

DELEGATED DECISION

BY THE PORTFOLIO HOLDER FOR CHILDREN'S SERVICES

Feasibility Study into the Expansion of Special Schools

Legal observations (education law)

Education Act 1996

The Education Act 1996 ("EA1996") contains a number of general duties and powers that are relevant here.

General responsibility for education

Under section 13(1) of the Education Act 1996 ("EA1996"), a local authority shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education and secondary education and, in the case of a local authority in England, further education, are available to meet the needs of the population of their area.

Duty to promote high standards and fulfilment of potential

Under section 13A of the EA1996, a local authority in England must ensure that their relevant education functions (essentially for a local authority in England, any function relating to the provision of education) and their relevant training functions (i.e. any function relating to the provision of training) are (so far as they are capable of being so exercised) exercised by the local authority with a view to promoting high standards, ensuring fair access to opportunity for education and training and promoting the fulfilment of learning potential by every person under the age of 20 and every person aged 20 and over for whom an Education Health and Care plan is maintained.

Functions in respect of provision of primary and secondary schools

Under section 14(1) of the EA1996, a local authority shall secure that sufficient schools for providing primary education and secondary education are available in their area. By "sufficient", this section means sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education (EA1996, section 14(2)). By "appropriate education", this section means education which offers such variety of instruction and training as may be desirable in view of –

- (a) the pupils' different ages, abilities and aptitudes, and
- (b) the different periods for which they may be expected to remain at school,

including practical instruction and training appropriate to their different needs. (EA1996, section 14(3)).

A local authority in England shall exercise their functions under this section with a view to –

- (a) securing diversity in the provision of schools, and
- (b) increasing opportunities for parental choice. (EA1996, section 14(3A)).

In exercising their functions under this section, a local authority in England shall in particular have regard to –

- (a) the need for securing that primary and secondary education are provided in separate schools [but section 14(7) of the EA1996 states this duty does not apply in relation to middle schools or special schools];
- (b) the need for securing that special educational provision is made for pupils who have special educational needs; and
- (c) the expediency of securing the provision of boarding accommodation (in boarding schools or otherwise) for pupils for whom education as boarders is considered by their parents and the authority to be desirable. (EA1996, section 14(6)).

Sections 15ZA to 15B of the EA1996 put similar duties in place for persons over compulsory school age.

Special schools

Lastly, section 337 of the EA1996 contains the definition of special school, which is as follows:-

A school is a special school if it is specially organised to make special educational provision for pupils with special educational needs, and it is—

- (a) maintained by a local authority,
- (b) an Academy school, or
- (c) a non-maintained special school.

Education and Inspections Act 2006

The Education and Inspections Act 2006 (“EIA”) contains the statutory school organisation regime. In particular, sections 7, 10 and 11 of the EIA deal respectively with: a local authority invitation for proposals from persons other than local authorities to establish a new school (this provision applies to special schools); publication of a proposal to establish a new school (including a new community special school or foundation special school) by the local authority itself with the consent of the Secretary of State; a proposal by the local authority to establish a maintained school in special cases, such as where no proposals are made by others pursuant to a notice under section 7 of the EIA or proposals are made but none of them are approved or result in Academy arrangements being entered into.

Presumably, the statutory school organisation regime may well be engaged if the Portfolio Holder approves the proposal set out in this delegated decision report and Nottingham City Council (“NCC”) considers whether a special school or special schools need to be established as a result of work done subsequently.

Children and Families Act 2014

Amongst other things, section 27 of the Children and Families Act 2014 (“CFA”) states the following:-

- (1) A local authority in England must keep under review—
 - (a) the educational provision, training provision and social care provision made in its area for children and young people who have special educational needs or a disability, and

(b) the educational provision, training provision and social care provision made outside its area for—

(i) children and young people for whom it is responsible who have special educational needs, and

(ii) children and young people in its area who have a disability.

(2) The authority must consider the extent to which the provision referred to in subsection (1)(a) and (b) is sufficient to meet the educational needs, training needs and social care needs of the children and young people concerned.

It should also be noted that section 27 of the CFA contains a requirement that in exercising its functions under this section a local authority must consult with a wide range of individuals and organisations, including children and young people in its area with Special Educational Needs (“SEN”), the parents of children in its area with SEN, children and young people in its area who have a disability, the parents of children in its area with a disability, governing bodies of maintained schools in its area and the proprietors of Academies in its area.

Conclusion

The above sets out the education legislation that is potentially engaged here.

If the Portfolio Holder approves the proposal set out in this delegated decision report, it is advisable that any procurement of external consultants follows NCC’s procurement process and any resultant engagement of consultants is the subject of a commercial agreement between NCC and the consultants in question. Further advice from NCC procurement officers and Legal Services may be required for this.

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