

School admissions, children and young people with disabilities or special educational needs.

A briefing from the Council for Disabled Children



School admissions, children and young people with disabilities or special educational needs

Ensuring that every child in England enjoys the right to education is of fundamental importance. Receiving the right education is the key to unlocking a child's enjoyment of many other rights, and helping to ensure that children reach their full potential, ensure their well-being, and participate actively in society.

Children's Legal Centre (2008) The right to education in England

The admissions system is designed to make sure that all children can exercise their right to education and that they all have the same opportunity to attend a good school that makes appropriate provision for them.

The admissions requirements under the School Standards and Framework Act 1998; the special educational needs (SEN) requirements under the Children and Families Act 2014; and the disability requirements under the Equality Act 2010 all combine to provide a strong framework protecting children and young people's rights. Schools who welcome all children and young people; schools who think ahead and make adjustments for disabled pupils; schools who plan special educational provision to meet special educational needs; schools who involve parents and children and young people themselves in planning to achieve good outcomes are more likely to meet both the spirit and the letter of the legislation.

A report from the Office of the Children's Commissioner in 2014, entitled, 'It might be best if you looked elsewhere', found that, in general, the school admissions process is well-managed. However, there was evidence from some parents of disabled children and children with SEN who, during the informal parts of the process, such as visits to schools, had been encouraged to explore admission to a different school for their child. Actions such as encouraging parents to go elsewhere may amount to discrimination. There is more on this below.

SEN and disability must not be used as a reason to refuse admission.

Local authorities are required to provide impartial information, advice and support for children, young people and parents on SEN and disability issues, including admissions. Information about Information, Advice and Support Services (IASS), and other advice giving organisations, is provided at the end of this briefing. It is important that parents, children and young people are given information about these services so that they can benefit from the support provided.

About this briefing

This briefing

This briefing provides information about school admissions arrangements. It is written for parents of disabled children and young people; parents of children and young people with special educational needs (SEN) and professionals advising parents including those in IASS.

Different admissions arrangements apply in different circumstances and, in this briefing, we include:

- The admission of disabled children and young people and those with SEN during the annual admissions process, [page 7](#);
- The admission of disabled children and children with SEN at other times of the year, [page 11](#);
- The admission of children with SEN who have an *education, health and care (EHC) plan*, [page 13](#).

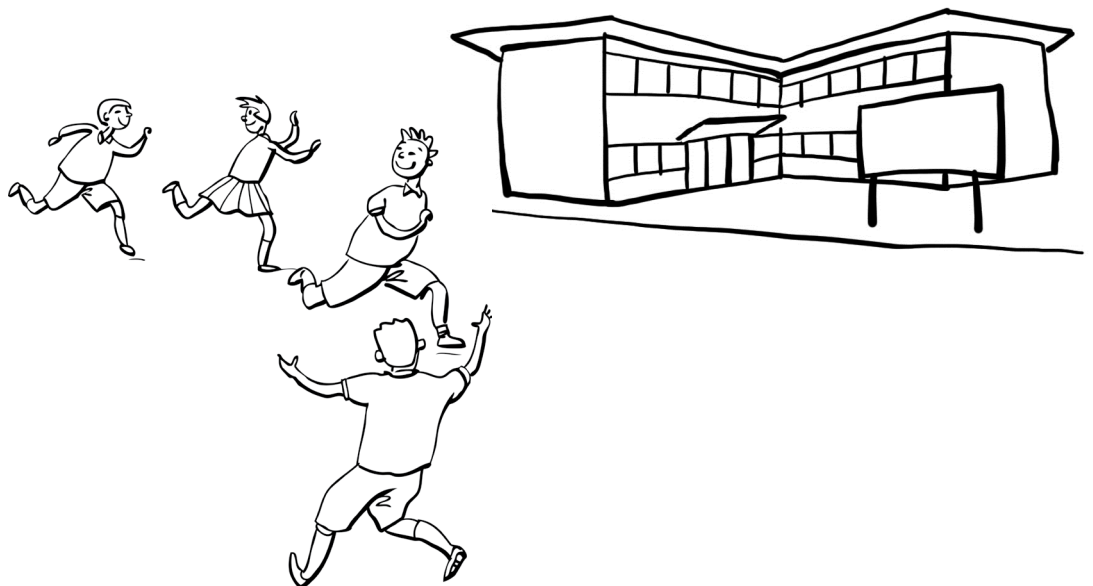
This briefing provides a summary of the arrangements and focuses on issues that are particularly relevant to the admission of disabled children and children with SEN. The relevant statutory Codes: the *School Admissions Code* and the *SEN and Disability Code of Practice*, set out the requirements in detail. The Equality Act covers admissions and so, in the first section, we look at the requirements of the Equality Act in relation to the admission of disabled children and young people, [page 5](#).

We use the term 'school' to include maintained schools, Academies and free schools. Free schools are Academies that have been set up in a particular way. Most of the admissions, SEN and disability requirements apply directly to schools and Academies, but some duties apply in a different way, through the Academy's funding agreement. The briefing points this out where the duties apply differently. Otherwise, the term 'school' applies to all types of school including Academies and Free Schools.

Italics are used to indicate words or expressions that have a particular meaning that is defined in the law, in the School Admissions Code or in the SEN and Disability Code of Practice. Italics are used the first time this word or expression is used. Many of these words or expressions are explained in this briefing.

Contents

1. Admissions and the Equality Act 2010	5
2. The admission of children and young people with SEN during the annual admissions process	7
3. The admission of children outside the annual admissions process	11
4. Admission of a child or young person with an EHC plan	13
5. Further Information	16



1. Admissions and the Equality Act 2010

Admissions are covered by the Equality Act 2010. The Equality Act applies to all schools. Schools must not discriminate against disabled children and young people seeking admission to the school as pupils.

The definition of disability in the Equality Act is quite broad:

Many children and young people who have SEN may have a disability under the Equality Act 2010 – that is ‘...a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities.’ This definition provides a relatively low threshold and includes more children than many realise: ‘long term’ is defined as a year or more and ‘substantial’ is defined as ‘more than minor or trivial’.

SEN and Disability Code of Practice: 0-25 years (2015)

Disability discrimination can take a number of forms: direct or indirect discrimination, discrimination arising from a disability, a failure to make reasonable adjustments, harassment, and victimisation are all prohibited conduct under the Equality Act. The disability discrimination duties are explained in a CDC booklet, *Disabled Children and the Equality Act 2010: What teachers need to know and what schools need to do.*

All schools must make *reasonable adjustments* for disabled children and young people in their admission arrangements, as in every other aspect of school life. Because this is an anticipatory duty, schools need to think ahead and plan to make adjustments to prevent any disadvantage that might arise at any stage of the admissions process.

Under wider Equality Act duties, admissions authorities must have due regard to the need to: *eliminate discrimination, advance equality of opportunity and foster good relations* between disabled pupils and pupils who are not disabled. This is known as the *Public Sector Equality Duty*, and schools must publish information every year to show that they are complying with these duties and objectives to show how they are going to achieve the aims of these duties.

All schools are required to publish an SEN Information Report, and this must be on their website. As part of this duty, all schools must publish information about arrangements for disabled pupils:

- Admissions arrangements for disabled pupils;
- How the school prevents disabled pupils from being treated less favourably than others;
- The facilities that help disabled pupils to access the school;
- The school’s *Accessibility Plan*. The Accessibility Plan must show how the school is improving: the accessibility of the physical environment; access to the curriculum; and access to information for disabled pupils.

During a visit the school told me informally that they don't deal with the type of need my child has. Can they do this?

The nature of a child's disability or special educational need is not a lawful basis for refusing admission. If your child is disabled, rejecting a child on the basis of the nature of their needs may amount to discrimination.

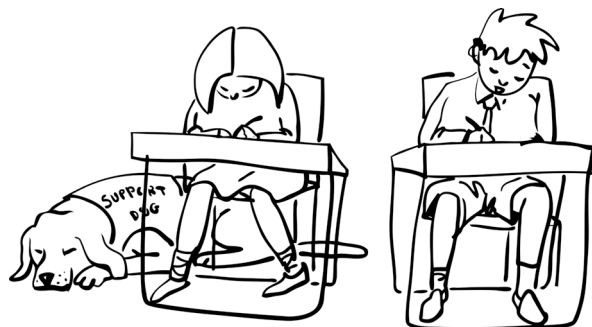
What can I do about it?

In the first instance, you may want to raise the complaint directly with the school. (All schools should publish their complaints arrangements.) If this doesn't solve the problem, or you don't want to complain to the school first, you can make a claim of disability discrimination to the First-tier Tribunal (Special Educational Needs and Disability).

If the complaint was about an admissions decision, rather than something that happened on a visit, you would appeal against the decision to the Admissions Appeal Panel. There is more about complaints and appeals [below](#).

How long do I have to make a claim of disability discrimination to the Tribunal?

If you are making a claim of disability discrimination to the Tribunal, you have six months from the time that the event took place – the event that you think may count as discrimination.



2. The admission of children and young people with SEN during the annual admissions process

Children and young people with SEN who are on SEN Support, and do not have an EHC plan, go through the normal annual admissions process in the area where they live. Admissions to all maintained schools in England are governed by the School Admissions Code. This Code provides statutory guidance. This means that everyone who has responsibility for any aspect of admissions has to comply with it: admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels.

The law and the School Admissions Code apply directly to maintained schools; the law and the Code apply to Academies (including Free Schools, University Technical Schools and Studio Schools) through a 'funding agreement' (a contract) with the Secretary of State for Education. This means that, if an Academy doesn't comply with the law or the Code, the arrangements for putting it right are different. We say more about this below.

It is the *admissions authority* for a school or academy that has responsibility for admissions.

Who is the admissions authority?

Type of school	The admissions authority
A community school A voluntary controlled school	The local authority
A foundation school A voluntary aided school	The governing body
An Academy or a Free School	The Academy Trust

The admissions authority for the school must ensure that the admissions arrangements for the school comply with the School Admissions Code. This includes some important principles:

Admissions authorities must ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective.

School Admissions Code, 2014

All schools are required to publish their admissions arrangements. The admissions arrangements are the responsibility of the admissions authority for the school. The admissions arrangements must include:

- The published *admission number*, that is, the number of pupils who can be admitted to the school; and
- The *over-subscription criteria*, that is, the criteria that will be used if there are more applications to the school than there are places available.

The local authority brings together the admission arrangements for all the schools in their area and publishes these in a single document. The local authority also provides a *common application form* for all state funded schools. Parents apply to the local authority where they live for places at their preferred schools. Parents can express a preference for at least three schools and this can include schools in a different local authority.

If a school has more places than applications, any parent who applies must be offered a place for their child, unless the school is a *designated grammar school* or, in some circumstances, a school that has a long-standing arrangement that allows it to be *partially selective*.

If a school has more applications than places, the school's admissions authority must put the applications in order against their over-subscription criteria and send the list back to the local authority. Parents then receive an offer of a place at their highest preference school that has a place available.

For secondary schools, offers are made on or about 1 March and for primary schools, on or about 16 April in the year in which the pupil will be admitted to the school.

Over-subscription criteria

The admissions arrangements for any school must set out the over-subscription criteria that will be used if there are more applications than places available, and the order in which the criteria will be applied. Any child who has an EHC plan that names the school must be admitted to the school (there is more about this later).

In any over-subscription criteria, the highest priority must be given to *looked after children* and to *previously looked after children*. The over-subscription criteria must be:

- reasonable
- clear
- objective
- procedurally fair and
- compliant with all the equalities legislation.

The School Admissions Code says:

Admissions authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child.

School Admissions Code, 2014, page 10

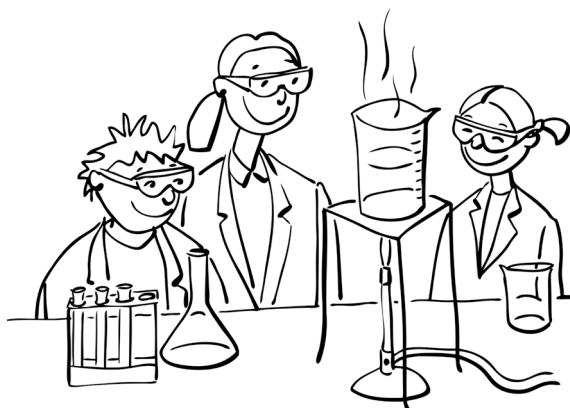
There are many criteria that are permitted and are commonly used, such as:

- a child having brothers or sisters at the school
- distance between the child's home and the school
- catchment area
- feeder schools.

Schools recognised by the Secretary of State as having a religious character (normally called *faith schools*) are permitted to allocate places by reference to faith-based criteria where the school is over-subscribed.

There are a number of things that admissions authorities must not do. The list in the Admissions Code of Practice is quite long. Included here are some of the most relevant considerations for children with SEN. For example, admissions authorities must not:

- Take into account anything other than the over-subscription criteria they have published;
- Introduce any new selection by ability (only designated grammar schools can select by ability and some schools that have pre-existing arrangements for partial selection);
- Interview children or parents;
- Take into account reports from previous schools about children's past behaviour, attendance, attitude or achievement, or that of any other children in the family. However, if a child has been permanently excluded from two or more schools, admissions authorities do not need to comply with parental preference for a period of two years after the last exclusion, see below.



Sixth form places

Admissions authorities are allowed to set academic criteria for admission to sixth forms. These must be the same for pupils who already attend the school and for pupils applying to the sixth form from another school. The sixth form admission criteria must be consulted upon and published in the same way as criteria for admission at any other point. As with other points of entry, looked after children who meet the criteria have priority in admission. As with other points of entry, the Equality Act requirements apply to sixth form admissions, so schools must, for example, make reasonable adjustments.

Schools are not allowed to interview children or parents as part of the admission arrangements, but a meeting can be held to discuss sixth form options and academic entry requirements. This meeting cannot be used to determine whether or not a place is offered.

Complaints and appeals

What happens if my child is refused admission?

You can appeal against a decision to refuse a place to your child at the school you have applied to. When the *admissions authority* tells you that your application has been unsuccessful, they must:

- Let you know the reason that the admission was refused;
- Give you information about the right to appeal, the deadline for making an appeal (this must be at least 20 days) and where you have to send your appeal;
- Tell you that you have to set out, in writing, the reason for your appeal.

What happens if the admissions arrangements are unfair?

You can object to admissions arrangements that do not comply with the law and the School Admissions Code. You make an objection to the Schools Adjudicator; the Schools Adjudicator must consider your objection; and, if the Schools Adjudicator decides the admissions arrangements do not comply, the Adjudicator can direct the admissions authority to change them and they must do so.

If your complaint is about unfair admissions arrangement to an Academy, it is only the Secretary of State who can *direct* the admissions authority to change their admissions arrangements.

3. The admission of children outside the annual admissions process

Parents can apply directly to a school for their child outside the annual admissions round of applications. Local authorities do not have to co-ordinate admissions outside the annual process, though some do. Local authorities are responsible for ensuring that there are sufficient school places in their area and, if parents ask, they must provide information about where there are places still available in all the schools in their area.

There may be no difficulty finding a suitable place.

However, some children seeking a place outside the normal admissions round may be looking for a school after being permanently excluded or after a period in a pupil referral unit or other alternative provision. If a child who needs to be admitted outside the normal admissions round has not got a school place, a fair access protocol is used. A fair access protocol is most commonly used for placing permanently excluded pupils and, in particular, for placing pupils who have been excluded permanently from two or more schools.

Every local authority must have a *fair access protocol*. The purpose of the fair access protocol is to ensure that children, particularly the most vulnerable, are offered a place at a suitable school as quickly as possible, so that the amount of time that a child is out of school is kept to the minimum.

There are requirements about which children must be covered by the fair access protocol. These include: children with SEN, disabilities or medical needs but who do not have an EHC plan (or a statement); children who have been out of education for two months or more; and children who need to be reintegrated to mainstream education (for example, from a pupil referral unit or the criminal justice system).

The local authority must agree the fair access protocol with the majority of schools in the area; and all admissions authorities must participate in the fair access protocol.



Parental preference for a particular school does not have to be followed when the fair access protocol is being used to admit a child. If a child has been excluded permanently from two or more schools, there is no requirement for an admissions authority to comply with parental preference for a particular school for a period of two years from the last exclusion. However, this 'twice excluded rule' does not apply to:

- young children (below compulsory school age at the time of the exclusion);
- children who have been reinstated following a permanent exclusion;
- children with an EHC plan (or a statement).

In agreeing a fair access protocol, the local authority must ensure that no school is required to take more than their fair share of children who have been excluded from other schools or have challenging behaviour, even where they have places available.

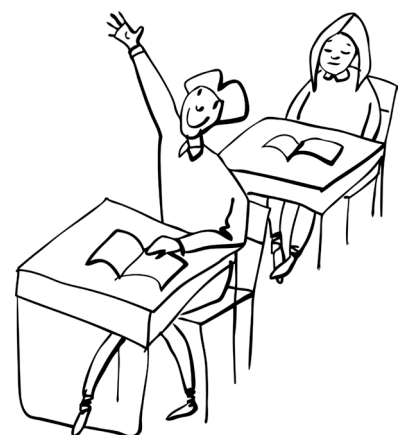
A fair access protocol must not require a school to accept automatically a child with challenging behaviour in place of another child who has been excluded from the school. Admissions authorities must not refuse to admit a child with challenging behaviour on the basis that they must first have an assessment for special educational needs.

My child is on SEN Support. We've just moved to the area and the local school won't admit her. What can I do?

If the school is not full, they may be required to admit her, unless she has been permanently excluded from two or more schools.

If the school is full, they may be able to refuse admission. If you ask the local authority, they must give you information about schools that have places available.

You may also want to contact your local IASS for more information, advice and support.



4. Admission of a child or young person with an EHC plan

The admission of a child or young person with an EHC plan is agreed under procedures set out in the Children and Families Act 2014. Towards the end of the EHC needs assessment and plan development process, at the point where a draft EHC plan is sent to the parents of the child, or to the young person themselves, no educational placement is named in Section I of the plan. The parent, or the young person, may then ask for a particular institution to be named in the plan.

From this point onwards, the process varies according to the type of educational institution that is the preference of the parent of the child, or the young person him or herself.

Requesting a particular school

The parent or the young person can request that any one of the following types of institution is named in an EHC plan:

- a maintained school
- a maintained nursery school
- an academy or free school
- a further education or sixth form college
- a non-maintained special school
- an independent special school or college approved under section 41 of the Children and Families Act 2014¹

If a parent or a young person makes a request for a particular school, nursery or college in any of these groups, the local authority must then consult the establishment and must name that school or college in the child or young person's EHC plan unless:

- the school or college is *unsuitable to the child or young person's age, ability, aptitude or special educational needs*; or
- the child or young person's attendance at that school, or other institution, would be:
 - o *incompatible with the efficient education of others*; or
 - o *incompatible with the efficient use of resources*.

If any of these conditions apply, the local authority is not required to name the requested school or other establishment in the EHC plan. If the school or college is named in the child or young person's EHC plan, that school or college must then admit them.

¹ A school or college which has been approved by the Secretary of State as a school or college that a parent or young person can request is named in a plan.

For other schools or educational establishments

For other nurseries, schools or colleges, not covered by the list above, a parent or young person can make representations for a particular nursery, school or college. The local authority must consider representations but there is no obligation on the local authority to name that nursery, school or college in the EHC plan and the local authority cannot name it without the agreement of that establishment.

Transferring between schools

At key points of transfer between phases of education, such as primary to secondary school, an EHC plan must be reviewed in time to make the amendments and name the new school by 15 February in the year of the transfer, or 31 March in the case of transfer to post-16 provision.

Presumption of mainstream

Where no particular nursery, school or college has been requested, or a particular request has not been met by the local authority, the law says that children and young people must go to a mainstream school unless:

- the parent or young person does not want a mainstream school; or
- going to a mainstream school would not be compatible with the *efficient education of other children*.

A local authority cannot use the *efficient education of other children* exception if there are reasonable steps that might make going to a mainstream school compatible with the efficient education of other children. The SEN and Disability Code of Practice sets out a range of reasonable steps that might be taken in different circumstances and for different pupils, see paragraphs 9.91-9.94 of the Code.

What happens if the local authority does not name the school I want?

You can appeal to the Tribunal against:

- the nursery, school or college named in your child's EHC plan;
- the type of school, or other institution specified in the EHC plan; or
- the fact that no institution is named in the EHC plan.

If your child is over school leaving age (the end of the school year in which they become sixteen) they can bring the appeal themselves.

An appeal is made to the First-tier Tribunal (Special Educational Needs and Disability). An appeal must be made within two months of the local authority notice of their decision. If the appeal is only about the school or other institution in the EHC plan, parents or young people do not need to consider mediation; if other aspects of the EHC plan are being appealed, they must consider mediation and get a certificate to confirm that they have considered it. The SEN and Disability Code of Practice describes mediation requirements in more detail.

The Tribunal can order the local authority to name a particular nursery, school or college in an EHC plan, if it is a type of nursery, school or college on the list that can be requested, see above. When the local authority names the nursery, school or college, they must admit that child or young person. If it is a nursery, school or college about which *representations* are made, the Tribunal cannot order the local authority to name that institution unless it agrees to admit the child or young person.

What happens if a school refuses to admit a child, even when the school has been named in the child's EHC plan?

If it is a maintained school, the local authority can direct the school to admit the child. If it is an Academy, the local authority cannot direct them to admit the child. The local authority can, however, contact the Department for Education (DfE) and let them know that the Academy has refused to admit the child. The DfE takes the issue up with the Academy and, ultimately, can direct them to admit the child.



5. Further Information

Information and guidance:

Department for Education (2012) *School Admission Appeals Code: Statutory guidance for school leaders, governing bodies and local authorities*

Department for Education (2014) *School Admissions Code: Statutory guidance for admissions authorities, governing bodies, local authorities, schools adjudicators and admissions appeals panels*

Department for Education and Department of Health (2015) *Special Educational Needs and Disability Code of Practice: 0 to 25 years*

Equality and Human Rights Commission (2014) *Technical Guidance for Schools in England*

Office of the Children's Commissioner (2014) *'It might be best if you looked elsewhere': An investigation into the schools admissions process*

Stobbs, P. (2015) *Disabled Children and the Equality Act 2010: what schools need to know and do, including responsibilities to disabled children under the Children and Families Act 2014.*
Council for Disabled Children

Sources of information, advice and support:

Equality and Human Rights Commission (EHRC): www.equalityhumanrights.com/en

Independent Parental Special Education Advice (IPSEA): www.ipsea.org.uk/

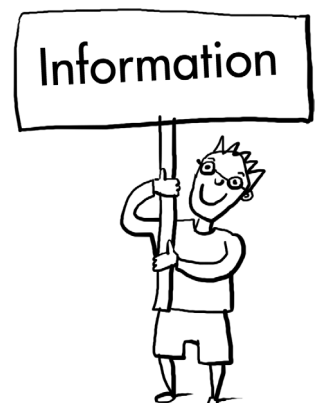
Information, Advice and Support Services Network (IASSN): www.councilfordisabledchildren.org.uk/information-advice-and-support-services-network

Office of the Schools Adjudicator: www.gov.uk/guidance/schools-adjudicator-make-an-objection-appeal-or-referral

Objections about admission arrangements form the largest part of the work of schools adjudicators.

For EHC plan appeals: www.gov.uk/appeal-ehc-plan-decision

For disability discrimination claims against schools: www.gov.uk/complain-about-school/disability-discrimination





About the Council for Disabled Children

The Council for Disabled Children (CDC) is the umbrella body for the disabled children's sector in England, with links to the other UK nations. CDC works to influence national policy that impacts upon disabled children and children with Special Educational Needs (SEN) and their families. The CDC membership is made up of a variety of professional, voluntary and statutory organisations, including disabled young people and parent representatives. CDC's broad based membership and extensive networks of contacts provides a unique overview of current issues. It also enables us to promote collaborative and partnership working among organisations.

CDC hosts the following networks and projects:

- IASS Network
- Independent Support
- Making Ourselves Heard
- Special Educational Consortium
- Transition Information Network

cdc@ncb.org.uk | www.councilfordisabledchildren.org.uk | 0207 843 1900



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