To support this joint endeavour the parties agree to:

- Work in partnership on all matters relating to the education and welfare of children and young people;
- To raise issues and concerns about any aspect of academy performance in an open and transparent manner;
- Act fairly and with impartiality at all times and show mutual respect;
- Show an awareness of the impact of any action on other providers;

- Actively participate in local partnerships, learning communities and other forum related to developing local provision;
- Agree to share data in line with an agreed protocol, to support benchmarking.
- Secure Safeguarding so that all concerned are safe.

### School Improvement

Local Authorities have a statutory duty as set out in section 13a of the 1996 Education Act to promote high standards and fulfilment of potential in maintained schools and other education and training providers, so that all children and young people benefit from a good education.

- To meet this duty the LA will monitor the attainment and progress of all learners in Derbyshire ;
- Ensure all providers are aware of any concerns the LA may have with regard to school provision.

### **ANNUAL CONVERSATION AROUND STANDARDS**

Both parties agree to conduct an annual conversation, normally involving the Senior Manager of the Academy and Senior Officers of the LA. The agenda for this conversation is as follows:

1. To discuss the most recent validated Academy performance and the Academy's response.
2. To discuss the Academy's processes and outcomes for self-evaluation
3. To discuss the Academy's processes for school improvement and any partners.

These meetings will generally take place within the autumn term.

### **Process for raising concerns around conduct and performance of academies**

In the main, the local authority expects to achieve improved outcomes and provision for pupils through the identified local authority procedures and an open, honest partnership with schools, governing bodies and local communities.

When the performance or conduct of an Academy is causing concern, discussions take place with the headteacher and/or the governors in accordance with the procedures and protocol as set out in the DCC School Improvement Procedures and Protocols for working with Academies. The purpose of these discussions is to clarify the causes of concern and agree the next-steps. The local authority will confirm in writing the agreed causes of concern and will seek a response from the Academy allowing the action it intends to take to address them.

The County Council may choose to make representation to the Board of the Academy Trust. The Local Authority may decide to make representation to the Education Funding Agency, Ofsted, or in the final resort, the Secretary of State where the concern is either persistent or so serious that it cannot be resolved locally. The LA may decide to issue a Letter of Concern to the Academy.

### **The issue of a warning letter by the local authority**

A Letter of Concern may be issued by the Strategic Director of Children Services to the governing body of an academy where the local authority is satisfied that:

- standards of pupils' performance are unacceptably low and are likely to remain so unless immediate action is taken to raise standards;
- there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or is likely to prejudice, standards;
- the safety of pupils or staff is threatened, whether by breakdown of discipline or otherwise.

The Letter of Concern will set out the matters on which the local authority's concerns are based. These will be set out in some detail and explain the facts that exist in that particular academy and the circumstances which are giving the local authority cause for concern.

### 3. STATUTORY ROLES AND RESPONSIBILITIES

#### 3a. Academy Schools

The key responsibilities for Academy Trust Boards are:

- Ensure the quality of education provision;
- Ensure the Academy is fully inclusive including the most vulnerable students;
- Challenge and monitor the performance of the Academy – areas of challenge will include curriculum, assessment and attainment, behaviour and attendance, views of the school and the community, staffing and budget;
- Fulfil the role of critical friend;
- Appoint the Principal;
- Employ staff;
- Approve the Academy formal budget plan each Academy financial year (September-August);
- Comply with (and ensure that Academy Trust complies with) both charity and company law;
- Manage and comply with the obligations in the Funding Agreement – upholding admissions arrangements and arrangements for pupils with Special Educational Needs (SEN), (including those attending ERS provision where relevant) provision of free school meals, ensure a broad and balanced curriculum that includes English, Maths, Science and Religious Education;
- Manage the Academy Trust's finances and property;
- Determine their own Admissions Policy and arrangements in line with the School Admissions Code and associated legislation, although participation in the LA co-ordinated schemes is still required;
- Administer their own School Admissions Appeals in line with the Schools Admissions Appeals Code;
- Promote and ensure the welfare and safeguarding of all children (as set out in 'Safeguarding Children & Safer Recruitment' Statutory Guidance 2007);

#### 4. LA RETAINED RESPONSIBILITIES

The Local Authority retains the following services for which it continues to have responsibility for in Academies.

##### 4a. Home-to-School Transport (including SEN)

- Consult on and determine a DCC Transport Policy;
- Assess eligibility for transport in line with that policy and current legislation;
- Make appropriate transport provision for eligible pupils, including those with SEN;
- Manage a transport appeals process and deal with complaints;
- Discharge DCC's statutory duty around transport for Post-16 students;
- Ensure best value in transport provision.

##### 4b. SEN

Section 1 of the Academies Act 2010, requires academy funding agreements to contain equivalent SEN obligations to those placed upon the governing bodies of maintained schools by the Education Act 1996 and regulations made under the 1996 Act, and in any successive legislation. .

This means that academy trusts must comply with:

- the Education Act 1996 (as amended from time to time) and any successive legislation;
- the Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) and any successive regulations; and
- the Education (Special Educational Needs Co-ordinators (England) (Amendment) Regulations 2008 (as amended from time to time) and any successive regulations.

In practical terms, this requires academies to:

- Inform parents that their child has SEN and the special educational provision being made;
- Admit a pupil where the academy is named in the pupil's statement of SEN/Education Health and Care Plan;
- Appoint a person as Special Educational Needs Coordinator (SENCO) who is a qualified teacher and ensure that new SENCOs undertake prescribed training; and
- Have regard to the SEN Code of Practice.

Funding agreements signed before the academies Act 2010 may differ but in general place similar requirements on academies.

Staff must ensure that the children/young people with SEN engage in the activities of the academy together with children who do not have SEN, so far as is reasonably practicable and is compatible with:

- The child receiving the special educational provision which his learning difficulties call for;
- the provision of efficient education to children with whom he will be educated; and
- the efficient use of resources.

Academies must have regard to the Equality Act 2010 and make reasonable adjustments for disabled pupils and not treat them any less favourably.

#### Enhanced Resource Schools

Where Academies are an Enhanced Resource School (ERS), the LA and Academy will have a Service Level Agreement which stipulates expectations of the provision, staffing and monitoring of the Resource and the support the LA will provide. The expectations of provision are described in full in the LA Descriptors of ERS Provision. The Service Level Agreement will be formally reviewed on a 5 yearly basis but will be part of annual conversations between the Academy and the LA.

#### 4c. Derbyshire Information, Advice and Support Service (DIASS) for SEND (formerly Parent Partnership)

Provide an 'arms-length' DIASS, that offers advice and support to parents and carers of children and young people with special educational needs. They are a free, impartial and confidential service.

#### 4d. Provision of Pupil Referral Places or Educational Provision for a pupil who is no longer registered at an Academy

Section 3 of the Children, Schools and Families Act 2010, which came into force on 1 September 2011, extends the duty in Section 19 of the Education Act 1996, so LAs must now ensure that all children who fall within the scope of Section 19 receive suitable full-time education unless reasons that relate to their medical condition mean that this would not be in their best interests.

#### 4e. Safeguarding

To meet this duty the LA will:

- Ensure schools are aware of their responsibilities for safeguarding children.
- Monitor their safeguarding performance, through annual audit.
- Bring any deficiencies to the attention of the Governing Body of the school and advise the action needed to remedy them.
- Make available appropriate training, model policies and procedures.
- Involvement in dealing with allegations against staff and volunteers; and ensuring arrangements are in place to prevent unsuitable staff and volunteers from working with children.



- Ensure all children who either go missing from education or who are electively home educated are safeguarded.
- Issue Work Permits and Performance Licences for individual students.

#### 4f. Attendance

To meet this duty the LA will:

Ensure schools are complying with their responsibilities in relation to the attendance registers, as set out in the Pupil Registration regulations, through an annual Registration Audit

Prosecution of parents for non-attendance

- To enforce DCC's statutory responsibilities, when appropriate, where parents have failed in their duty to ensure their child receives an education (Sections 437, 444, 444A of the Education Act 1996, and Section 103 of the Education & Inspections Act 2006)

#### 4g. Place Planning

The changes in the Government's approach to education provision in recent years has resulted in a change to the LA's statutory role from provider of school places to commissioner of school places. The presumption is that Academy/Free Schools will contribute to the overall capacity of the schools' estate, thus contributing to ensuring sufficient school places are provided across the County. Close liaison through individual schools and local learning communities is, therefore, critical to ensure that sufficient places exist and are planned for, which will include Academies and Free Schools sharing accurate and timely information regarding their school capacity including planning for ERS places where.

To meet this duty the LA will:

- ensure that every child in Derbyshire has a school place and to increase opportunities for parental choice;

#### 4h Co-ordination of Admissions

To meet this duty the LA will:

- Consult on and set co-ordinated admissions schemes.
- Consult on and set admissions arrangements for maintained schools in line with the School Admissions Code and associated legislation.
- Manage requests for admission 'in-year'.
- Champion the rights of children to access schools of preference, particularly vulnerable children.
- Destination tracking of all 16-18 and 16-25 SEN.

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