

EDUCATION ACT 2002

SCHOOL ADMISSION: CODE OF PRACTICE

The Education Act 2002 will bring about significant changes to the way school admission arrangements will be required to be managed.

A revised School Admission Code of Practice has been laid before Parliament and is expected to come into force on 20 January 2003. This will apply to arrangements that lead to primary and secondary school intakes from September 2004 onwards. **This Code replaces the earlier version of the Code which has been in place from April 1999, and all other guidance on school admissions.** The Act allows the Secretary of State to also make provision by way of a Code of Practice for other admission functions. A Code has been issued to cover Admission Appeals.

In relatively brief form the revisions to the existing arrangements are set out below. They are followed by extracts from the draft Code of Practice which hopefully set out the requirements in further detail. The Code runs to 66 pages and can be accessed from the DfES web site at www.teachernet.gov.uk The 'School Admission Appeals Code of Practice' can also be accessed from the same web site.

1. The Education Act 2002 repeals Section 91 of the School Standards and Framework Act 1998, which provides for the right of the governing body of a church voluntary aided school and its maintaining LEA to enter into a statutory agreement which would allow the governing body to limit the number of children it admits who do not comply with its faith requirements. Schools will, therefore, in future not be able to keep places empty if there are applicants for them.
2. The Act requires each LEA to establish an Admission Forum as a matter of Statute. Each Forum will include voluntary aided school and Diocesan representatives and its role will be to be a vehicle for the various parties involved in pupil admission to discuss and agree admission issues. The governing body of a voluntary aided school will be required to have regard to any advice given by the Forum for its area.
3. Each LEA is required to draw up a scheme for the co-ordination of admission arrangements in its area. The LEA is required to define the 'relevant area' which might also involve neighbouring LEA areas. Co-ordinated arrangements are required to be in place for September 2005 but LEAs are encouraged to have them in place for secondary schools for September 2004. Regulations are to be introduced requiring full co-operation not only within LEAs but between LEAs before offers of secondary school places are made.
4. A duty is placed on each LEA to facilitate agreement on a scheme for co-ordinated admission arrangements. In the event that it is not able to achieve this, the Secretary of State will have the power to impose a scheme.

5. The concept of a **standard number** as a measure of a school's capacity is removed. In its place is introduced a '**net capacity**' figure which each LEA is required to assess. Governors when setting the published admission number must have regard to this figure and it is, therefore, important that the governors have given careful thought to and, at best, agreed the figure. New provisions are made for the LEA and parents to object to any variation from this figure. If the governors wish to set an admission figure lower than the net capacity figure they must do so through a 'public notice' which must advise parents of their right to object to an Adjudicator.
6. Consultation with other admission authorities within the relevant area should be completed by 1 March. After consultation the governors must determine their admission arrangements by 15 April and notify all those consulted what they have determined. The Regulations require the Governing Bodies of Voluntary Aided Schools to consult the Governing Bodies of Community and Voluntary Controlled Schools for which the LEA is the admission authority.
7. Adjudicators may consider objections from admission authorities on any aspect of another school's admission arrangements, e.g. the determination by a governing body of an admission number which is lower than the one indicated by the net capacity formula. The right to object is extended to community and voluntary controlled schools but they may not object to the admission arrangements for other community and voluntary controlled schools. This right will only extend to the admission arrangements for voluntary aided and foundation schools.
8. LEAs are recommended to refer objections to the Adjudicator on behalf of parents where necessary. They are also warned that if admission arrangements include practices that are stated in the Code to be bad practice an objection should be made to the Adjudicator or otherwise the LEA could be held accountable by the Local Government Ombudsman.
9. A governing body may delegate its admission functions to a committee. If it chooses to do so, such a committee should include the headteacher but a headteacher should not be delegated the authority to refuse admission on her/his own. The Code is silent on the matter of whether a headteacher can admit.
10. The right of appeal against a refusal to admit has been extended to pupils requesting a place in the sixth form of the school they are attending.
11. Previous DfES guidance allowed Church schools to interview parents and prospective pupils for the purpose of assessing religious or denominational commitment where this was provided for in their admission arrangements and oversubscription criteria. The Diocese has consistently advised against such practice. Such arrangements will no longer be allowed with effect from the September 2005 admission arrangements.

THE CODE OF PRACTICE

Section 84 of the School Standards and Framework Act 1998 requires the Secretary of State to issue a Code of Practice containing such practical guidance as he thinks appropriate, in respect of the discharge of admission functions by local education authorities, the governing bodies of maintained schools, admission appeal panels and the Schools Adjudicator. The Code may include guidelines setting out aims, objectives and other matters; and each of the bodies just mentioned must have regard to its provisions. The following set out guidelines on key aims and objectives.

- a. School admission arrangements should work for the benefit of all parents and children in an area. The arrangements should be as simple as possible for parents to use, and help them to take the best decisions about the preferred school for their children.
- b. In drawing up admission arrangements, admission authorities should aim to ensure that:
 - The arrangements enable parents' preferences for the schools of their choice to be met to the maximum extent possible;
 - Admission criteria are clear, fair and objective, for the benefit of all children, including those with special educational needs, disabilities or in public care;
 - Local admission arrangements contribute to improving standards for all pupils;
 - Local admission authorities consult each other and co-ordinate their arrangements, including over the rapid re-integration wherever sensible of children who have been excluded from other schools;
 - Parents have easy access to helpful admissions information;
 - Local admission arrangements achieve full compliance with all relevant legislation and guidance - including on infant class sizes and on equal opportunities - and take full account of the guidance in the Code of Practice

What admission arrangements must include

LEAs are required to consult on the admission arrangements for their schools each year. The governing bodies of voluntary aided schools, as their own admission authorities, are also required to consult on their admission arrangements every year; however, if they meet prescribed criteria they only have to consult every alternate year.

The criteria are as follows:

- The **LEA** must have notified the Secretary of State that all admission authorities in the relevant area have consulted each other in the qualifying year (i.e. in 2004/05 or any subsequent year);

- The admission authority must not be proposing to change the admission arrangements which it had determined in the preceding year; and no objection must have been made to the Schools Adjudicator about the admission arrangements proposed by the governing body in any of the preceding five years.
- Consultation should give full details of admission arrangements and these should be consistent with any co-ordinated scheme that will operate for the area for the year in question. It is important to note that the area is not necessarily the LEA area but might include elements of neighbouring LEAs. The LEA will determine the 'relevant area'.

Consultation information should include:

- admission numbers for any years to which it is intended to admit pupils, including Year 12;
- application procedures and timetables, as agreed locally, including where possible the opportunity to make applications online;
- the oversubscription criteria to be used, and the order in which they will be applied, to allocate places if the school receives more applications than there are places available;
- information about any tests for aptitude or ability, if allowed, or details of any additional information required, such as evidence of religious commitment, and of the objective criteria that will be used to judge these aspects;
- any separate entry requirements and oversubscription criteria for Year 12 or nursery places, if applicable;
- information about whether a waiting list will be maintained and for how long, plus confirmation that this will be maintained in the order of the oversubscription criteria;
- information about how late applications can be made and will be handled.

Informing parents: publication of admission arrangements

The Code emphasises that parents need to be able to make informed decisions when applying for a school place for their child and that they should have all the relevant information to hand before they apply. It goes on to say that above all, they need to be able to estimate their realistic chance of being offered a place for their child at any particular school.

LEAs and governing bodies must publish information about their admission arrangements in accordance with the Education (School Information) Regulations

2002. Each LEA is under a specific duty to publish information about all the maintained mainstream schools in its area.

The Code states that published information should:

- offer clear guidance in plain English and in commonly used community languages to steer parents through the procedure;
- set out clearly the **timescale** for each stage of the admissions process, particularly the deadline for the receipt of applications, including applications made online;
- explain the admission arrangements of all maintained schools, including how co-ordinated schemes will work in the **LEA's** area and neighbouring areas;
- **give information on the number of applications for places at each school the previous year, the number which were successful and the criteria under which they were accepted (with an indication of whether this reflects the pattern of recent years);**
- explain what is expected from parents, and what the parent can expect from the school and the **LEA**, at each stage;
- make clear how parents can express their preferences for a school, when parents will know whether or not their applications have been successful, and how to take up their statutory right of appeal;
- include explanations to help parents assess realistically their likelihood of getting a place at any preferred school, and describe the risks of unrealistic preferences and consequences of ranking preferences in a particular order;
- give a name and details of a contact point for further information.

Published admission arrangements must include the oversubscription criteria that will be used to allocate places if there are more applicants than places at a particular school. The criteria chosen may in turn give rise to a need to publish more information to help parental choice.

For instance, where catchment areas are used, it is good practice for admission authorities to provide a map of the areas, and to indicate how far parents within those areas have succeeded in getting places in the past, and whether that is a good guide for the future. Where priority is given to children transferring from named feeder primary schools, details should be given.

Composite prospectuses should also tell parents where and how to access other sources of information, such as the annual school performance tables, and published reports of recent school inspections. In the case of a school that is found by inspection to be in need of special measures or to have serious weaknesses, the LEA might want to provide parents with additional information about the urgent steps that are being taken to ensure pupils are not **disadvantaged**. Parents choosing a school need to be assured that all causes for concern will be tackled and removed

quickly, as required by national policies.

Oversubscription and oversubscription criteria

Where more parents have expressed a preference for a particular school in a particular year than it has places in that year, the admission authority must apply the oversubscription criteria in its published admission policy in deciding which parental preference it should meet.

Admission authorities have discretion, which they must exercise reasonably, to determine their own oversubscription criteria, **provided these criteria are objective, clear, fair, compatible with admissions and equal opportunities legislation, have been decided with regard to any relevant advice from the local Admission Forum and have been subject to the required consultation.**

The governing body, as the admission authority, should consider how best to monitor school admission applications, refusals of places, and admission appeals to ensure that the admission process is fair and offers equal opportunities to all pupils. Schools and LEAs have a duty to promote racial equality under the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000), and need to bear this in mind when deciding their oversubscription criteria.

The Code states that the criteria should be, as far as possible, inclusive of all elements in the school's local community.

Commonly used and acceptable criteria include sibling links, distance from the school, ease of access by public transport, medical or social grounds (with an explanation of what evidence is required and how this will be assessed), catchment areas, transfer from named feeder primary schools and whether the child is in public care.

Admission authorities should make clear the order of priority in which the criteria will be applied, and how tie-break decisions will be made.

Admission authorities should not give priority to parents based on the date order in which applications were received before the deadline.

It is important that all oversubscription criteria are clearly defined and objectively assessable. Even common criteria such as sibling links need to be explained, because different ethnic groups may understand terms to have different meanings. The information should make clear the position of other children living in the same household (e.g. step-children) and whether any special conditions apply to twins, triplets etc.

The oversubscription criteria should also explain how distance from home to the school will be measured. This should involve a reliable and reasonable system. Some admission authorities have been criticised by the Local Government Ombudsman for using methods which did not take into account the shortest walking distance, or which relied heavily on commercial systems for measuring car journeys or were poor at ensuring accuracy, for example

using a ruler on a map. Where a child lives with parents with shared responsibility, each for part of a week, the oversubscription criteria need to make clear how the 'home' address will be decided in a fair and considered way.

It is not uncommon for families living in urban areas to make application for a school situated in a neighbouring LEA area. The 1989 'Greenwich Judgment' ruled it to be unlawful for an admission authority to give priority to children simply because they live in the same LEA area in which the school is situated. There has so far not been a similar ruling on parish boundaries and thus priority to baptised Roman Catholic children resident in a designated parish area should still apply. The 'Greenwich Judgement' would only be a factor for the small number of parishes, whose boundaries cross LEA areas. The 1997 **Rotherham** Judgment confirmed that there is nothing unlawful in admission authorities operating catchment areas as part of their oversubscription criteria and thereby giving priority to local children whose parents have expressed a preference for the school.

Section 86 of the 1998 Act requires **LEAs** to make arrangements to enable parents to express a preference for the school where they would like their child to be educated, and to give reasons for that preference. This requirement also extends to the Governing Bodies of Voluntary Aided schools. LEAs and governing bodies have an overriding duty, except in some specified circumstances, to comply with parents' declared preference, and they should have regard to the reason the parents give for preferring that school. This may be particularly relevant where a parent has expressed a preference for a particular type of school, for example, a Roman Catholic school.

It is the view of the DfES that an admission authority's duty in allocating places is to give priority to parents who have expressed preferences and that the admission authority should not guarantee places to parents in a local catchment area, in case the pattern of preferences expressed does not allow this guarantee to be met. Similarly, it should not guarantee places to those who satisfy any other admission criteria.

Faith Schools

The term 'faith school' has found recent prominence in Government and DfES statements and publications without any real clarity as to what they mean by it. What is becoming increasingly clear is that they do not support the concept of a single faith school which is the basis on which our schools were established.

The Code states that schools designated by the Department as having a religious character may give preference in their admission arrangements to members of a particular faith or denomination (as may be required by their Trust Deed), **providing this does not conflict with other legislation, such as Race Relations Legislation.**

With the repeal by the Education Act 2002 of Section 91 of the School Standards and Framework Act 1998, it is no longer possible for aided schools with a religious character to agree special arrangements with their **LEA** by which they can keep

places empty if they do not have enough applications from their particular Faith or denomination.

The Code makes reference to possible tests of faith commitment. The policy of the Diocese is that the required test is evidence that the child is accepted as a baptised Roman Catholic.

The Diocesan policy which has been in place for a number of years is that, in accepting a child for baptism we, as a community, make a total commitment to support the spiritual development of that child and if others involved are unable, for whatever reason, to maintain the commitment they make at that time, this does not absolve us of our commitment. No other faith commitment criterion should be applied.

The Commission has received a small number of enquiries about constructing an admission policy, which gives preference, after Roman Catholics, to the generality of Christians over other Faith groups. It is the advice of the Commission that such discrimination would expose a governing body to a potential claim under Racial Discrimination Legislation. The school is clearly established as a Roman Catholic school rather than to serve a wider Christian community. Discrimination in favour of other Christian pupils is potentially challengeable as capable of discriminating against a racial group.

The Code states that,

‘Faith schools can contribute to community cohesion by having admission arrangements that are inclusive of other faiths and of all elements of the population of their local area. Some faith schools already achieve inclusiveness by designating a proportion of places for which children of their own faith or denomination will be given priority, and the remainder as community or open places for which local children will be given priority. Note this is quite different from ‘quotas’ which would reserve places solely for particular groups, and would mean leaving places empty if not enough members of those groups apply’

This would seem to typify the level of muddled thinking at the Department on this subject. No supporting examples or evidence are given. The suggestion would also appear to have the potential effect of refusing Roman Catholic pupils in favour of others without any guidance as to where those pupils would go; presumably to a school of another faith or no faith commitment. There is also no advice as to the criteria governors should use to select which members of the Roman Catholic community to refuse.

The previous draft stated that ‘The Secretary of State encourages faith schools to have admission arrangements that are inclusive of other faiths and which reflect the general population of their local area’. This statement has been deleted from the latest draft but the policy view remains in the document and is a matter which needs to be addressed at both a national and Diocesan level.

Equal opportunities and avoiding discrimination

Bearing in mind the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000), and the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001), **admission authorities should carefully consider the possible impact, direct or indirect, on equal opportunities of their proposed oversubscription criteria.**

For example, criteria which give preference to children whose parents or older siblings had previously attended the school or whose parents followed particular occupations, such as teachers, could disproportionately (even if unintentionally) disadvantage an ethnic minority, traveller or refugee families who have more recently moved into the area. In such cases, the criterion could be unlawful unless objectively justified. **Such criteria have been determined by the Schools Adjudicator not to be in the interests of all local children and have been ruled out when the subject of an objection.**

The Code states that it would not be good practice for admission authorities to set or seek to apply oversubscription criteria that had the effect of **disadvantaging** certain, social groups in the local community, including disabled pupils. Examples would be explicit or implicit discrimination on the basis of parental occupation, employment, income range, and standard of living or home facilities.

The Race Relations Act 1976 (as amended) requires all admission authorities to promote racial equality. In the context of deciding admission arrangements, this means assessing the impact of admissions policies on ethnic minority pupils and parents.

Where a school is named in a statement of special educational needs, the governing body of a maintained school, has a duty to admit the child to the school. An admission authority should determine oversubscription criteria, and apply them, as fairly to children with special educational needs but no statement, or to children with a disability, as to other applicants.

Children in public care (looked after children)

The Code describes children in public care, 'looked after children' as a disadvantaged group who have very low average levels of attainment, often related to frequent changes of school because their care placements change. It recommends that all admission authorities give priority to such children in their oversubscription criteria. It also provides for a school designated by the Department as having a religious character to be able to give priority to 'looked after children' of their faith over those children belonging to other faiths, (or presumably no faith). This provision has clear implications for our schools. Taken in isolation this section of the Code could only be read to require priority to be given to children in care who would not qualify as Roman Catholic over Roman Catholic members of the Parish etc who are not in care.

While schools should clearly be sympathetic to the needs of disadvantaged groups and to meet those where possible, it is the view of the Commission that the first responsibility of the governing body of a Roman Catholic school is to the community it was established to serve.

This view is informed by:

- The recognition in the Code that 'schools designated by the Department as having a religious character may give preference in their admission arrangements to members of a particular faith or denomination',
- The responsibilities of the Diocese and, by extension those of the governors, under Canon Law to ensure an appropriate faith education for children of the Roman Catholic community.
- The requirements of Charity Legislation to ensure that funds raised in the name of the Diocesan charitable trust, which covers all funds and property held by the Diocese, are used (in terms of schools) for the purpose of providing a Roman Catholic education for the Roman Catholic community of the Diocese.
- The requirement on a school governing body, as a 'public body', to give expression to Human Rights legislation which provides for the right of parents to access for their children education which is in conformity with their religious convictions (where this is compatible with the avoidance of unreasonable public expenditure).

The specimen admission policies which are attached to this document are drafted in accordance with this interpretation of the Code and associated legislation.

Governors might wish to consider going beyond the DfES definition of looked after children as children in public care and to include groups who might not fall within the definition, such as some traveller children or children of refugee or asylum seeker status?

SPECIMEN ADMISSIONS POLICY

PRIMARY SCHOOLS

_____ is a Roman Catholic Primary School provided by the Diocese of Salford and is maintained by the _____ Local Education Authority as a Voluntary Aided School. The school's Governing Body is the Admissions Authority and is responsible for taking decisions on applications for admissions. For the school year commencing September _____, the governing Body has set its planned admissions number at ____.

Admission to the school will be made by the Governing Body in accordance with the stated parental preferences it receives, subject to the following set of criteria which will be used to form a priority order if there are more applications for admission than the school has places available.

1. Baptised Roman Catholic children who are in public care, who will have a brother or sister * attending the school at the time of admission and are resident in the parish of _____
2. Baptised Roman Catholic children who will have a brother or sister attending the school at the time of admission and resident in the parish of _____
3. Other baptised Roman Catholic children who are in public care and are resident in the parish of _____
4. Other baptised Roman Catholic children who are resident in the parish of _____
5. Other baptised Roman Catholic children who are in public care and resident in another parish.
6. Other Baptised Roman Catholic children resident in another parish.
7. Other children who are in public care.
8. Other children.

NOTES

- a. All applicants will be considered at the same time and after the closing date for admissions which is _____
- b. Each Roman Catholic applicant will be required to produce a baptismal certificate.
- c. Parents should check carefully whether they are resident within the parish boundary of _____. A map illustrating the boundary is attached.
- d. It is the duty of governors to comply with class size limits at Key Stage One. This means that the school cannot operate classes in Key Stage one of more than 30 children.
- e. If in any category there are more applications than places available, priority will be given on the basis of proximity to the school. **(How this is to be defined must be clearly stated in the policy).**
- f. The Governing Body reserve the right to admit children with proven and exceptional medical and social needs where admission to the school might best help satisfy those exceptional needs, providing that such application is submitted with appropriate evidence from a doctor or social worker.
- g. If an application for admission has been turned down by the Governing Body, parents can appeal to an independent Appeals Panel. This appeal must be sent in writing to the Clerk to the Governors at the school within 14 days of notification of refusal. The date of notification will be 2 working days after posting by first class post. The parents must give their reasons for appealing in writing and the decision of the Appeals Panel is binding on the Governors.
- h. **(For schools with a nursery)** Admission arrangements to the Reception class are separate to those for the Nursery. Attendance at the Nursery does not give a child any guarantee or priority when it comes to consideration by the governors of applicants for admission to the Reception class.

* Governors should consider how they will interpret a sibling link. If they use brother or sister they should be clear at the start of the process how this is to be defined, (for example step relatives and children of partners where there is not a legally defined domestic arrangement in place) and their interpretation should be clearly stated in the policy. The notes might be an appropriate place for such a definition.

SPECIMEN ADMISSIONS POLICY

SECONDARY SCHOOLS

_____ is a Roman Catholic Secondary School provided by the Diocese of Salford and is maintained by the _____ Local Education Authority as a Voluntary Aided School. The school's Governing Body is the Admissions Authority and is responsible for taking decisions on applications for admissions. For the school year commencing September _____ the governing Body has set its planned admissions number at _____.

The governors recognise that the first responsibility of the school is to serve the Roman Catholic community for which it has been established. This is focused on designated parish communities and the Roman Catholic primary schools that are partners in providing for those communities. In establishing their oversubscription criteria the governors have also taken full account of the Code of Practice produced by the Department for Education and Skills and the emphasis placed on supporting children in public care.

The parish communities served by the school are

The associated primary schools are

Admission to the school will be made by the Governing Body in accordance with the stated parental preferences it receives and subject to the following set of criteria which will be used to form a priority order if there are more applications for admission than the school has places available.

1. Baptised Roman Catholic children who are in public care, who would have a brother or sister * attending the school at the time the admission would take effect and are resident in a designated parish.
2. Other Baptised Roman Catholic children who are in public care and are resident in a designated parish.
3. Other Baptised Roman Catholic children who are resident in one of the parishes named above, who attend one of the associated primary schools and would have a brother or sister attending the school at the time the admission would take effect.
4. Other Baptised Roman Catholic children who are resident in one of the parishes named above and attend one of the designated primary schools.
5. Other Baptised Roman Catholic children who would have a brother or sister attending the school at the time the admission would take effect.
6. Other Baptised Roman Catholic children who are resident in one of the parishes named above.
7. Other Baptised Roman Catholic children.
8. Other children who are in public care and have a brother or sister attending the school at the time the admission would take effect.
9. Other children who are in public care.
10. Other children.

NOTES

- a. All applicants will be considered at the same time and after the closing date for admissions which is _____.
- b. Each Roman Catholic applicant will be required to produce a baptismal certificate.
- c. If in any category there are more applications than places available, priority will be given on the basis of proximity to the school. **(How this is to be defined must be clearly stated in the policy).**
- d. Parents should check carefully whether they are resident within the parish boundary of one of the designated parishes. Maps illustrating these boundaries are available in the information provided by the primary schools and at this school.

- e. The Governing Body reserve the right to admit children with proven and exceptional medical and social needs where admission to the school might best help satisfy those exceptional needs, providing that such application is submitted with appropriate evidence from a doctor or social worker.
- f. If an application for admission has been turned down by the Governing Body, parents can appeal to an Independent Appeals Panel. This appeal must be sent in writing to the Clerk to the Governors at the school within 14 days of refusal. The parents must give their reasons for appealing in writing and the decision of the Appeals Panel is binding on the Governors.

* Governors should consider how they will interpret a sibling link. If they use brother or sister they should be clear at the start of the process how this is to be defined, (for example step relatives and children of partners where there is not a legally defined domestic arrangement in place) and their interpretation should be clearly stated in the policy. The notes might be an appropriate place for such a definition.