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Signed By:
Approval Committee: Governing Body



GILLINGHAM SCHOOL

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INSTRUMENT OF GOVERNANCE

Summary

About this departmental advice

This is advice from the Department for Education. This advice is non-statutory, and has been produced to help recipients understand their obligations and duties in relation to the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 (“the regulations”) as amended by the School Governance (Roles, Procedures and Allowances) (England) (Amendment) Regulations 2013.

The regulations revoke the Education (School Government) (Terms of Reference) (England) Regulations 2000, the Education (Governors’ Allowances) (England) Regulations 2003, and the School Governance (Procedures) (England) Regulations 2003.

This departmental advice replaces the Statutory Guidance on the School Governance (Procedures) (England) Regulations 2003, and the non-statutory guidance: Paying Allowances to School Governors 2003.

Expiry or review date

This advice will be kept under review and updated as necessary.

Who is this advice for?

The regulations and this advice apply to the governing bodies and school leaders of maintained schools and of federations of maintained schools and the management committees of pupil referral units in England.

The regulations do not apply to academies. However, many of the principles of good governance set out in this advice are reflected in the Governors’ Handbook which also applies to the boards of academies. 4

Key points

- The 'board of governors' should operate at a strategic level, leaving the head teacher and senior school leaders responsible and accountable to it for the operational day-to-day running of the school.
 - The board should avoid its time being consumed with issues of secondary importance, and focus strongly on three core functions: • setting the vision and strategic direction of school;
 - holding the headteacher to account for its educational performance; and
 - ensuring financial resources are well spent.
- Governors need a robust process and framework for setting priorities, creating accountability and monitoring progress.
- It is good practice for the board to review its own performance regularly and publish an annual statement to explain how it has fulfilled its responsibilities.
- Boards should develop and maintain a scheme of delegation to define explicitly at which level each of its functions will be exercised. It is crucial that the board as a whole retains oversight of the core functions.
- The chair has a vital role in keeping the board focused on its core functions, and in ensuring it operates effectively, including through the active contribution of all its members.
- High quality professional clerking is crucial to the effective functioning of the board.
- Members of the board and its committees must be present in a meeting to vote, but they may be present 'virtually', for example by telephone or video conference.

Roles, procedures and allowances

Role of the governing body and headteacher (Regulation 6)

1. The governing body provides non-executive leadership. Its role is to operate as a board akin to the board of trustees of a charity, or the board of directors of a company. In all matters, the 'board of governors' should operate at a strategic level, leaving the headteacher and senior school leaders responsible and accountable to it for the operational day-to-day running of the school. To emphasise this point, this advice will refer to the governing body as 'the board'.
2. A clear understanding of, and distinction between, the role of the board and the headteacher is crucial to effective governance. The regulations make clear that the headteacher is responsible for the educational performance of the school and for the internal organisation, management and control of the school – which includes the performance management of staff. The board's role is to hold the headteacher to account for exercising their professional judgement in these matters and for the performance of all of their other duties. Having advised the board, the headteacher must comply with any reasonable direction given by it.
 3. The regulations define three core functions consistent with the strategic role of the board. These are to:
 - set the vision and strategic direction of school;
 - hold the headteacher to account for its educational performance; and
 - ensure financial resources are well spent.
4. The board should focus strongly on these core functions and avoid its time being consumed with issues of secondary importance. While a range of other issues may at times require the board's attention, this should not be at the expense of its ability to oversee and drive up the overall educational and financial performance of the school.
5. Governors need a robust process and framework for setting priorities, creating accountability and monitoring progress. This may be facilitated by a school development plan or equivalent document that sets out strategic targets and key performance indicators (KPIs). The focus should be on significant strategic challenges and opportunities for school improvement in line with the board's core functions. Avoiding unnecessary detail and peripheral issues will prevent the board's attention being spread too thinly

and help create a practical and powerful tool for facilitating the board's core business. Additional detail, such as those things needed to deliver the headline KPIs, may be recorded in a separate more detailed plan maintained by the headteacher.

6. To create robust accountability, governors need to ask challenging questions on the basis of robust objective data. As explained in the Governors' Handbook, governors should not just rely on information provided by the headteacher. Rather, they should scrutinise objective national data at least once a year; use visits to verify what they are told, and ensure the headteacher's termly report provides appropriate and sufficiently detailed information. The Governors' Handbook provides prompts on the range of topics on which governors may need to ask questions. The National Governors' Association has worked with its members to develop a detailed list of specific possible questions.
7. In early 2014, the National College for Teaching and Leadership will launch training workshops for governors on how to understand and use RAISE online school performance data; on understanding financial benchmarking data and driving up financial efficiency in schools; and on performance related pay.
8. Although governors are volunteers, they have a vital and demanding role that requires skill and professionalism. It is only right that the board of governors is accountable to Ofsted for its effectiveness. The School Inspection Handbook sets out how inspectors judge the effectiveness of a school's governance based on criteria that directly reflect the board's three core functions.
9. It is good practice for the board of governors to review its own performance regularly in light of its core functions, the inspection criteria and other helpful frameworks such as the '20 Questions' published by the All Parliamentary Group on Education Governance and Leadership.
 10. It is also good practice for the board to publish an annual governance statement (as academy trusts are required to do through the Accounts Direction) to explain how it has fulfilled its responsibilities – particularly in relation to its core functions, including:
 - the governance arrangements that are in place, including the remit of any committees;
 - the attendance record of individual governors at board and committee meetings; and
 - an assessment of the effectiveness and impact of the board and any committees with details of any particular challenges that have arisen.

Delegation and committees (Regulation 18, Parts 3 and 5)

11. The regulations allow the board, should it so wish, to delegate most of its functions to committees or individuals. However it chooses to exercise its functions, the board always acts as a 'body corporate' and remains accountable at the board level in law and to Ofsted for the performance of all its duties and functions. This is why committees and individuals must report back to the full board on any activities they have carried out on its behalf.
12. Where the board delegates any of its functions it should ensure that the committee comprises, or the individual has, the necessary skills to carry out those functions, particularly where financial information or performance data are being considered.
13. Boards should develop and maintain a scheme of delegation to define explicitly at which level each of its functions will be exercised – at board level, by a committee, or by a named individual. This will help everyone to understand the division of responsibilities. A template, such as the one produced by the National Governors' Association, may be a helpful starting point. Each individual or committee to which functions have been delegated should have a terms of reference that records their remit and decision making powers. These should be reviewed at least annually.
14. By their nature, the core functions set out in the regulations should remain the main focus of the board's interests. While detailed work may be undertaken by committees made up of people with strong skills in, for example, finance or performance data, it is crucial that the board as a whole retains oversight of the core functions. Any important decisions relating to the core functions should be made by the full board. This means that every governor needs to have at least a basic understanding of school performance and financial data to be able to engage in the debate.
15. The Governors' Handbook explains where specific functions cannot be delegated. A number of restrictions on the delegation of functions to individuals arise from regulation 19. While the regulations no longer prohibit the delegation to an individual of the board's power to determine whether a pupil should be admitted to the school, this restriction remains under the School Admissions Code with which boards of governors in schools that are their own admissions authority must comply.

Role of the chair / vice-chair (Regulations 7, 8 and 9)

16. The chair, with support from the vice chair, is responsible for ensuring the effective functioning of the board. It is the chair's role to give the board clear leadership and direction, keeping it focused on its core functions. Chairs should encourage governors to work as an effective team, building their skills, knowledge and experience. They need to ensure that all governors are actively contributing relevant skills and experience, participating constructively in meetings, and playing their part in the work of any committees. It is their role to make sure every governor knows what is expected of them and receives appropriate induction and training. It is for the chair to have honest conversations, as necessary, if governors are not pulling their weight.
17. The chair must not exercise as an individual any of the functions of the board except where this has been sanctioned by the board, or in the specific circumstances permitted in the regulations. The chair is permitted to act in cases of urgency where a delay in exercising the function would be likely to be seriously detrimental to the interests of the school, a pupil, parent or member of staff.
18. The regulations set out the procedure for appointing a chair and vice-chair from among the existing members of the board. The focus should be on appointing someone with the skills for the role, not just the willingness to serve. It is possible to appoint more than one person to share the role of chair, or similarly the role of vice chair, if the board believes this is necessary and in the best interests of the school. The board would need to ensure that any role-sharing arrangement does not lead to a loss of clarity in its leadership.
19. Succession planning arrangements should be in place so that any change in the chair does not impede the board's effectiveness. Although the regulations do not place any restrictions on this, boards should consider carefully how many times they re-elect their chair to a new term of office. In some circumstances, a change of chair may be necessary for the board to remain invigorated and forward looking.
20. The board may decide that none of its existing members has the appropriate skills to serve as its chair. Nothing in the regulations prevents boards advertising for and recruiting a highly skilled chair from outside its current membership. The successful candidate would need to be appointed to a vacant position on the board prior to being elected as chair in accordance with the regulations.

21. The National College for Teaching and Leadership has developed a national programme of leadership development training for vice, existing and aspiring chairs.

Role of the clerk (Regulation 11)

22. High quality professional clerking is crucial to the effective functioning of the board. Clerking is not only about good organisation and administration, but also, and more importantly, about helping the board understand its role, functions and legal duties. This is crucial in helping the board exercise its functions expediently and confidently, so that it can stay focused on its core functions.
23. Boards should set demanding standards for the service they expect from their clerk and assure themselves that they are employing a clerk with suitable skills and training. Consequently, they should expect to pay an appropriate amount commensurate to the professional service they expect their clerk to deliver. A model job description has been developed by the National Governors' Association.
24. The National College for Teaching and Leadership will develop and launch a new licensed national training programme for clerks in 2014.

Procedures (Part 4)

25. Boards of governors are, in general, best placed to decide for themselves how they operate. These regulations therefore retain provisions on only the essential basics of good governance procedures – such as the procedures for decision making and the discipline of sending out the agenda and papers for board and committee meetings seven days in advance. Beyond this, the regulations give boards more freedom to decide how they work.
26. The regulations require that decisions of the board and its committees are made by a majority of the votes of the governors present and voting on the decision in question. Governors must declare pecuniary interests and the board should decide whether this represents a conflict such that the governor should withdraw from discussion and/or decision making.
27. Associate members cannot vote on board decisions, but may be permitted by the board to vote in decisions of any committees to which they are appointed.
28. The requirement to be present at the meeting means that proxy voting or voting in advance of a meeting is not permitted. It is important that governors are present to hear and engage in the debate before casting their vote.

29. However, the regulations now give boards the power to make arrangements for their members to be present at board and committee meetings 'virtually', for example by telephone or video conference, and therefore to participate in discussion and decision making remotely.

Governors' allowances (Part 6)

30. School governors provide a voluntary service, and cannot be paid for their role as a governor. But they can receive out of pocket expenses. This may include reasonable expenses to cover travel costs or child care costs incurred as a result of fulfilling their role as governor. Where the board has a delegated budget, whether to pay allowances and what allowances might reasonably be paid are matters for the board to decide. Where a board does not have a delegated budget, allowances and expenses may be paid by the local authority at a rate determined by them.
31. Payments can only be paid for expenditure necessarily incurred to enable the person to perform any duty as a governor. This does not include payments to cover loss of earnings for attending meetings. Travel expenses must be at a rate not exceeding the HM Revenue and Customs (HMRC) approved mileage rates which are changed annually and are on HMRC website. Other expenses should be paid on provision of a receipt and be limited to the amount shown on the receipt.

Further sources of information Associated resources (external links)

- [Ofsted School Inspection Handbook](#)
- [20 Questions for governing bodies to ask themselves](#)

Other departmental advice and guidance you may be interested in

- [The Governors' Handbook](#)

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