

## LONDON BOROUGH OF BRENT

**Executive - 23 May 2005**

Report from the Director of Education, Arts and Libraries

For action/information

Wards affected:

**Report Title: The Avenue School's Request to Delay the Voluntary Aided Status Implementation Date from 1 April 2005 to 1 September 2005**

Forward Plan Ref: N/A

**\*Reason for urgency – The request to delay the implementation date for VA status by the Trustees of The Avenue School was totally unexpected by the Authority. The full details of the request were not received until 12 April 2005. The considerable uncertainty in the school should not be allowed to continue.**

### 1.0 Summary

- 1.1 Having spent two years pursuing the LEA to grant The Avenue School VA status from 1 April 2005, on 23 March 2005 the Trustees of the school informed the LEA by phone that they no longer wished The Avenue to become a VA school. On 12 April 2005 the Trustees clarified their request in writing by stating that the implementation date for VA status should be delayed for one term retrospectively. This way the Trustees feel they will have more time to decide the best course of action for the future of the school. However, it is not clear that the school can legally retrospectively change the implementation date of 1 April 2005.

## **2.0 Recommendations**

- 2.1 That the Executive consider the reasons why the Trustees of The Avenue School wish to retrospectively delay the implementation date for VA status and consider the response of Brent LEA to that request.
- 2.2 That the Executive convey to the School Organisation Committee the view of the LEA that EITHER the LEA supports the request that there be a delay in implementation of VA status from 1 April 2005 OR the LEA does not support the request that there be a delay in implementation of VA status from 1 April 2005 and asserts that all parties should implement the current VA status of the school.

## **3.0 Detail**

- 3.1 The Avenue School was an independent, fee-paying, Muslim primary school located in Kilburn. In May 2004 The Trustees sought officially to establish a voluntary aided primary school for 5 – 11 year old boys and girls. After wide consultation the School Organisation Committee (SOC) made the decision on 21 December 2004 to grant The Avenue School VA status commencing 1 April 2005.
- 3.2 On 23 March the LEA received a phone call from the Headteacher of The Avenue School. The Headteacher explained that an Emergency Governing Body meeting was held the night before to discuss the future of the school and the Governors came to the decision that they should no longer pursue the voluntary aided status.
- 3.3 She explained that having received detail of their budget share from the LEA for the financial year 2005 / 2006 it soon became obvious that they could not work with that budget and that some teachers would have to be made redundant. They appealed to the parents for additional contributions towards future costs but received a poor response. The teachers contacted their unions and the threat of strike action soon followed. The school then felt that the only solution to the problem was to halt the VA process before 1 April 2005.
- 3.4 The LEA explained to the Headteacher that it was not as simple as that to halt the process and a proper procedure has to be followed. This procedure involves the school issuing a statutory proposal outlining the reasons for halting the process and giving a reasonable time for the community to respond to the new proposal. After consultation the case has then to go before the SOC who will consider all comments and objections and then make the final decision. It was explained that this process could take up to 6 weeks and 1 April was at that time only a week away with the Easter Break in between. The Headteacher was advised that the VA process could not be halted at this late stage and that one option would be for the school to become VA on 1 April for at least one term and then seek to revert back to an independent school during the summer. The LEA would then seek legal advice from the Department for Education and Skills (DfES).

3.5 The advice from the DfES was that there were two options open to the school. **The first method** is as stated above, ie the Governors would have to publish a new proposal seeking to be relieved of the duty to implement the proposal to establish the school before the implementation date. SOC would have to give approval. However, the timeframe did not allow for this decision to be made before 1 April 2005 and it was too short notice for SOC to meet before 1 April. Therefore with this method the proposal would have to be implemented after 1 April 2005. The Governors would then have to issue a statutory proposal to close the VA school and go through the process of consultation, formal publication, allow representation and go to the SOC.

3.6 **The second method advised by the DfES** - was for the school to seek a modification to the implementation date of the proposal from SOC as soon as possible after the 1 April implementation date had passed. (The DfES originally stated that a similar case happened in Birmingham some years ago, but when pushed for details none could be found). If the governors did this it would give them time to bring forward a proposal to be relieved of the duty to implement - without the VA school having been formally established. This method grants the Governors more time to establish what they want to do. They will still have to issue a statutory notice and SOC will have the final decision after consultation. After considering this advice the consultant for The Avenue issued a statement on behalf of the Trustees stating that they wished to modify the implementation date from 1 April 2005 to 1 September 2005.

[However, Brent's legal advice is that this approach may not meet the requirements of DfES regulations.]

3.7 The LEA has been contacted by several parents of the school asking for advice. Parents are understandably concerned about the request for future fees when they were under the impression that fees were a thing of the past

3.8 A Special SOC meeting was held on Wednesday 13 April 2005. SOC members listened to the representatives of the school, the parents and the LEA. SOC members however felt that they had not had enough time or information before the meeting to be able to take a vote to delay the implementation date or not. SOC members requested that they be granted more time and more details so that they could vote at the next SOC meeting. Another meeting has been arranged for Friday 27 May.

3.9 A temporary governing body had already been set up by the trustees, in discussion with the LEA. It met first on March 9th 2005. However, no Instrument of Government has been received. This is the statutory document setting out the membership of the governing body. There is currently some confusion as to whether the temporary governing body regards itself as still being in existence, and the LEA is seeking to clarify this. This temporary governing body has virtually all the functions and powers of a full governing body. Under normal circumstances, the temporary governing body transforms to the permanent governing body during the first term of the new school. As far

as we know, this process has not been set in motion by either the temporary governors or the school.

#### **4.0 Financial Implications**

- 4.1 The Council have allocated £596,280 in 2005/2006 to the school through the funding formula. If the school ceases to be VA this funding will no longer be required (or a proportion of it will not be if VA status is only for a part year). The funding would have to be retained within the Individual Schools Budget and might be available to be allocated across the remaining maintained schools. However, the DfES or OPDM may take the view that the Council should not have received the extra RSG for the Avenue pupils and in that case the allocation would be required to make a repayment to them.
- 4.2 The allocation of funding to the school would be less than £596,280 because this figure assumed that the school nursery class would be part of the maintained school whereas the governors want it to remain fee paying. This reduces the Budget Share to £523,341. However, the school would also be entitled to a Standards Fund allocation of around £35,000 and schools standard grant of £21,000 – making a total of £579,341.

#### **5.0 Legal Implications**

- 5.1 The Avenue School, through its “promoters” (that is the Trustees), sought voluntary aided status. It served notice under the School Standards and Framework Act 1998 section 28(2) on 28<sup>th</sup> May 2004. There were discussions with the Department of Education and Skills as to whether sufficient funding would be obtained to support the new VA school or whether there would be a financial penalty on Brent Local Education Authority. Those discussions were concluded satisfactorily from the point of view of the LEA and the School. The Executive on 13<sup>th</sup> December 2004 agreed to approve the Avenue School becoming VA on 1<sup>st</sup> April 2005. The School Organisation Committee on 20<sup>th</sup> December 2004 made the decision that the Avenue School become VA on 1<sup>st</sup> April 2005.
- 5.2 Under the 1998 Act Schedule 6 paragraph 5 once approval is given by the SOC to proposals there is then there is a duty on the promoters and the LEA to implement them . However, the legal advisers for the promoters are arguing that there are two circumstances whereby the duty to implement can be withdrawn.
- 5.3 Under Schedule 6 para 5 (2) there is a provision whereby the promoters can modify the proposals after consulting with relevant parties. The Education (School Organisation Proposals) (England) Regulations 1999 regulation 11 sets out who must be consulted when paragraph 5(2) is being relied upon. They refer to the need to consult with the LEA. It seems that a modification of a proposal can include a delay of implementation. The advice to the SOC of 13<sup>th</sup> April 2005 of the Senior Education Lawyer of Brent was that it is not clear whether para 5(2) could be invoked after 1<sup>st</sup> April, that is, the date of

implementation. However, in the event that it can, then clearly the LEA would need to have proper time to respond to the consultation request as to whether the LEA would agree to a delay in implementation. Further, although it is not a strict requirement of the 1999 regulations, as a matter of public law and good administration, it was the view of the Senior Education Lawyer that the parents of children at the school should be consulted. That consultation exercise is now in process.

- 5.4 The lawyers on behalf of the Trustees have also referred to another route provided by Schedule 6 paragraphs 5(3) and (4) whereby there can be a discharge of the duty to implement if the SOC agree that implementation would be unreasonably difficult or that circumstances have so altered since approval was given that implementation would now be inappropriate. However, as they accept, this route would require a statutory notice (which they have not served) and full consultation. Although they have referred to this route the promoters and their legal advisers appear to be relying solely on the para 5(2) route referred to above.
- 5.5 There has also been some discussion by the promoters that one possibility is that they accept that the school became VA on 1<sup>st</sup> April 2005 but that it may apply to revert to becoming independent as from 1<sup>st</sup> September 2005. This would require the disestablishment of a maintained school. This would need the full statutory procedure involving wide consultation and the guidance speaks of the process taking up to two years.
- 5.6 This is an unusual, quite possibly an unprecedented situation. The intentions of the Trustees have not always been clear. There is clearly considerable disagreement in the school community. The present position is that the Executive is being requested to agree whether or not the LEA should agree to a delay in implementation of VA status on 1<sup>st</sup> April 2005 and to convey that view to the SOC.
- 5.7 This matter has had to be brought to the Executive as a matter of urgency and outside the usual Forward Plan procedure. Clearly none of the officers of the LEA were aware of this request for a delay in implementation until just a few days before 1<sup>st</sup> April. The proper status and running of the school needs to be resolved as a matter of urgency. Given this urgency and the fact that the consultation exercise is presently in process the recommendation at 2.2 has, at this stage had to be put in the alternative. However, it is anticipated that the LEA will put a clear recommendation to the LEA by the time of the Executive.

## **6.0 Diversity Implications**

- 6.1 The DfES is actively encouraging LEAs to grant more faith schools voluntary aided status.
- 6.2 The Avenue is a mixed gender Muslim school.

- 6.3 Islamia Primary School became a voluntary aided school in April 1999. The Avenue School will provide a wider choice of non fee-paying schools for Muslim pupils in Brent.
- 6.4 In line with data analysis conducted on all Brent schools, attainments by boys and girls in different ethnic groups will be monitored. Furthermore, ethnic and gender monitoring of all school teaching and non-teaching staff will take place annually. Extensions to this, to bring the information gathered in line with Brent's Corporate Equalities Policy, will occur subject to changes in the law and exemptions granted to faith based organisations.

### **7.0 Staffing/Accommodation Implications (if appropriate)**

- 7.1 In a maintained voluntary aided school, such as the proposed new Muslim primary school, it is the Governing Body of the school that is the employer of all staff with full rights over their hiring, conduct, discipline and dismissal in accordance with employment law, although staff costs are funded by the authority through the school's delegated budget.
- 7.2 In February 2005 the Trustees of The Avenue School did issue redundancy notices to members of teaching staff in order to balance their books for the 2005/2006 financial year in preparation for VA status. Once the unions were involved and disputes began the Trustees reconsidered their action and appealed to the parents for additional funding in order to keep the teachers in employment. However, the response from parents was very poor.

### **Background Papers**

#### **Appendix 1 - School Organisation Committee minutes – 13 April 2005**

### **Contact Officers**

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