

# Use of Powers Under the Education Act 2002 on the Federation of Maintained Schools

## 1. Background

The proposal by the governing bodies of Rawcliffe Infant school and Clifton Without Junior school to federate under one governing body and one headteacher with effect from April 2005 has aroused considerable interest within the city. It has prompted questions about LA (Local Authority) policy and, more particularly, about whether federation is now an alternative to amalgamation for schools with falling rolls.

This consultation paper provides a description of the legal distinction between federation and merger and offers guidance on when the LA will support the federation of two or more schools and when it will pursue proposals for a school reorganisation.

## 2. School Amalgamations

From time to time, and for a variety of reasons, the LA reorganises schools. The main reason for doing this is to ensure the most efficient provision of education across the city. There is a high price to pay for failure to keep abreast of changes in the demand for school places. Too few places and it becomes difficult to satisfy parental choice, too many and an increasing proportion of the funding for schools is spent keeping buildings open rather than educating children.

Any particular decision by the LA about the future of a school or groups of schools is likely to be triggered by one or more of the following:

- concern about the quality of education being provided by the school, sometimes, but not always, in response to inspection by OFSTED
- concern about the future viability of the school as a consequence of demographic trends within the catchment area
- the opportunity to make more efficient provision of education without risking the quality of what is currently available
- the opportunity presented by the retirement or resignation of the headteacher to open a debate with governors, parents and staff about the future of the school

In York, the decision to consult about a possible school reorganisation is delegated by Council to the Executive Member for Education advised by the Executive Member Advisory Panel (EMAP). A school reorganisation involving the closure of existing schools or the opening of new ones requires the publication of a statutory notice and a 3-month public consultation period. The decision to undertake a statutory consultation can only be taken by the Executive.

Before triggering action of this kind, LA officers will analyse demographic trends in the area, make a judgement about the impact of reorganisation on the education of the pupils attending the school or schools involved as well as neighbouring schools, and establish the implications of change for capital and revenue budgets. Only then will the decision be taken to trigger a non-statutory consultation as the first step in gauging local opinion.

Particular proposals to reorganise schools will vary according to local circumstances. However, the LEA will normally seek to close all of the schools ear-marked for amalgamation and replace them with new schools. It will normally recommend to the governing body that the appointment of the headteacher be subject to national advertisement, but that other appointments are ring fenced to the existing staff. HR procedures will be agreed with the relevant unions and the interim governing body in advance of any appointments. The LA will also comply with the provisions of the Education Act (2002) on the establishment of new secondary schools.

In summary, the LA will continue to manage the supply of school places by bringing forward proposals from time to time to create new schools which support the most efficient use of resources and allow improvements to the existing estate.

### **3. Federation**

Section 24 of the Education Act 2002 provides that maintained schools may federate under one governing body if they so wish. The statutory framework for federation is set out in *The Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003* and accompanying guidance.

The regulations make clear that, legally, federated schools remain separate entities, but with a single governing body and with the option of appointing a single headteacher. The power to federate resides with the governing bodies of the schools involved, and not with the LA. Under the regulations, up to five schools may join together. The Governing Bodies of the schools are required jointly to consult with the staff, parents and the LEA, following which they can take the decision to federate on a simple majority vote. The rules governing the consultation are not complex, but require the Governing Body to publish proposals about the size and composition of the governing body, arrangements for staffing the schools, timescales and 'such other matters as the governing body consider appropriate'. The consultation period must be 'no less than 28 days', following which each governing body must separately consider the responses and decide whether to proceed with the federation.

The governing body of a federation is accountable for the two schools separately, but can vire funding and resources between them. The intention is that federation should provide the maximum opportunity for joint working and the flexible use of resources to raise standards. All policies and schemes of work, for example, can be jointly produced and, to all intents and purposes,

the two schools are free to work as one. The decision to federate does not, of itself, alter the contracts of the staff employed by the schools involved. However, staff can opt to be employed by the federation if they so wish, and new staff can be appointed to the federation itself rather than to the individual schools.

Federation is not an alternative to amalgamation. Its main purpose is to encourage opportunities for joint working to improve the quality of provision and raise standards, not to tackle the supply of school places or remove surplus capacity.

The LA will be inclined to support proposals for federation when:

- it is possible to demonstrate the potential for raising standards by establishing unified arrangements for governance, a single management structure and joint working
- it will ease problems of recruiting high quality staff at all levels, but particularly where senior posts (headteacher and deputy headteacher) are proving hard to fill
- curriculum continuity and pupil progression are enhanced by close partnership working
- there is clear support from the great majority of parents and governors

#### **4. Amalgamation or Federation?**

Despite the clear differences between amalgamation and federation, there will be occasions when it is not clear which provides the most appropriate way forward for a particular combination of schools. A decision by the LA to amalgamate two or more schools will always take precedence over any decision by their governing bodies to federate. On occasion the LA may propose federation as a first step to the governing bodies of schools that have been earmarked for amalgamation. This is most likely to be an option when:

- the process of amalgamation is likely to be prolonged over a number of years and the alternative of split site working would bring with it significant financial disadvantages
- it is proving difficult to recruit a headteacher to one or more of the schools involved
- there is a clear advantage in asking staff to work more closely together as a prelude to merger
- speed is of the essence