
Academies: ACE briefing

In March 2000, David Blunkett, then Secretary of State for Education, launched a 'radical new approach to promote greater diversity and break the cycle of failing schools in inner city areas' – the City Academy, a publicly funded but independent school, now known simply as an academy.

There are currently (2005) 41 academies, the first three of which opened in September 2002. The Government's target is at least 53 academies by 2007 and 200 by 2010 with 30 in London by 2008 and 60 by 2010.

Academies are located in areas of disadvantage in England and can take pupils of any age range.

Funding

Academies are established by sponsors from business, faith or voluntary groups but receive the bulk of their funding direct from government.

The Secretary of State's power to enter into a funding agreement is contained in Section 482 of the Education Act (EA) 1996 (as amended by Section 65, EA 2002).

Academies are not allowed to charge for admission (Section 65(4)(a) EA 1996, as amended by Section 65 EA 2002).

They can be set up as companies limited by guarantee with charitable status. Academies are independent schools (Section 463(1) EA 1996 as amended by Section 172 EA 2002).

They must apply for provisional registration on the Independent Schools Register maintained by the Registrar for England (Section 160 EA 2002), which becomes final after inspection. It is an offence to run an independent school that is not registered or provisionally registered (Section 159 EA 2002).

Governance

Academies are under the control of a governing body. This will usually consist of:

- sponsors, or their representatives;
- members of the local community, including a governor appointed by the LEA;
- staff;
- at least one elected parent governor.

The governing body, subject to any restrictions imposed by the funding agreement, can regulate its own procedures and those of its committees.

Admissions

Academies must provide education for pupils of different abilities who are wholly or mainly drawn from the area in which the school is situated (Section 482(2)(b) EA 1996 as amended by Section 65 EA 2002). Although all-ability schools, they can admit up to 10 per cent of pupils each year on the basis of 'aptitude' for a specialism.

Admission arrangements are agreed with the Secretary of State as a condition of the funding agreement. The admission policy must comply with general admission law and the statutory Codes of Practice.

Each academy must participate in the Admissions Forum set up by the LEA in which it is located and have regard to its advice (Section 85A School Standards and Framework Act 1998 as amended by Section 66 EA 2002 and the Education (Admission Forums) (England) Regulations 2002 SI 2002/2900 Reg 5(2)(g)). The right of appeal against refusal to admit conferred on a parent by Section 94 of the School Standards and Framework Act 1998 does not apply to academies but the funding agreement must contain provision for appeal.

The arrangements for appeals must be in line with the School Admission Appeals Code of Practice as it applies to foundation and voluntary aided schools. Academies are included in an LEA's composite prospectus and take part in co-ordinated admission schemes as part of their funding agreement (6.4, 6.7 and Annex C.1 School Admissions Code of Practice DfES/0031/2003). Any changes to the admission arrangements must have the Secretary of State's approval.

Exclusions

The statutory power to exclude a pupil from school comes from Section 52 EA 2002 but the power given by this section is only given to a head of a maintained school. As a result *Improving Behaviour and Attendance: guidance on exclusion from schools and pupil referral units* (DfES/0345/2004) does not apply to academies. However, they must have exclusion procedures consistent with those set out in the guidance. Enforceability is via the funding agreement, which must contain a clause requiring the school to have regard to guidance on exclusions. The DfES says that the procedures should include an 'independent appeal', with the panel formed by the academy, possibly by asking the local LEA to help them with members. Academies' admissions and exclusions appeal panel hearings are not supervised by the Council on Tribunals as are those for maintained schools' hearings, and they

are outside the jurisdiction of the Local Government Ombudsman.

Special educational needs and disability

As mainstream inclusive schools academies, through their funding agreement, must adhere to SEN law and guidance. Since they are tied into admission law and guidance by their funding agreement they are expected to admit pupils with SEN and disabilities as appropriate. A parent can make representations for an academy to be named in a Statement of special educational needs (Section 9 EA 1996 and *Inclusive Schooling – Children with Special Educational Needs*, para 31 DfES/0774/2001). If one is named then, unlike other independent schools, no consent by the Secretary of State is required, so long as the pupil falls within the terms generally approved for the school (para. 8.66 , *Special Educational Needs Code of Practice* DfES/581/2001). However, an academy can refuse to admit a child with a Statement even if the LEA judges it to be the most suitable. The final decision rests with the Secretary of State, although parents do have the right of appeal to SENDIST. Academies are subject to the Disability Discrimination Act 1995 as amended by the Special Educational Needs and Disability Act 2001 and any code of practice issued by the Disability Rights Commission.

Inspection

Academies are subject to the School Inspections Act 1996 (Section 10(3)(gg) as amended by the Learning and Skills Act 2000 Sch 9 para 67). The areas under inspection are the same as for maintained schools (Section 10(5) School Inspections Act 1995). According to this legislation, the first inspection must take place within two years of opening. The Department for Education and Skills says it has an agreement with Ofsted that they will carry out a monitoring inspection of new academies, under Section 3 of the School Inspections Act 1996, in the fifth or sixth term of their existence and a full published Ofsted inspection within the third academic year.

As independent schools, academies have to comply with, insofar as they relate to academies, the Education (Independent School Standards) (England) Regulations 2003 SI2003/1910, which set out the standards which independent schools must meet in order to be, or remain, registered schools.

Parenting Contracts, Parenting Orders and Penalty Notices

Academies can issue/enter into these under the Anti-Social Behaviour Act 2003 and in so doing follow the DfES Guidance on Education-Related Parenting

Contracts, Parenting Orders and Penalty Notices (paras 56 and 144 (DfES/0234/2004)). An LEA can apply for a Parenting Order in respect of a parent of a pupil at an academy (para 166).

Curriculum

The curriculum must satisfy the requirements of Section 78 EA 2002 (i.e. be balanced and broadly based) but with an emphasis on a particular area, or particular subject areas, specified in the funding agreement (Section 482 EA 1996 as amended by Section 65 EA 2002). The law relating to the National Curriculum applies only to maintained schools. An academy's funding agreement sets out the curriculum and its assessment. The funding agreement contains a clause requiring the teaching of the core subjects of the National Curriculum to pupils in years 7–11 but the head can disapply one or more core subjects for an individual pupil or group of pupils.

Academies also have to make provision for the teaching of RE and have regard to DfES guidance on sex and relationship education. Any changes to the curriculum need the approval of the Secretary of State. Academies are bound by their funding agreement to register with the Qualifications and Curriculum Authority for the purpose of arranging for pupils to take part in the national curriculum assessment at the end of key stage 3.

Information for parents

The funding agreement requires a prospectus to be published annually. This must contain details of the admission arrangements, the curriculum offered, assessment arrangements and the results of attainment tests and public examinations, any religious affiliation of the school, policy on providing for children with special educational needs, arrangements for pupils with disabilities; pupil absence rates and destinations of school leavers.

Governing bodies must have home-school agreements (Section 110 School Standards and Framework Act 1998 as amended by Learning Skills Act 2000 Sch 9 para 85) and a written policy on bullying which has regard to DfES guidance *Bullying: don't suffer in silence* DfES 0064/2000 (Education (Independent School Standards)(England) Regulations 2003, Regulation 3(2)(a) SI2003/1910).

Unless otherwise agreed an annual written report has to be sent to a parent setting out the progress and attainment (Regulation 6(5) Education (Independent School Standards)(England) Regulations 2003, SI2003/1872).

There is no requirement for an academy to hold an annual parents' meeting.

The Education (Pupil Information)(England) Regulations 2000 SI 2000/297 that give parents the right to receive a copy of their child's school record apply only to maintained schools. Parents' right to the information from academies is via the Data Protection Act.

Complaints

Section 29 EA 2002 only applies to maintained schools but academies are required to have a written complaints procedure, available on request to parents. The regulations set out how the complaint should be handled, e.g. a written record to be kept of all complaints, copy of the findings to be given to the complainant (Education (Independent School Standards)(England) Regulations) 2003, Regs 6(2)(j) and Sched para 7).

ACE concerns and questions

Funding

- Sponsors get a lot of influence in return for a comparatively small investment: £2 million compared to the Government's £11–£26 million. An academy in Peterborough cost £32 million – the most expensive school ever.
- Why were LEAs not allowed to use these large sums of money to improve their own schools, as many academies are former decrepit inner city schools in need of investment? Will this mean less money for other schools? Many LEAs understandably feel threatened by academies being established in their areas.
- As part of the funding arrangements academies are able to reduce pay and condition requirements for teachers, which worries the teaching unions. Teachers must sign 'gagging clauses' in order not to reveal potentially embarrassing facts about the academy when they take up employment.
- The Government has said private schools will want to invest in academies but there has been no rush to do so.
- Sir Peter Lampl of the Sutton Trust, who favours private involvement in schools, described academies in the Guardian as "highly expensive and untested".

Governance

- Many of the private sponsors are churches or faith organisations, which may influence both the curriculum and the admissions policies. The Emmanuel Schools Foundation is hoping to open six academies and promote teaching creationism in schools.
- Two academies have been criticised for giving contracts to companies linked to their sponsors.

Standards

- Academies' worth is not yet clear: Ofsted has inspected only the first three of them and has published only the reports on Grieg (Haringey, 'rapidly improving') and Unity (Middlesbrough, 'failing'). Bexley was found to have 'significant weaknesses', but its report was not published after it threatened Ofsted with legal action. The report by PricewaterhouseCoopers which was due in December has just been published (June 2005), but is extremely tentative about performance data. None of the nine academies opened in September 2003 has been visited by Ofsted (June 2005).
- Nine out of the 11 academies which reported national test results last year were ranked in the bottom 200 schools.
- The House of Commons Education and Skills Select Committee (March 2005) has expressed grave reservations about the lack of evaluation of academies, especially given the amount of public funds being devoted to them and the disadvantages of the population they are intended to serve.
- Academies which are improving may be raising standards by improving their intake rather than doing better by the same pupils. Research by Professor Stephen Gorard of York University has found that only one of three early academies, Bexley Business Academy in south-east London, is still serving the most disadvantaged pupils in their area.
- Two academies are among the bottom 12 schools in the GCSE league tables. At Manchester Academy only 8 per cent of pupils achieved five A* to C grade passes while those attending a new academy in Peckham, south London, managed 12 per cent.
- Teachers in independent schools, including academies, are not obliged to register with the profession's regulatory body, the General Teaching Council, although some may choose to do so.

Exclusions

- On its advice lines ACE is hearing of academies not following the Government's guidelines when excluding pupils and there is anecdotal evidence that informal (illegal) exclusions are occurring, especially of pupils with SEN.
- The fairness and independence must be doubted of an appeal hearing by a panel constituted by the academy itself, especially as the panels fall outside the remit of the Council of Tribunals and the Local Government Ombudsman.
- Maintained schools lose money when they permanently exclude a pupil; academies suffer no financial penalty.
- The permanent exclusion rate at King's in Middlesbrough, one of Emmanuel's academies, is 10 times the national average. The June 2005 PriceWaterhouseCoopers report found that the

exclusion levels of two out of three of the first three academies were above the national average, and one of these was well above both the national average and that of other schools with similar populations.

Special educational needs

- Local authorities do not have the power to name an academy on a child's Statement without the academy's consent, despite their having to adhere to SEN law and guidance. A number of pupils with Statements naming an academy have been refused a school place; the DfES has become involved with these cases.
- ACE has also heard from parents who are unhappy with academies failing to make provision for their child with SEN but without a Statement.