

## EXECUTIVE BOARD – 17<sup>th</sup> May 2016

<b>Subject:</b>	Alternative Provision Model 2016/2017 - Devolve high needs funding to schools to support pupils		
<b>Corporate Director(s)/ Director(s):</b>	Alison Michalska - Corporate Director for Children and Adults Pat and Sarah Fielding – Directors of Education		
<b>Portfolio Holder(s):</b>	Councillor Sam Webster, Portfolio Holder for Schools		
<b>Report author and contact details:</b>	Michael Wilsher, Inclusion Officer 0115 876 4626 michael.wilsher@nottinghamcity.gov.uk		
<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Subject to call-in</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reasons:</b> <input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input checked="" type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Total value of the decision: £3.365m</b>			
<b>Wards affected: All</b>	<b>Date of consultation with Portfolio Holder(s): 3 May 2016</b>		
<b>Relevant Council Plan Key Theme:</b>			
Strategic Regeneration and Development			<input type="checkbox"/>
Schools			<input checked="" type="checkbox"/>
Planning and Housing			<input type="checkbox"/>
Community Services			<input type="checkbox"/>
Energy, Sustainability and Customer			<input type="checkbox"/>
Jobs, Growth and Transport			<input type="checkbox"/>
Adults, Health and Community Sector			<input type="checkbox"/>
Children, Early Intervention and Early Years			<input type="checkbox"/>
Leisure and Culture			<input type="checkbox"/>
Resources and Neighbourhood Regeneration			<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>			
This report is to approve proposals to move to a new model for Alternative Provision for the 2016/17 financial year. This involves the devolution of high needs funding to mainstream maintained schools and academies (referred to as schools in this document) under a service level agreement (SLA) in order to support early intervention and make provision for pupils with challenging behaviour in schools. It is the intention that this will help reduce permanent exclusion across the city and support early intervention.			
<b>Exempt information: None</b>			
<b>Recommendation(s):</b>			
<b>1</b> To approve the proposal to devolve funds to schools from the Dedicated Schools Grant (DSG) funded High Needs budget from the 2016/17 financial year under a Service Level Agreement (SLA).			
<b>2</b> To approve the use of an additional £3.365m from the Statutory School Reserve to support the implementation of this model over the next 5 years. £0.500m of this requirement is to cover potential risks.			

### **1    REASONS FOR RECOMMENDATIONS**

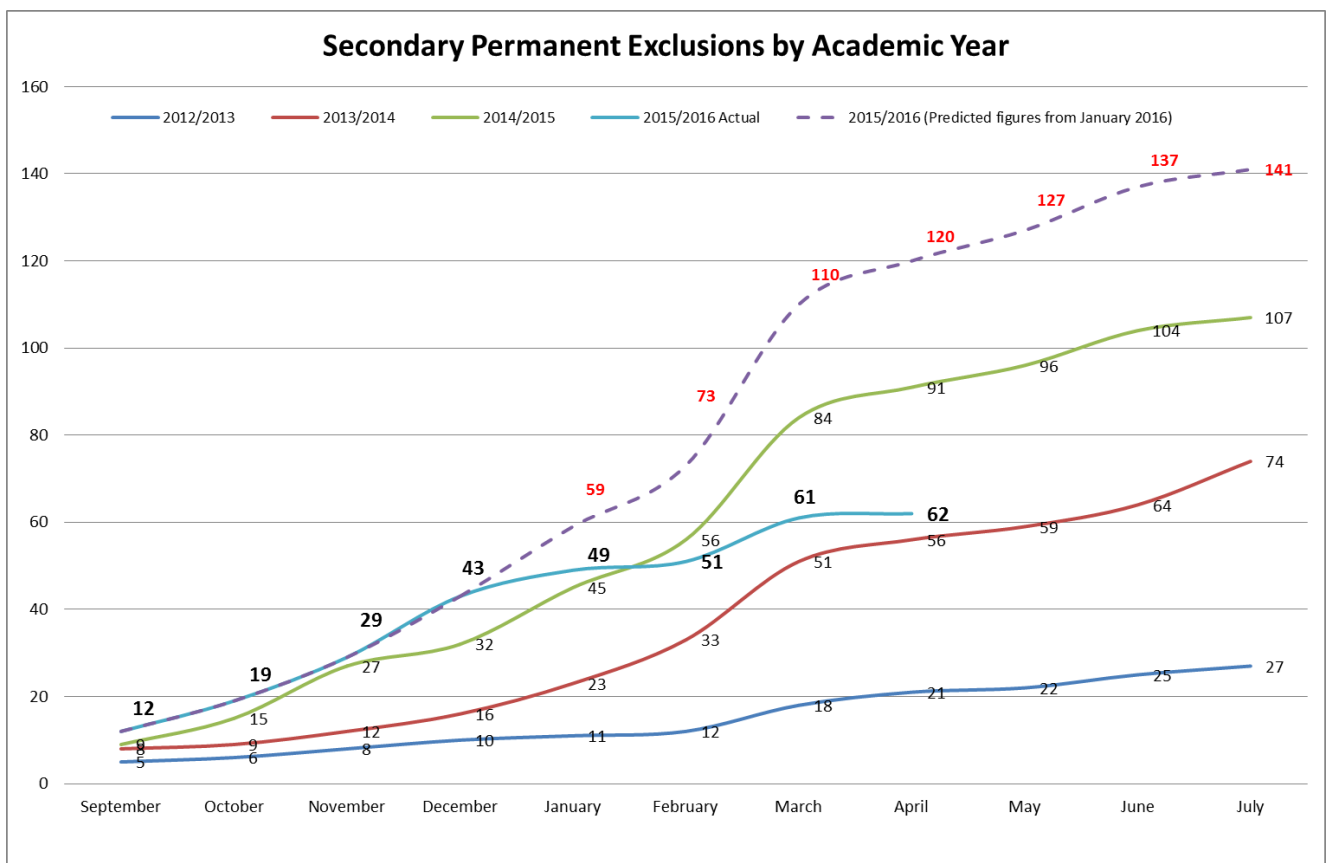
1.1 The current system is inequitable and is not financially sustainable.

- 1.2 The intention behind these proposals is to put schools in charge of commissioning alternative provision to support pupils at risk of permanent exclusion in their schools. This is consistent with the national direction of travel as outlined in the White Paper and National Funding Formula and High Needs consultations.
- 1.3 It is envisaged that there will be improved educational outcomes as a result of this approach as outlined in paragraph 2.4.
- 1.4 The LA has consulted schools and Schools Forum over the arrangements for high needs pupils and alternative provision.
- 1.5 Consultation has been undertaken with all schools over these proposals. The Nottingham City Secondary Education Partnership (NCSEP) has indicated the agreement of secondary head teachers to the devolution proposals. Interest has been expressed by a couple of groups of primary schools in piloting the new approach in their areas.

It is the intention to implement the proposal across the whole of the secondary phase simultaneously, but to stagger the primary implementation to review the pilot cluster models. The purpose of the primary model will be to support schools in developing effective models and for all primary schools to be part of the model before April 2017.

## **2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 Within the 2015/16 high needs budget; £2.815m is set aside to fund Denewood and Unity Learning Centres. However, due to increased numbers of permanent exclusions across all key stages approximately £1.655m has been required from reserves to supplement this budget as approved by Executive Board on 21 January 2016. The annual overspend will continue to grow if the number of permanent exclusions remains in line with the average for the last 3 academic years.
- 2.2 This academic year (2015/2016) has already seen secondary permanent exclusions above the average for the last 3 years as shown in the graph below. It is important to note that primary permanent exclusions have also risen significantly over the last 3 years (on average 20 exclusions per year) including at Key Stage 1. Over the last three academic years permanent exclusions have been issued to 94 pupils 2013/2014; 126 pupils 2014/2015 and 73 pupils so far this academic year.



2.3 The proposal is to move to a model of devolution of alternative provision funding to schools.

Under this model, schools have all the funding and make the choice of provision for their pupils. Educational benefits of the new approach are expected to be:

- Additional funding available to schools to support early intervention and provide for the needs of pupils.
- Schools can work together to develop good practice and shared resources.
- Funding and resources to support links between primary and secondary to develop transition support.
- Better outcomes for pupils accessing quality education and provision through schools.
- More flexibility to avoid exclusion and speed of support.

2.4 Funding will be devolved to schools based on a formula which is 75% based on Ever 6 Free School Meals (FSM) pupils and 25% on total pupils. In the transition, new devolved allocations will be adjusted to reflect the costs attributed to pupils that the school has previously excluded, but schools will receive at least 43% of their total formula share.

2.5 This funding will be attached to conditions outlined in a SLA. This will include the requirement for schools to meet the ongoing costs of provision for all pupils including those that they permanently exclude. Devolved funding will be adjusted to reflect a charge for any pupils permanently excluded after 1st April 2016. The proposal is for this charge to be £15,000 (pro-rata) in 2016/17 whilst PRU unit costs are being managed downwards. In future years the charge will be aligned to the full cost of a Denewood/Unity placement, as determined and consulted through schools forum.

- 2.6 Secondary heads are in the process of reviewing and providing feedback on the detailed contents of the SLA. It will not be possible to release funding until there is an agreed SLA and all schools have signed up. Schools forum have also been extensively consulted on the proposals.
- 2.7 Whilst there will be a slight delay due to the above, the LA is proposing that the devolved funding allocations once released will represent the full April – March financial year 2016/17 funding and the terms of the SLA will state that the allocation is adjusted for a charge on any exclusions from April 1st 2016. Delays to the implementation date risk the affordability of the model which has been consulted on.

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 3.1 The proposals have been revised considerably as a result of feedback from schools during the period of consultation.

### **4 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

- 4.1 The proposals in this report affect the Local Authority's High Needs (HN) budget which is funded by the Dedicated Schools Grant (DSG).
- 4.2 The devolved funding is separate from (and in addition to) schools' delegated budget shares. It remains classed as a central budget and its terms of use, is dictated by an agreement between the LA and the school. This will include the requirement for schools/academies to meet the costs of provision for all pupils including those that they permanently exclude.
- 4.3 In the transition to the new approach, the HN budget will need to continue to support costs of provision at the PRUs for pupils previously permanently excluded as well as devolved funding for schools. There will be some reduction to the new devolved allocations at an individual school level to reflect the costs attributed to pupils previously excluded.
- 4.4 Further detail on the financial implications, including the formula that will be used for allocations, can be found in the 21 April 2016 Schools Forum report which is attached as an appendix 2.
- 4.5 Modelling shows that the proposals will require an estimated £5.165m from the Statutory School Reserve (SSR) over the next 5 years, of which £2.2m will be required in 2016/17 and has already been approved by the Executive Board on 22 March 2016 as part of the report on the 2016/17 Schools Budget. This report requests approval for the balance of £2.965m plus a further £0.500m to cover potential risks.
- 4.6 Recent trends in permanent exclusions suggest that the continuation of the status quo would cost significantly more. These proposals will bring the costs back under control. It is also considered that the commissioning of AP directly by schools will lead to higher quality, value for money provision.

### **5 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND INCLUDING LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

## Legal Implications

- 5.1 This report sets out proposals to devolve funds from the high needs budget for alternative provision to maintained schools and Academies. The high needs budget for alternative provision is a sum of money provided by the Education Funding Agency (“EFA”) to a local authority over and above other education funding. In a sense it is additional funding for the specific purpose of alternative provision. As such, it is for the local authority to determine how to use it in accordance with EFA guidance. The current EFA guidance is entitled: *High needs funding: alternative provision Additional guidance 2016 to 2017* (September 2015). This budget can be devolved to maintained schools and Academies, provided maintained schools and Academies are treated on an equivalent basis, following consultation with the local authority’s schools forum (*High needs funding*, paragraph 24). In addition, *High needs funding* makes it clear that a local authority cannot charge a maintained school or Academy for the costs of a permanently excluded pupil, over and above the charge derived from the education funding regulations, unless this is pursuant to an agreement between the local authority and the maintained school or Academy (*High needs funding*, paragraph 42).
- 5.2 The proposals set out in this report would, if implemented, essentially entail Nottingham City Council (“NCC”) devolving its high needs budget for alternative provision to maintained schools and Academies by reference to a funding formula that applies equally to maintained schools and Academies and only distinguishes between primary and secondary schooling. This is in accordance with *High needs funding* and is lawful. Furthermore, this would include the requirement for maintained schools and Academies to meet the on-going costs of provision for all pupils including those that they permanently exclude, with devolved funding adjusted to reflect a charge for any pupils permanently excluded after 1 April 2016. The proposal is for this charge to be £15,000.00 (pro-rata) in 2016/17 whilst PRU unit costs are being managed downwards. In future years the charge will be aligned to the full cost of a Denewood/Unity placement, as determined and consulted through schools forum. Again, since this charge would be levied against the amount a maintained school or Academy has had devolved to it from the high needs budget for alternative provision – a form of additional funding – such a charge would be lawful. Indeed, whilst it is desirable for the sake of certainty that the charge is the subject of a commercial agreement between NCC and each governing body of a maintained school/proprietor of an Academy, since this is money devolved from a central budget that would be recouped by NCC in the event of a permanent exclusion it could be said there is no need for a formal commercial agreement, particularly as the proposals set out in this report envisage arrangements with clusters of primary schools which could result in unwieldy commercial agreements. The alternative option would be to adjust the amount down that would be devolved to the permanently excluding maintained school/Academy from the high needs budget for alternative provision in the following financial year.
- 5.3 If these proposals are to be implemented, it is advisable that NCC seeks further legal advice as to the commercial law, education law and employment law implications of these proposals.

Jon Ludford-Thomas  
Senior Solicitor

**6 STRATEGIC ASSETS & PROPERTY COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)**

6.1 N/A

**7 SOCIAL VALUE CONSIDERATIONS**

7.1 N/A

**8 REGARD TO THE NHS CONSTITUTION**

8.1 N/A

**9 EQUALITY IMPACT ASSESSMENT (EIA)**

9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:

(Please explain why an EIA is not necessary)

Yes

Attached as Appendix 1, and due regard will be given to any implications identified in it.

**10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)**

10.1 N/A

**11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT**

11.1 Provision and Services for Pupils with Behavioural, Emotional and Social Difficulties in Nottingham City - An Independent Review, Peter Gray 2015

Educational Excellence Everywhere, March 2016

National Funding Formula and High Needs 2016

**12 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT**

12.1 Kathryn Stevenson - Finance Analyst (Schools) – Resources