

16 February 2012

FAO: Heather Fearnley
PA to Headteacher
St Bartholomew's School
Andover Road
Newbury
Berkshire
RG14 6JP

Legal and Electoral Services

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Berkshire RG14 5LD
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Our Ref: SAS/sb/001498

Your Ref:

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Dear Sirs,

Re: Excluded Pupil Funding Agreement

I refer to your letter to our Mr Ian Pearson (Head of Education Service) dated 1st February 2012.

I am pleased to confirm that the above Agreement has now been signed on behalf of the Council and is dated 15th February 2012. I enclose one copy for your safe keeping.

Yours faithfully,



Shiraz Sheikh
Solicitor - Corporate Services Team

Enc

cc. Ian Pearson

BETWEEN

WEST BERKSHIRE COUNCIL

And

ST. BARTHOLOMEW'S SCHOOL

**AGREEMENT
IN RESPECT OF PUPIL
FUNDING FOR EXCLUDED
PUPILS IN ACADEMIES**

This Agreement is made this 15th day of February 2012

Between:

West Berkshire Council of Market Street, Newbury, RG14 5LD

"the Council"

and

St. Bartholomew's School a company limited by guarantee registered in England and Wales (company number 7721470) whose registered office is at Andover Road Newbury RG14 6JP

"the Academy"

Together "the Parties"

RECITALS

- A The creation of the Academy had the effect of removing the Academy from the delegated funding arrangements operating in West Berkshire for maintained schools. The Academy's funding arrangements are governed by the Funding Agreement between the Academy and the Secretary of State for Education.
- B As a result of these changes, the Parties wish to enter into this Agreement in respect of pupil funding in circumstances where a pupil of the Academy is excluded and/ or where a pupil excluded from a maintained school becomes a pupil of the Academy.
- C The Funding Agreement sanctions such Agreements and this Agreement is made in accordance with Clause 30 of the Funding Agreement.

1. DEFINITIONS AND INTERPRETATION

- 1.1 "Funding Agreement" means the agreement made between the Academy Trust and the Secretary of State for Education dated [insert date]
"Guidance" means the DfE document entitled 'Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units' 2008
- 1.2 In this Contract unless otherwise specified:
- 1.2.1 reference to a Party is reference to a Party to this Contract and includes the Party's permitted assignees and/or the respective successors in title to substantially the whole of its undertaking;
- 1.2.2 reference to a person includes any person, individual, company, firm, corporation, government, state or agency of a state, or any undertaking whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists;
- 1.2.3 reference to a statute or statutory instrument or any of its provisions is to be construed as a reference to that statute or statutory instrument or such provision as from time to time amended or re-enacted;

- 1.2.4 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 1.2.5 reference to "Clauses", "Paragraphs" or "Schedule(s)" is to, clauses or paragraphs of or schedules to this Contract; and
- 1.2.6 "includes" and "including" shall mean including without limitation.
- 1.2.7 The headings in this Contract are for information only and shall be ignored in construing it.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the date of the signing of the Funding Agreement and continue in force continuously with the Funding Agreement unless terminated otherwise in accordance with the terms of this Agreement.

3. TRANSFER OF FUNDING FOR EXCLUDED PUPILS

- 3.1 The Parties agree that the pupil funding for excluded pupils shall be transferred between them in accordance with the provisions of this Clause notwithstanding any provisions excluding Part 7 of the Guidance contained in the Funding Agreement.
- 3.2 In the case of a pupil on roll at a maintained school who is excluded and subsequently becomes a pupil on roll at the Academy, the Council shall provide the pupil funding in respect of that pupil to the Academy.
- 3.3 In the case of a pupil on roll at the Academy who is excluded and subsequently becomes a pupil on roll at a maintained school, the Academy shall provide the pupil funding in respect of that pupil to the Council.
- 3.4 The relevant date and the method of determining the funding shall be dealt with between the Parties in accordance with the process in Part 7 of the Guidance.
- 3.5 The Academy shall notify the Council as soon as a permanent exclusion takes place.
- 3.6 The Council shall pay the pupil funding for a pupil placed at the Academy within 30 days of the pupil being placed. In the case of a pupil excluded by the Academy the Council shall invoice the Academy for the pupil funding and the Academy shall pay the Council within 30 days of the receipt of the invoice.

4. DISPUTES

- 4.1 The Parties undertake to fulfil their part of this Agreement. In the event of any disagreement or dispute, this will be dealt with in the first instance by the Head teacher and the relevant Council officer.
- 4.2 If the disagreement or dispute cannot be resolved this way, it will be referred to the Chair of Governors/ Board of the Academy Trust and the Director of Children and Young People's Services who shall meet to try and resolve the issue.
- 4.3 If the meeting referred to in Clause 4.2 does not resolve the dispute, then the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure

or any other model mediation procedure as agreed by the Parties. To initiate mediation, either Party may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute. The mediation shall commence within twenty (20) working days of the Mediation Notice being served. The Parties will cooperate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

4.4 No Party may commence court proceedings/arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

4.5 Nothing in this Dispute Resolution Procedure shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms.

5. TERMINATION

5.1 This Agreement shall continue in force until

5.1.1 the Funding Agreement terminates; or

5.1.2 There is a national change in the way in which pupil money for excluded pupils is allocated such as would render this Agreement no longer fit for purpose; or

5.1.3 either Party commits an irremedial breach of this Agreement; or

5.1.4 such time as the Parties shall otherwise determine and agree.

6. VARIATION

6.1 The Parties may by agreement vary the terms of this Agreement. Any such variation shall take effect only when recorded in writing and signed by both Parties. Variations shall be appended to this Agreement once signed.

7. WAIVER

7.1 Failure of any Party to exercise any contractual right or remedy shall not constitute a waiver of it. No waiver shall be effective unless it is communicated in writing to the other Party. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

8. SUB CONTRACTING AND ASSIGNMENT

8.1 Neither Party may subcontract or assign their obligations under this Agreement without the prior written consent of the other Party.

9. SEVERABILITY

9.1 If any provision of this Agreement is or becomes illegal or invalid, it shall not affect the legality and validity of the other provisions. The Parties shall in good faith amend and, if necessary, novate this Agreement to reflect as nearly as possible the spirit and intention

behind the illegal or invalid provision to the extent that such spirit and intention is consistent with the laws of the jurisdiction and so that the amended clause complies with the laws of the jurisdiction.

10. EXCLUSION OF THIRD PARTY RIGHTS

10.1 No third Party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

11. JURISDICTION

11.1 This Agreement shall be governed by and construed in all respects in accordance with English law. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

SIGNED ON BEHALF OF

WEST BERKSHIRE COUNCIL

Authorised Officer



SIGNED ON BEHALF OF

THE ACADEMY TRUST



Authorised Signatory