

### Local authority powers of intervention in schools

#### 1 Background and context

1.1 This guidance is for use by the school effectiveness officers, and for information for head teachers and members of governing bodies. First, the legislation and guidance defining a ‘school of concern’ is summarised. Then ‘early intervention’ proposals and process for issuing an early warning notice and the use of the local authority’s (LA) intervention powers are explained.

#### 2 Schools of concern

2.1 There are 10 relevant acts, which are listed on page 7 of the DfE’s schools causing concern guidance, which was updated in September 2020 (see [here](#)). However, the principal one is the Education and Inspections Act, 2006 as set out in part 4 of, and schedule 6 to, the Act. In addition, section 72 requires LAs to have regard to guidance given by the secretary of state for education.

2.2 It is important to note that the guidance makes clear that ‘schools causing concern’ are not solely those that are ‘eligible for intervention’. The category includes schools about which the LA has ‘serious concerns’.

2.3 Schools ‘eligible for intervention’ are as follows:

2.4 First, where a performance standards and safety warning notice has been given (s 60) and the school has failed to comply (see [here](#)). Such a notice may be given when ‘standards of pupil performance are unacceptably low; where there has been a ‘serious breakdown’ in the way the school is managed’; or the safety of pupils or staff at the school is threatened. The definition of ‘low standards’ is when standards are low one or more of the following:

- the standards that the pupils might in all the circumstances reasonably be expected to attain;
- where relevant, the standards previously attained by them; or
- the standards attained by pupils at comparable schools.

2.5 Second, where a teachers’ pay and conditions warning notice has been given, and the school concerned has failed to comply. (section 60A of the Act, which was inserted by the 2009 Act).

2.6 Third, where a school requires ‘significant improvement’ under section 61 of the Act (see [here](#)). This is any school given ‘notice to improve’ by Ofsted.

2.7 Fourth, a school requiring special measures under section 62 (see [here](#)).

#### 3 LAs’ powers and the types of intervention

3.1 Section 2 explains eligibility for intervention (see paragraphs 2.4 to 2.7 above). The LA will consider using its statutory powers in the case of all such schools (except where those schools are academies, where these statutory powers do not apply), and in this section explains its powers of intervention as set out in sections 63 to 66 of the 2006 Act. The section does not touch on the powers of the secretary of state for education to intervene, or to force local authorities to do so.

##### SECTION 63 – TO REQUIRE THE GOVERNING BODY TO ENTER INTO ARRANGEMENTS

3.2 See [here](#). In essence, a LA may give a school’s governing body a notice requiring it to enter into a contract for ‘specified services’ giving it advice, where the contractor might be, for example, an individual, a company or the governing body of another school, or to collaborate with another school’s or college’s governing body. The LA can specify under section 63 that the school takes specified steps to create or join a federation including other schools.

3.3 The LA will consult, as required, the school’s governing body, and any trust or diocesan authority responsible for the school’s governance, before exercising the power. The LA will ensure that the power

is exercised within any statutory timescales that apply when the school concerned has been issued with a safety notice. This is currently within two months of the end of the compliance period.

#### **SECTION 64 – THE APPOINTMENT OF EXTRA GOVERNORS BY AN LA**

3.4 See [here](#). Section 64 enables the LA to appoint additional governors where a school is eligible for intervention. The council is likely to appoint additional governors when it wants the school concerned to be provided with additional expertise and may appoint as many additional governors as it thinks fit.

(Note: In the case of a voluntary aided school where the LA has exercised the power to appoint additional governors, the appropriate appointing authority in relation to that school may appoint an equal number of governors to those appointed by the local authority).

3.5 There is no requirement for a LA to consult before appointing extra governors to a governing body of an ‘eligible’ school. However, the power must be exercised within two months of the end of the compliance period.

#### **SECTION 65 – THE APPOINTMENT OF AN INTERIM EXECUTIVE BOARD (IEB)**

3.6 See [here](#). The purpose of an interim executive board is to accelerate improvement in standards and attainment and provide challenge to the leadership of the school to secure rapid improvement. An IEB can also be applied for where there has been a serious breakdown of working relationships within the governing body of the school. There is no time limitation with reference to any warning notice, and the LA might determine to exercise this power at any time where a school is eligible for intervention.

3.7 The LA must consult the school’s governing body, and any trust or diocesan authority responsible for the school’s governance, before exercising the power. At least 14 days will be allowed for interested parties to respond. This period can be longer if this is considered reasonable.

3.8 If the secretary of state for education consents to the establishment of an IEB, the LA’s director of children’s services must write to the governing body of the school to give notice that an IEB will be established. The letter must specify the date of commencement of the IEB and the intended cessation date.

3.9 The IEB’s main functions are to secure a sound basis for future improvement in the school concerned and to promote high standards of educational achievement. The IEB should be considered as the governing body of the school although statutory requirements regarding the GB’s constitution (2007 regulations) do not apply.

3.10 The IEB’s responsibilities include the management of the budget (this is fully delegated – any previous withdrawal of delegated powers will be restored), the curriculum, staffing, pay and performance management and the appointment of the head teacher and deputy head teacher. An IEB may recommend to a local authority, or recommend that the secretary of state give a direction to a local authority, that a school should be closed, but it cannot publish proposals for closure. The IEB may also seek an academy order from the secretary of state to convert the school to an academy with a strong sponsor’.

3.11 The LA must constitute the IEB in line with the requirements of the 2006 Act. That is, the initial board shall comprise at least two members, and further members might be added. The intention of the Act is that an IEB should be a small, focused group appointed for the full period which it is expected to take to turn the school around, and LA officers should choose members of an IEB on a case by case basis, depending on the needs of the school. Existing governors may be appointed to an IEB. Copies of the notice of appointment of IEB members should be sent to all the school’s governing body members, and, in the case of foundation or voluntary schools, the diocesan or other appropriate appointing authority.

## **SECTION 66 – SUSPENSION OF THE DELEGATED AUTHORITY FOR THE GOVERNING BODY TO MANAGE THE BUDGET**

3.12 See [here](#). A LA has the power to consider suspending a school governing body’s right to a delegated budget in cases where a maintained school is eligible for intervention by giving the governing body of the school notice in writing. A copy of the notice to suspend the right to a delegated budget must be given to the head teacher of the school and the governing body. The LA is not required to consult before withdrawing delegated financial powers from a governing body; moreover the LA can appoint additional governors in cases where financial delegation is withdrawn.

3.13 Where a school is eligible for intervention as a result of being given a performance standards and safety warning notice, this power must be exercised within a period of two months following the end of the compliance period. If the local authority fails to exercise this power within this time, a new warning notice must be given in order to do so. Again, there is no requirement for the local authority to consult before exercising this power.

3.14 The council must set out to the head teacher and members of the governing body what the suspension of the right to a delegated budget means in practice. In summary, arrangements in the school concerned revert to those that applied before the implementation of the Education Act, 1988 (as amended by subsequent legislation, principally the Education Act, 1996). Governors remain responsible for school discipline and the curriculum but can have only an advisory role in the recruitment and dismissal of staff. The council has the flexibility to allow governors to retain certain decisions that involve spending, which may be considered on a case by case basis and set out in writing to the school’s head teacher and members of the governing body.

### **4 Summary**

4.1 This appendix is solely concerned to set out the powers available for use by the director of children’s services in the governance and management of schools that meet prescribed criteria.

4.2 It should be read in conjunction with West Northamptonshire Council’s strategy relating to ‘intervention’ and procedures to be used in any instance where a school meets a criterion or criteria as set out in government acts or regulations and the school’s governors and management cannot or are unable to comply with officers’ reasonable requirements.