

Birmingham City Council

Report to Cabinet Member for Education Skills and Culture

Date: 20 March 2020



Subject: PROPOSAL TO MODIFY THE IMPLEMENTATION DATE OF THE PROPOSAL TO REMOVE BOARDING PROVISION AT HUNTERS HILL COLLEGE

Report of: Dr Tim O'Neill
Director for Education & Skills

Relevant Cabinet Member: Cllr Jayne Francis - Education Skills and Culture

Relevant O &S Chair(s): Cllr Kath Scott - Education & Children's Social Care

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 To seek the determination to modify the implementation date of a statutory proposal:

- To modify the implementation date of the proposal to remove the boarding provision at Hunters Hill College from 1st April to 1st July 2020.

2 Recommendations

That the Cabinet Member for Education, Skills and Culture;

- 2.1 Approve, having taken into account the statutory guidance, the modification to the implementation date of the statutory proposal to remove the boarding provision at Hunters Hill College from 1st April 2020 to 1st July 2020.

3 Background

- 3.1 Hunters Hill College is a Birmingham Community Special School situated outside the City boundary at Spirehouse Lane, Bromsgrove, Worcestershire. The school can offer up to 135 places for boys with an Education Health and Care Plan (EHCP) for Social, Emotional and Mental Health needs, (SEMH). Of the 135 places available, 32 can accommodate boarding pupils who have an EHCP for a boarding school place.
- 3.2 Due to a number of issues at the College (which include safeguarding concerns, Ofsted rating of 'inadequate' and the condition of the buildings), Birmingham City Council in full collaboration with the Governing Body and the IEB (appointed 21st February 2020) published proposals to remove the boarding provision with effect from 1st April 2020.
- 3.3 In compliance with DfE guidance the proposal was fully consulted upon in line with the requirements set out in statutory guidance "Making significant changes ('prescribed alterations') to maintained schools" (October 2018) published by the Department for Education (DfE).
- 3.4 The proposal to remove boarding provision at Hunters Hill College was approved on 5th February 2020 by the Cabinet Member for Education, Skills and Culture. The Local Authority, in exercise of the powers conferred on it, determined to implement the proposals with an implementation date of 1st April 2020. A copy of the Cabinet Member report to remove the boarding provision can be found in **Appendix 1** of this report.
- 3.5 The IEB which was appointed on 21st February 2020 has now requested a modification to the implementation date of the proposal from the 1st April 2020 to 1st July 2020 to allow all the statutory staff consultations to fully take place in compliance with the Local Authority's schools' redundancy policy. Birmingham City Council fully supports this request.
- 3.6 The school is working in accordance with the relevant redundancy procedures. Under basic Advisory Conciliation and Arbitration Service (ACAS) guidance by law the Local Authority must consult with affected staff and those not at risk of redundancy. This requires meetings with staff and unions and conducting meaningful consultation. The consultation process will involve a business case which will outline:

- Why the redundancies need to take place
- Which jobs are at risk
- Number of people that may be involved
- Selection criteria and how the redundancies will be carried out
- Calculation of redundancy pay
- Looking into details of any agency workers currently being employed by the school, which may mitigate any redundancies.
- Failing to follow this process could leave the school open to potential unfair dismissal claims

A timeline for this process can be found in **Appendix 2**.

- 3.7 The Education and Inspections Act 2006 and Regulation 7 of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the Prescribed Alterations Regulations) state that the Local Authority must have regard to any guidance issued by the Secretary of State when making a decision on such proposals. The relevant statutory guidance is attached (**Appendix 3**). The Education and Inspections Act 2006, and Paragraph 5 of Schedule 3 to the Prescribed Alterations Regulations allows for the proposals to be approved, approved with modification, approved subject to meeting a prescribed condition, or rejected.
- 3.8 If the proposals are approved, the implementation date to remove the boarding provision at the school will be modified from 1st April to 1st July 2020 to allow all the statutory staff consultations to fully take place.

4 Options considered and Recommended Proposal

- 4.1 The option of doing nothing would mean that the implementation date for the removal of the boarding provision at Hunters Hill College will remain as 1st April 2020. This will not allow sufficient time for the statutory staff consultations to take place and could place the school and the Local Authority open to potential unfair dismissal claims.
- 4.2 The option to modify the implementation date would allow all staff consultations to be carried out within statutory timescales giving staff time to review and respond and avoid the proposal to remove the boarding provision not “failing to be implemented” (School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the “Prescribed Alterations Regulations”),

5 Consultation

5.1 Internal & External

The original determined proposal to remove the boarding provision with an implementation of 1st April 2020 was fully consulted upon in line with the requirements set out in the statutory guidance “Making significant changes (‘prescribed alterations’) to maintained schools” (October 2018) published by the Department for Education (DfE). A copy of the approved Cabinet Member report to remove the boarding provision with an implementation date of the 1st April 2020 can be found in **Appendix 1**

- 5.2 If approved, the details of this modification will be published on the BeHeard website where the original proposal to remove the boarding provision was published.

6 Risk Management

Should the proposals for the modification to the proposal for the closure of the boarding provision not be approved there is a high risk of the statutory staff consultations not being completed within the statutory timescales which could lead to the school being open to potential unfair dismissal claims.

7. Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The proposal to modify the implementation date on the proposal to remove the boarding provision at Hunters Hill College is necessary in order for the statutory staff consultations to take place in compliance with the relevant redundancy policy.

7.2 Legal Implications

- 7.2.1 This report exercises powers contained within sections 19 and 21 of the Education and Inspections Act 2006 and Schedule 2 and Schedule 3 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the "Prescribed Alterations Regulations"), whereby the Local Authority of a Community Special School can seek modifications (e.g. to the implementation date) from the decision maker before the approved implementation date. Under the Prescribed Alterations Regulations, the Local Authority is the decision maker for this statutory proposal.

7.3 Financial Implications

- 7.3.1 One of the financial implications in the original report to remove the boarding provision was saving on staffing costs. The modification to the implementation date from 1st April to 1st July 2020 will mean that the school continues to be funded for the residential provision up until 1st July 2020.
- 7.3.2 This will mean the school will receive additional part year funding of £275,000 for the residential provision, though will also incur additional staffing costs of £182,500 to cover the period 1st April to 1st July 2020. In overall terms the impact of this change on the deficit of the school, taking into account other non-staff costs, should be neutral. However, the funding of £275,000, which would have otherwise been released for alternative provision, will not be available in 2020/21.

7.4 Procurement Implications (if required)

Not applicable

7.5 Human Resources Implications (if required)

- 7.5.1 Pre meetings and discussions took place during the course of February 2020 with a caveat that implementation was subject to approvals being granted. The school

is working in accordance with the relevant redundancy procedures. Under ACAS guidance, by law the Local Authority must consult with affected staff and those not at risk of redundancy in terms of the proposals and the impact on them in an employment context and the options available including mitigation of compulsory redundancy through a voluntary redundancy trawl. An overview of the end to end process along with a timeline can be found in **Appendix 2** of this report.

The modification to the implementation date from 1st April 2020 to 1st July 2020 is necessary to ensure all staff employed in the residential unit and trade unions and teaching associations are consulted in line with the relevant policy and procedure.

7.6 Public Sector Equality Duty

- 7.6.1 An updated Equality Assessment initial screening was carried out in October 2018 (EQUA221) against the School Organisation Change process, which identified that a full impact assessment was not required. No events have occurred since then which would require the preparation of a fresh screening in respect of these recommendations.

8 Appendices

1. Cabinet Member Decision -Remove the Boarding Provision at Hunters Hill College.
2. Timeline for HR Consultation
2. Guidance for Decision Makers

9. Background Documents

- Education and Inspections Act 2006
- Making significant changes ('prescribed alterations') to maintained schools: "Statutory guidance for proposers and decision makers" published by the Department for Education (DfE) October 2018.