

Diocese of Brentwood
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Academy Conversion

Dear Family

I hope you are well.

We have received the attached communication from the Diocese's legal team and been asked to circulate it widely.

Can I take this opportunity to remind you of the forthcoming governors' consultation meeting for parents regarding the proposal to convert to an academy. This is taking place at 7.00pm on Monday March 16th in the school hall. I do hope to see you there.

With every good wish

A handwritten signature in black ink that reads 'Gary Nott'.

Gary Nott
Head teacher

Academisation - a legal response to NEU assertions

Consultation

Section 5 of the Academies Act 2010 requires governing bodies of schools seeking to convert to academy to consult such persons as they think appropriate about whether the conversion should take place. There is no legal requirement for a ballot. Consultation can take place before or after an academy order is made.

Decisions as to the form and extent of that consultation are matters for the governing body. As a public body, the governing body is required to follow appropriate guidance and must ensure:

- that consultation is carried out when proposals are at a formative stage;
- that sufficient reasons for the proposal are given to allow intelligent consideration and response;
- that adequate time is given for a response;
- that the outcome of consultation is conscientiously taken into account when finalising proposals.

To complement more broad ranging information which is being provided by the school in connection with a proposal to convert to academy, this note outlines a factual response to certain statements made by the National Education Union (NEU). This note is not a statement of "measures" for the purposes of consultation pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

Responses

NEU Statements ¹	Legal Response
The change of employer (from either Local Authority or Governing Body, as the case may be, to academy trust) means staff will no longer work in the public sector.	All academy trusts are charitable not for profit organisations regulated and funded by Central Government, in the same way LA maintained schools are. Academy trusts continue to be treated as public bodies for all public law purposes including Freedom of Information, GDPR, procurement etc.
An academy is no longer an LA school and automatically loses LA support, including in areas such as SEN, school improvement and speech and language therapy services.	Whilst the LA has no power to intervene in an academy, it continues to have a safeguarding and funding role as academy budgets follow the LA approach on pupil funding. The LA will retain responsibility for SEN provision and funding and academies are free to contract with any LA for school improvement and any other type of support. Academies, just like maintained schools, are expected to manage within their budgets and not set a deficit budget.
Academy trusts cannot guarantee staff's terms and conditions won't change in the future and some allow new staff to join on different terms and conditions creating a "two tier	Staff transferring to an academy trust are protected by TUPE, which means no changes are permitted to staff's terms and conditions and any continuity of service is preserved. Academy trusts are not bound to follow the national agreements (e.g. the School Teachers Pay and Conditions Document), but in

¹ Extracted from reported comments made by local, regional and national representatives.

workforce”.	practice many do so and some academy trusts voluntarily commit to doing so (e.g. by adopting the TUPE+ protocol). Many academy trusts offer improved terms and conditions including higher pay in order to be the employer of choice in a difficult recruitment market.
Academy trusts have weaker financial controls leading to excessive senior pay and the proliferation of expensive “chief executive officers”.	Academy trusts must comply with the Education & Skills Funding Agency’s “Financial Handbook”, which for example includes stringent guidance on setting executive pay. Academy trusts must identify a senior executive officer who is personally accountable for the academies and who must be able to assure Parliament, and the public, of high standards of probity in the management of public funds made available to the trust, particularly in terms of regularity, propriety and the need to ensure value for money. Many of these executive officers are in fact still headteachers of schools for which the academy trust has responsibility.
Academy trusts are less accountable to parents and the community and there is no parent representation on the “local governing body”.	Academy trusts are set up to advance education for the public benefit. Schools operated by an academy trust retain their identity and distinctiveness (including any religious designation) and will continue to serve their local community. Academies must comply with all other statutory guidance affecting schools including admissions, exclusions and safeguarding. The academy trust’s governance document stipulates that there must be parent representation on the governing body. Academy trusts are required to publish the full details of any delegated authority which will include details of the appointment and removal of trustees and governors, typically referred to as the “Scheme of Delegation”. The same is not true of maintained schools and particularly groups of federated schools.

Purpose

Whilst consultation will naturally focus on the reasons why a school is seeking to become an academy because of the focus of the statutory requirement to consult, a broader approach may be helpful. The Confederation of School Trusts recommends that the right question that schools and their communities should be asking is:

“How can my school best collaborate with others in a strong and ethical structure to ensure that each child becomes a powerful learner and that adults can work together and learn from each other?”

By approaching the academy question in a more positive, open minded way, the school can ensure that all views are taken into account and decisions are made in compliance with the legal duty.

For more information, contact:
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