

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of meeting:</b>	21 April 2009
<b>Report of:</b>	Interim Manager for School Organisation & Development
<b>Title:</b>	School Organisation Decision Making

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### 1. Purpose of Report

To consider the appropriate processes for making decisions on school organisation matters; specifically, the publication and determination of public statutory notices.

### 2. Recommendations

To approve the decision making processes for school organisation matters as required by the Education and Inspections Act 2006 and other legislation, and in this respect:

- (1) Option 4 as set out in the report be approved; and
- (2) the procedure for considering school reorganisation proposals which attract objections, as set out in Appendix B, be adopted.

### 3. Financial Implications 2009/10 and beyond

There are no significant capital or revenue implications as a result of adopting a decision making process.

### 4. Legal Implications

There are statutory processes and guidance in relation to the different types of school organisation proposals. The decision required will ensure that the statutory requirements in relation to decision making are met and will curtail opportunities for legal challenge.

### 5. Risk Assessment

The risk of breaching the statutory processes is significantly reduced if a clear process, one which complies with legislation, guidance and general administrative law, is selected and followed.

### 6. Background and Options

The Local Authority is required by statute to make certain decisions relating to school organisation e.g. closing, opening and other specified alterations to schools. All local authorities have had to change their procedures following the abolition of School Organisation Committees in

2007. Cheshire East Borough Council now needs to make specific provision for school organisation decision making in its constitution.

The Cabinet report item of 24 March 2009 regarding decision making arrangements resolved that the constitution be amended to empower individual Cabinet Members to make all executive decisions in respect of their portfolio areas, with five identified exceptions.

Statutory guidance states: "The Department does not prescribe the process by which a Local Authority carries out their decision making function (e.g. full Cabinet or delegation to Cabinet Member or officials). This is a matter for the Local Authority to determine but the requirement to have regard to statutory guidance applies equally to the body or individual that makes the decision."

Four possible options have been discussed with the Portfolio Holder, Councillor Paul Findlow. As the relevant Cabinet Member he will own and recommend any process on school organisation matters to other Members of the Cabinet. The options considered are as detailed below:

**Option 1:** Delegate decision-making authority to an officer, either Strategic Director of People or Head of Children and Families, who will sit with the Legal Adviser to take decisions: i.e. the process will be conducted *in camera*.

**Option 2:** Delegate decision making authority to the portfolio holder.

**Option 3:** Refer decision to the full Cabinet

**Option 4:** Establish a special panel chaired by the Portfolio Holder who makes decisions based upon the advice of the Panel.

**It is recommended that:**

Option 4 as a variant on option 2, the Portfolio Holder in reaching a decision receives advice from an advisory panel, which could include non-executive members (who cannot vote or exercise decision making powers themselves). This is the recommended option because it demonstrates that a wide range of opinion has been canvassed.

The Panel adopt the procedure set out in Appendix B of this report for considering the proposal, following which the Portfolio Holder will move into private session to take the decision.

This will provide a transparent forum giving proposers and objectors equal rights to present both orally and in writing their arguments to the Panel, with opportunities for Panel Members to ask proposers and objectors questions prior to moving to a final decision-making process. The Portfolio Holder, in discharging his decision-making function, is required to have regard to statutory guidance setting out the factors to be taken into account in considering different kinds of proposals, and the Portfolio

Holder is required to set out and publish in detail the reasons for its decisions.

## **7. Overview of Day One, Year One and Term One Issues**

The Council will inherit work on various aspects of school organisation and could receive governing body or other proposals at any time.

## **8. Reasons for Recommendation**

A balanced decision making process has to be in existence in April 2009, in order to determine the inherited and future school organisation proposals. Notices have been placed for the closure of Church Lawton and a decision maker must be identified in order for this process to proceed. Further details of this school closure can be found at Appendix A.

### ***For further information:***

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### ***Background Documents:***

*Statutory Guidance on School Organisation*

*Documents are available for inspection at:  
DCSF Website - School Organisation Unit*

### **Proposed Closure of Church Lawton Primary**

A decision making paper is now urgently required as notices have been published in respect of the closure of this school. The timetable is as follows:

- Statutory Closure Notices issued 19/3/09
- Receipt of objections 30/4/09
- Final decision required by 30/6/09
- School to close 31/8/09

It is reasonable to assume that objections will be lodged. The decision needs to have been made by mid June 2009, to allow 5 days for possible call-in.

The decision making process is quite clearly defined by DCSF ("Closing a Maintained Mainstream School – A Guide for Local Authorities and Governing Bodies", issued by the DCSF School Organisation Unit) but is potentially very time consuming and laborious.

## **CHESHIRE EAST SCHOOL ORGANISATION PANEL**

### **PROCEDURE FOR CONSIDERING SCHOOL REORGANISATION PROPOSALS WHICH ATTRACT OBJECTIONS**

#### **Part 1 of meetings of the Panel will be held in public.**

The Panel has adopted the following procedure when exercising its function as the relevant decision maker under Schedule 2 Education and Inspections Act 2006 to consider school reorganisation proposals which attract statutory objections.

#### **Introduction**

- (1) The Panel will be chaired by the Portfolio Holder
- (2) There will be a brief introduction by the Principal Adviser to the Panel to explain the business which is being brought before the Panel, and how it will be considered.
- (3) The Constitution of the Panel will be:
  - 5 Members
  - Representatives from the Diocesan Boards
  - Governing Bodies from each sector

#### **Presentation of the Proposal**

- (2) The Chair of the Panel will ask the Proposers' representative(s) to present the proposal.

*(No more than three presentations and a maximum 15 minutes in total.)*

#### **Local Reaction to the Proposal**

- (3) The Principal Adviser will report briefly to the Panel on the level and nature of responses received, together with any other responses, eg expressions of support for the proposals.
- (4) The Chair of the Panel will invite a spokesman or spokesmen representing the objectors to make an oral presentation of their objections.

*(No more than three presentations and a maximum 15 minutes in total.)*

*Objectors are, therefore, invited to work together to co-ordinate their representations and to nominate no more than three spokesmen.*

*Objectors are asked to notify the Member Services Officer to the Panel of the name(s) of their spokesman or spokesmen in advance of the meeting.)*

## **Information Seeking**

- (5) Panel Members may ask the Proposers' representative(s) any questions about:
- The case for the proposals.
  - Proposers' comments on the objections received.
- (8) Panel Members may ask the objectors' spokesman or spokesmen any questions about the objections received.

## **Advice to the Portfolio Holder**

- (9) The Governor representatives and representatives from the Chester (CE ) Diocesan Board of Education and Diocese of Shrewsbury Education Service will be invited to make comments to the Portfolio Holder.
- (10) Elected Members will be invited to make comments to the Portfolio Holder.

## **Part 2 of the meeting will be held in private.**

*The Portfolio Holder will then meet in private and everyone else will be asked to leave the meeting at this point, save that elected members of the County Council may remain present, in accordance with the Council's Standing Orders relating to Council proceedings.*

## **Review**

- (11) The Portfolio Holder, advised by the Principal Adviser, will consider whether the Portfolio Holder has sufficient information to come to a decision, or whether more information, not available at the meeting, is needed.

If any significant additional information is required which cannot immediately be provided, it may be necessary for the Portfolio Holder to adjourn whilst the necessary information is obtained.

In exceptional circumstances where the Portfolio Holder considers that it is not possible to evaluate a proposal and/or objections received fully without a site visit, the Portfolio Holder may ask for a site visit to be arranged.

## **Decision Making**

- (12) When (either at the first meeting to consider the proposal or at a subsequent meeting if need be) the Portfolio Holder considers that he has sufficient information to reach a decision, he will consider the issues having regard to each element of the relevant statutory Decision Makers guidance which he is required to consider, before reaching his decision.

## **Announcement of the Decision**

- (13) The Portfolio Holder's decision will be published on the County Council's Political Information Network within two working days and the Principal Adviser to the Portfolio Holder will then prepare and make public a written statement setting out the reasons for the Portfolio Holder's decision in relation to the relevant statutory Decision Makers guidance.

### **Footnotes:**

1. Where the Proposer is the Local Authority this will be officers representing the Director of Children & Families. Other Proposers may include the Church of England and Catholic Dioceses and school governing bodies.
2. Nominated school governor representatives shall be sought from the Cheshire Association of Governing Bodies (CAGB) from serving primary, secondary and special school governors of Cheshire East schools, save that no person who is a governor, parent of a pupil attending or member of the staff of any school which is the subject of any proposal being considered by the Panel shall participate, but may nominate a substitute in his or her place.
3. Decisions by the Portfolio Holder remain subject to the Council's "calling in procedures under the relevant Standing Order. In the event of such "call-in", the council's Standing Orders shall apply in relation to all subsequent decision-making and the foregoing protocol shall cease to apply.

**SCHOOL CLOSURE PROPOSALS****Statutory Guidance – Factors to be Considered by Decision Makers**

4.15 Paragraphs 8(6) and 17 of Schedule 2 to the EIA 2006 provides that both the LA and schools adjudicator are required to have regard to guidance issued by the Secretary of State when they take a decision on proposals. Paragraphs 4.16 to 4.62 below contain the statutory guidance on considering proposals for school closure.

4.16 The following factors should not be taken to be exhaustive. Their importance will vary, depending on the type and circumstances of the proposals. All proposals should be considered on their individual merits.

**EFFECT ON STANDARDS AND SCHOOL IMPROVEMENT****A System Shaped by Parents**

4.17 The Government's aim, as set out in the Five Year Strategy for Education and Learners and the Schools White Paper *Higher Standards, Better Schools For All*, is to create a school system shaped by parents which delivers excellence and equity. In particular, the Government wishes to see a dynamic system in which:

- weak schools that need to be closed are closed quickly and replaced by new ones where necessary;
- the best schools are able to expand and spread their ethos and success; and
- new providers have the opportunity to share their energy and talents by establishing new schools - whether as voluntary schools, Trust schools or Academies - and forming Trusts for existing schools.

4.18 The EIA 2006 amends the Education Act 1996 to place new duties on LAs to secure diversity in the provision of schools and to increase opportunities for parental choice when planning the provision of schools in their areas. In addition, LAs are under a specific **duty** to respond to representations from parents about the provision of schools, including requests to establish new schools or make changes to existing schools. The Government's aim is to secure a more diverse and dynamic schools system which is shaped by parents. The Decision Maker should take into account the extent to which the proposals are consistent with the new duties on LAs.

**Standards**

4.19 The Government wishes to encourage changes to local school provision which will boost standards and opportunities for young people, while matching school place supply as closely as possible to pupils' and parents' needs and wishes.



4.20 Decision Makers should be satisfied that proposals for a school closure will contribute to raising local standards of provision, and will lead to improved attainment for children and young people. They should pay particular attention to the effects on groups that tend to under-perform including children from certain ethnic groups, children from deprived backgrounds and children in care, with the aim of narrowing attainment gaps.

4.21 Decision Makers should be satisfied that when proposals lead to children being displaced, any alternative provision will meet the statutory SEN improvement test (see paragraphs 4.55 to 4.61).

4.22 Where a school is to be closed so that it may be amalgamated with a more successful and/or popular school, the Decision Maker should again normally approve these proposals, subject to evidence being provided by the LA and other interests that the development will have a positive impact on standards.

### **Fresh Start and Collaborative Restarts**

4.23 Fresh Start and Collaborative Restart provide for poorly performing schools which are struggling to improve, to close and be replaced with new school provision, usually on the same site. When considering the closure of any school causing concern and, where relevant, the expansion of other schools, the Decision Maker should take into account the popularity with parents of alternative schools.

4.24 For all closure and Fresh Start proposals involving schools causing concern, copies of the Ofsted monitoring letters for the relevant schools should be made available. The Decision Maker should have regard to the length of time the school has been in special measures, needing significant improvement or otherwise causing concern, the progress it has made, the prognosis for improvement, and the availability of places at other existing or proposed schools within a reasonable travelling distance. There should be a presumption that these proposals should be approved, subject only to checking that there will be sufficient accessible places of an acceptable standard available in the area to meet foreseeable demand and to accommodate the displaced pupils.

### **Academies**

4.25 Academies are publicly-funded independent schools established in partnership with business and voluntary sector sponsors. They will normally replace one or more poorly-performing schools or will meet demand for new school places in diverse communities where there is only limited access to free high quality school places. Academies may be established in rural as well as urban areas. All Academies should contribute to a strategic approach to diversity in their area. The involvement of business and other non-Government partners will enable Academies to develop and implement new approaches to governance, teaching and learning in order to raise standards. All Academies will be required to share their facilities and expertise with other local schools and the wider community.

4.26 Where an Academy is to replace an existing school or schools, the

proposals for the closure of those schools should indicate whether pupils currently attending the schools will transfer to the Academy and, if appropriate, what arrangements will be made for pupils who are not expected to transfer.

4.27 If provision for pupils at a school proposed for closure is dependent on the establishment of an Academy, any approval of the closure proposals should be conditional on the Secretary of State making an agreement for an Academy (see paragraph 4.64), but there should be a general presumption in favour of approval.

### **Diversity**

4.28 The Government's aim is to transform our school system so that every child receives an excellent education – whatever their background and wherever they live. A vital part of the Government's vision is to create a more diverse school system offering excellence and choice, where each school develops its own ethos, sense of mission and a centre of excellence or specialist provision.

4.29 Decision Makers should consider how proposals will impact on local diversity. They should consider the range of schools in the relevant area of the LA and how they will ultimately impact on the aspirations of parents and help raise local standards and narrow attainment gaps.

### **Balance of Denominational Provision**

4.30 In deciding proposals to close a school with a religious character, the Decision Maker should consider the effect that this will have on the balance of denominational provision in the area.

4.31 The Decision Maker should not normally approve the closure of a school with a religious character where the proposal would result in a reduction in the proportion of denominational places in the area. This guidance does not however apply in cases where the school concerned is severely under-subscribed, standards have been consistently low or where an infant and junior school (at least one of which has a religious character) are to be replaced by a new all-through primary school with the same religious character on the site of one of the predecessor schools.

### **Every Child Matters**

4.32 The Decision Maker should consider how the proposals will help every child and young person achieve their potential in accordance with Every Child Matters' principles which are: to be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society and achieve economic well-being. This should include considering how displaced pupils will continue to have access to extended services, opportunities for personal development, access to academic and vocational training, measures to address barriers to participation and support for children and young people with particular needs e.g. looked after children or children with special educational needs (SEN) and disabilities.

## **NEED FOR PLACES**

### **Provision for Displaced Pupils**

4.33 The Decision Maker should be satisfied that there is sufficient capacity to accommodate displaced pupils in the area, taking into account the overall supply and likely future demand for places. The Decision Maker should consider the quality and popularity with parents of the schools in which spare capacity exists and any evidence of parents' aspirations for those schools.

### **Surplus Places**

4.34 It is important that education is provided as cost-effectively as possible. Empty places can represent a poor use of resources - resources that can often be used more effectively to support schools in raising standards. The Secretary of State wishes to encourage LAs to organise provision in order to ensure that places are located where parents want them. LAs should take action to remove empty places at schools that are unpopular with parents and which do little to raise standards or improve choice. The removal of surplus places should always support the core agenda of raising standards and respect parents' wishes by seeking to match school places with parental choices.

4.35 The Decision Maker should normally approve proposals to close schools in order to remove surplus places where the school proposed for closure has a quarter or more places unfilled, and at least 30 surplus places, and where standards are low compared to standards across the LA. The Decision Maker should consider all other proposals to close schools in order to remove surplus places carefully. Where the rationale for the closure of a school is based on the removal of surplus places, standards at the school(s) in question should be taken into account, as well as geographical and social factors, such as population sparsity in rural areas, and the effect on any community use of the premises.

## **IMPACT ON THE COMMUNITY AND TRAVEL**

### **Impact on Community**

4.36 Some schools may already be a focal point for family and community activity, providing extended services for a range of users, and its closure may have wider social ramifications. In considering proposals for the closure of such schools, the effect on families and the community should be considered. Where the school was providing access to extended services, some provision should be made for the pupils and their families to access similar services through their new schools or other means.

4.37 The information presented by those bringing forward proposals to close such schools, particularly when they are in receipt of funding as part of regeneration activity, should therefore include evidence that options for maintaining access to extended services in the area have been addressed. The views of other relevant agencies and partnerships with responsibility for community and family services should be taken into account, alongside those of the local police, Government Offices and Regional Development Agencies

having responsibility for the New Deal for Communities.

### **Community Cohesion and Race Equality**

4.38 When considering proposals to close a school the Decision Maker should consider the impact of the proposals on community cohesion. This will need to be considered on a case by case basis, taking account of the community served by the school and the views of different sections within the community. In considering the impact of the proposals on community cohesion the Decision Maker will need to take account of the nature of the alternative provision to be made for pupils displaced by the closure and the effects of any other changes to the provision of schools in the area.

### **Travel and Accessibility for All**

4.39 In considering proposals for the reorganisation of schools, Decision Makers should satisfy themselves that accessibility planning has been properly taken into account. Facilities are to be accessible by those concerned, by being located close to those who will use them, and the proposed changes should not adversely impact on disadvantaged groups.

4.40 In deciding statutory proposals, the Decision Maker should bear in mind that proposals should not have the effect of unreasonably extending journey times or increasing transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable routes e.g. for walking, cycling etc. The EIA 2006 provides extended free transport rights for low income groups – see Home to School Travel and Transport Guidance ref 00373 – 2007BKT-EN at [www.teachernet.gov.uk/publications](http://www.teachernet.gov.uk/publications) . Proposals should also be considered on the basis of how they will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

### **Equal Opportunity Issues**

4.41 The Decision Maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example, that where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. Similarly there needs to be a commitment to provide access to a range of opportunities which reflects the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

### **Rural Schools and Sites**

4.42 In considering statutory proposals to close a rural school, the Decision Maker should have regard to the need to preserve access to a local school for rural communities. There is therefore a presumption against the closure of rural schools. This does not mean that a rural school should never close, but the case for closure should be strong and the proposals clearly in the best interests of educational provision in the area. The presumption will not apply in cases where a rural infant and junior school on the same site are being closed to establish a new primary school. In order to assist the Decision Maker, those proposing closure should provide evidence to the Decision

Maker to show that they have carefully considered:

- a. Alternatives to closure including the potential for federation with another local school to increase the school's viability; the scope for an extended school or children's centre to provide local community services and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc;
- b. The transport implications as mentioned in paragraphs 4.39 to 4.40; and
- c. The overall and long term impact on local people and the community of closure of the village school and of the loss of the building as a community facility.

4.43 When deciding proposals for the closure of a rural primary school, the Decision Maker should refer to the Designation of Rural Primary Schools (England) 2007 to confirm that the school is a rural school. The list of rural primary schools can be viewed on line at:  
[www.dfes.gov.uk/publications/otherdocs.shtml](http://www.dfes.gov.uk/publications/otherdocs.shtml)

4.44 In the case of secondary schools, it is the responsibility of the Decision Maker to decide whether a school is to be regarded as rural for the purpose of considering proposals for closure under this guidance and in particular the presumption against closure. The Department's register of schools - Edubase - includes a rural/urban indicator for each school in England based on an assessment by the Office for National Statistics. The Decision Maker should have regard to this indicator. Where a school is not recorded as rural on Edubase, the Decision Maker may nonetheless wish to consider evidence provided by interested parties that a particular school should be regarded as rural.

## **TYPES OF SCHOOLS**

### **Boarding School Provision**

4.45 In making a decision on proposals to close a school that includes boarding provision, the Decision Maker should consider whether there is a state maintained boarding school within one hour's travelling distance from the school. The Decision Maker should consider whether there are satisfactory alternative boarding arrangements for those currently in the school and those who may need boarding places in the foreseeable future, including the children of service families.

## **SPECIFIC AGE PROVISION ISSUES**

### **Early Years Provision**

4.46 In considering proposals to close a school which currently includes early years provision, the Decision Maker should consider whether the alternative provision will integrate pre-school education with childcare services and/or with other services for young children and their families; and should have particular regard to the views of the Early Years Development and

## Childcare Partnership.

4.47 The Decision Maker should also consider whether the alternative early years provision will maintain or enhance the standard of educational provision and flexibility of access for parents. Alternative provision could be with providers in the private, voluntary or independent sector.

## Nursery School Closures

4.48 In deciding whether to approve any proposals to close a nursery school, the Decision Maker should be aware that nursery schools generally offer high quality provision, and have considerable potential as the basis for developing integrated services for young children and families. There should be a presumption against the closure of a nursery school unless the case for closure can demonstrate that:

- a. the LA is consistently funding numbers of empty places;
- b. full consideration has been given to developing the school into a Sure Start Children's Centre, and there are clear, justifiable grounds for not doing so, for example: unsuitable accommodation, poor quality provision and low demand for places;
- c. plans to develop alternative provision clearly demonstrate that it will be at least as equal in terms of the quantity and quality of early years provision provided by the nursery school with no loss of expertise and specialism; and that
- d. replacement provision is more accessible and more convenient for local parents.

## 14-19 Curriculum and Collaboration

4.49 The Government has ambitious plans to increase post-16 participation rates and improve the skills of learners. The foundation for making progress is a transformed, coherent 14-19 phase offering a rich mix of learning opportunities from which young people can choose tailored programmes and gain qualifications appropriate to their aptitudes, needs and aspirations. This will be achieved by better collaboration between local providers, including schools, colleges, training providers and employers. Decision Makers should therefore consider what measures are being proposed to ensure that opportunities available to students in this age group are not reduced by the school closure, although the absence of such measures should not prevent the closure of a poorly-performing school.

## 16-19 Provision – General

4.50 The Learning and Skills Act 2000 provides an entitlement to further education and training for young people aged 16 -19. Schools and colleges should offer high quality provision that meets the diverse needs of all young

people, their communities and employers. 16-19 provision should be organised to ensure that, in every area, young people have access, within reasonable travelling distance, to high-quality learning opportunities across schools, colleges and work-based training routes.

4.51 In September 2003 Ministers set out their **five key principles** for the reorganisation of 16-19 provision, following requests from partners (including the LSC and LAs) for more clarity on Government expectations. Decision Makers should therefore consider all proposals for changes to 16-19 provision in the context of these principles.

4.52 Details of the five key principles can be found in [‘Principles underpinning the organisation of 16-19 provision’](#) booklet. Briefly, they are:

- a. quality - all provision for all learners should be high quality, whatever their chosen pathway;
- b. distinct 16-19 provision - all young people should be attached to a 16-19 base which will meet the particular pastoral, management and learning needs of this age group;
- c. diversity to ensure curriculum breadth – well-managed collaboration between popular and successful small providers will enable them to remain viable and to share and build on their particular areas of expertise;
- d. learner choice – all learners should normally have local access to high quality 16-19 provision in a range of settings and any proposals for change to this provision should take into account the views of all stakeholders;
- e. affordability, value for money and cost effectiveness - proposals for change should include how any capital and recurrent costs and savings will lead to improved educational opportunities.

### **LSC Proposals to Close Inadequate 16-19 Provision**

4.53 The Learning and Skills Act 2000 (as amended by the Education Act 2005) gives the Learning and Skills Council (LSC) powers to propose the closure of 16-19 schools judged to require Special Measures. Where a 16-19 school is proposed for closure in such circumstances there should be a presumption to approve the proposals, subject to evidence being provided that the development will have a positive impact on standards.

### **Conflicting Sixth Form Reorganisation Proposals**

4.54 Where the implementation of reorganisation proposals from the LSC conflict with other published proposals put to the Decision Maker for decision, the Decision Maker is prevented (i.e. by the School Organisation Proposals by the LSC for England Regulations 2003 - SI 2003 No. 507) from making a decision on the “related” proposals until the Secretary of State has decided the LSC proposals (see paragraphs 4.13 to 4.14 above).

## **SPECIAL EDUCATIONAL NEEDS (SEN) PROVISION**

### **Initial Considerations**

4.55 When reviewing SEN provision, planning or commissioning alternative types of SEN provision or considering proposals for change, LAs should aim for a flexible range of provision and support that can respond to the special educational needs of individual pupils and parental preferences, rather than necessarily establishing broad categories of provision according to special educational need or disability. There are a number of initial considerations for LAs to take account of in relation to proposals for change. They should ensure that local proposals:

- i. take account of parental preferences for particular styles of provision or education settings;
- ii. offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise ) and regional and sub-regional provision; out of local authority day and residential special provision;
- iii. are consistent with the LA's Children and Young People's Plan;
- iv. take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, including the National Curriculum, within a learning environment in which children can be healthy and stay safe;
- v. support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- vi. provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- vii. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and
- viii. ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs will require amendment and all parental rights must be ensured. Other interested partners, such as the Health Authority should be involved.

4.56 Taking account of the considerations, as set out above, will provide assurance to local communities, children and parents that any reorganisation of SEN provision in their area is designed to improve on existing arrangements and enable all children to achieve the five Every Child Matters outcomes.



## **The Special Educational Needs Improvement Test**

4.57 When considering any reorganisation of SEN provision, including that which might lead to some children being displaced through closures or alterations, LAs, and all other proposers for new schools or new provision, will need to demonstrate to parents, the local community and Decision Makers how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with special educational needs. All consultation documents and reorganisation plans that LAs publish and all relevant documentation LAs and other proposers submit to Decision Makers should show how the key factors set out in the paragraphs below (4.58 to 4.61) have been taken into account. Proposals which do not credibly meet these requirements should not be approved and Decision Makers should take proper account of parental or independent representations which question the LA's own assessment in this regard.

### **Key Factors**

4.58 When LAs are planning changes to their existing SEN provision, and in order to meet the requirement to demonstrate likely improvements in provision, they should:

- identify the details of the specific educational benefits that will flow from the proposals in terms of:
  - a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment, with reference to the LA's Accessibility Strategy;
  - b) improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
  - c) improved access to suitable accommodation; and
  - d) improved supply of suitable places.
- LAs should also:
  - i. obtain a written statement that offers the opportunity for all providers of existing and proposed provision to set out their views on the changing pattern of provision seeking agreement where possible;
  - ii. clearly state arrangements for alternative provision. A 'hope' or 'intention' to find places elsewhere is not acceptable. Wherever possible, the host or alternative schools should confirm in writing that they are willing to receive pupils, and have or will have all the facilities necessary to provide an appropriate curriculum;
  - iii. specify the transport arrangements that will support appropriate access to the premises by reference to the LA's transport policy for SEN and disabled children; and
  - iv. specify how the proposals will be funded and the planned staffing arrangements that will be put in place.

4.59 It is to be noted that any pupils displaced as a result of the closure of a BESD school (difficulties with behavioural, emotional and social development) should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need. PRUs are intended primarily for pupils who have been excluded, although LAs can and do use PRU provision for pupils out of school for other reasons such as illness and teenage pregnancies. There may of course be pupils who have statements identifying that they have BESD who have been placed appropriately in a PRU because they have been excluded; in such cases the statement must be amended to name the PRU, but PRUs should not be seen as an alternative long-term provision to special schools.

4.60 The requirement to demonstrate improvements and identify the specific educational benefits that flow from proposals for new or altered provision as set out in the key factors are for all those who bring forward proposals for new special schools or for special provision in mainstream schools including governors of foundation schools and foundation special schools. The proposer needs to consider all the factors listed above.

4.61 Decision Makers will need to be satisfied that the evidence with which they are provided shows that LAs and/or other proposers have taken account of the initial considerations and all the key factors in their planning and commissioning in order to meet the requirement to demonstrate that the reorganisation or new provision is likely to result in improvements to SEN provision.

## **OTHER ISSUES**

### **Views of interested parties**

4.62 The Decision Maker should consider the views of all those affected by the proposals or who have an interest in them including: pupils; families of pupils; staff; other schools and colleges; local residents; diocesan bodies and other providers; LAs; the LSC (where proposals affect 14-19 provision) and the Early Years Development and Childcare Partnership if one exists, or any local partnership or group that exists in place of an EYDCP (where proposals affect early years and/or childcare provision). This includes statutory objections and comments submitted during the representation period. The Decision Maker should not simply take account of the numbers of people expressing a particular view when considering representations made on proposals. Instead the Decision Maker should give the greatest weight to representations from those stakeholders likely to be most directly affected by the proposals.

### **Types of Decision**

4.63 In considering proposals for a school closure the Decision Maker can decide to:

- reject the proposals;
- approve the proposals;

- approve the proposals with a modification (e.g. the school closure date); or
- approve the proposals subject to them meeting a specific condition (see paragraph 4.64).

### Conditional Approval

4.64 The regulations provide for a conditional approval to be given where the Decision Maker is otherwise satisfied that the proposals can be approved, and approval can automatically follow an outstanding event. Conditional approval can only be granted in the limited circumstances specified. Conditional approval cannot be granted where proposals are decided under Paragraph 19 of Schedule 2 (i.e. where there are no objections) – see paragraph 4.3 above. For school closures the following conditions can be set:

- a. the making of any agreement under section 482(1) of the 1996 Act for the establishment of an Academy, where the proposals in question provide for some or all of the pupils currently at the school which is the subject of the proposals to transfer to the Academy;
- b. the agreement to any change to admission arrangements specified in the approval, relating to another school;
- c. where the proposals depend upon conditions being met, by a specified date, for any other school or proposed school, the occurrence of such an event.

4.65 The Decision Maker **must** set a date by which the condition should be met but will be able to modify the date if the proposers confirm, before the date expires, that the condition will be met later than originally thought. The proposer should inform the Decision Maker and the Department (School Organisation Unit, DfES, Mowden Hall, Staindrop Road, Darlington, DL3 9BG) or by email to [schools.organisation-unit@dfes.gsi.gov.uk](mailto:schools.organisation-unit@dfes.gsi.gov.uk) when a condition is met. If a condition is not met by the date specified, the proposals should be referred back to the Decision Maker for fresh consideration.

### Decision

4.66 All decisions **must** give reasons for the decision (i.e. irrespective of whether the proposals were rejected or approved) indicating the main factors/criteria for the decision.

## Appendix C

The following table indicates Who can publish Decisions for the various School Category and type of proposal. The table indicates who the Decision Maker is. It also indicates if there is power to appeal and if so to whom.



<b>Local Authority</b> (cont)	<b>Foundation and Foundation Special Schools:</b>		
	Proposals to establish a new school either in Competition or without a Competition (i.e. with S/S consent)	Adjudicator	None
	Proposals to discontinue a school	LA	Adjudicator (RC and CofE diocese, LSC, school GB and trustees)
	Proposals for “prescribed alteration” to: enlarge the premises of an existing school; add or remove SEN provision or add provision for children over compulsory school age.	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)
	<b>Voluntary Schools:</b>		
	Proposals to discontinue a school	LA	Adjudicator (RC and CofE diocese, LSC, school GB and trustees)
	Proposals for “prescribed alteration” to: enlarge the premises of an existing school; add or remove SEN provision or add provision for children over compulsory school age.	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)
	<b>Nursery School:</b>		
	Proposals to establish a new nursery school	Adjudicator	None
	Proposals to discontinue a school	LA	Adjudicator (RC & CofE diocese, LSC)
	Proposals to transfer school to a new site	LA	Adjudicator (RC & CofE diocese, LSC)

<b>Governors of Foundation &amp; Foundation Special Schools</b>	Proposals to discontinue the school	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)
	“Prescribed alteration” for relevant change in instrument of government or to acquire a foundation	GB	LA (see Note 5)
	Proposals for other “prescribed alteration” to the school	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)

<b>Governors of Voluntary Schools</b>	Proposals to discontinue the school	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)
	“Prescribed alteration” to change the category of the school to foundation or VA/VC.	(VC/VA change to foundation) GB  Otherwise - LA	LA (see Note 5) if acquiring foundation or relevant change to instrument of government  Adjudicator (RC & CofE diocese, LSC, school GB and trustees)
	Proposals for other “prescribed alteration” to the school	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)

<b>Governors of Community or Community Special Schools</b>	“Prescribed alteration”:-  Community School: to physically enlarge the school, increase the number of pupils in any relevant age-group by 27 or more, add a sixth form or, where the school is a grammar school, to end selection.	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)
	Community Special: increase in number of pupils by 10% (or 5 pupils where school is just boarding and 20 in any other case whichever is lesser).	LA	Adjudicator (RC & CofE diocese, LSC, school GB and trustees)
	“Prescribed alteration” to change the category of the school	Change to foundation/ foundation special – GB  Otherwise - LA	LEA (Note 5) if acquiring foundation or relevant change to instrument of government  Adjudicator (RC & CofE diocese, LSC, school GB and trustees)



<b>New School Proposers</b>	Proposals to establish a new foundation school without a foundation, foundation special or voluntary school:  a) in a Competition; or b) without a Competition (with Secretary of State [S/S] consent)	LA	(a) None  (b)Adjudicator (RC & CofE diocese, LSC, proposer)
	Proposals to establish a foundation school with a foundation (in a Competition [with S/S consent] or without a Competition) where LA , or their appointee, is:- <ul style="list-style-type: none"> <li>• member of foundation;</li> <li>• trustee; or</li> <li>• exercise appointing rights.</li> </ul>	Adjudicator	None
	Other proposals to establish a foundation school with a foundation: a) in a Competition; or b) without a Competition (with S/S consent)	LA	(a) None  (b)Adjudicator (RC & CofE diocese, LSC, proposer)

**NOTES:**

1. The Secretary of State may, at any time, direct an LA to refer school competition proposals (and any subsequent proposals published by the LA) to the Adjudicator.
2. The LA must forward any proposals that they have not decided within [2months of the end of the representation period]
3. Proposals to establish a new community school, in a Competition, are subject to Regulation 9 of SI 2007 No. 1288 and may require prior consent of S/S, depending upon LA's APA rating, and levels of school diversity and schools eligible for intervention.
4. "Excepted Expansions" – defined in regulations as proposals to expand the capacity of the school, increase PAN by 27 or more pupils or change the school's upper age range so as to provide sixth form education.
5. The LEA can request "foundation proposals" to be referred to the adjudicator if they believe the consultation was inadequate or have concerns that foundation will have a negative impact on standards.

[Publish-Decision Table]